



# THE DEFENDER

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Newsletter of the Iowa Civil Liberties Union

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## Tinker Lawyer Still has It - Johnston Reminisces About Case; Talks of Freedom in Wartime

Dan Johnston, the ICLU's lawyer in the 1969 Des Moines Schools black armband case, told a record annual dinner audience that it was the over-confidence of school officials and lawyers that probably made his free speech victory possible.

"The arrogance of these people was just extraordinary. I don't think they thought they had any chance of losing--and we took advantage of that," said Johnston, who was just 30 years old when he argued the case to the United States Supreme Court.

Johnston started off his remarks by commenting about how when he served on the ACLU national board in the 1960s, he would have never considered bringing up the topic of human rights for gay people. And yet, here he was 40 years later, the third gay person in four years to address the ICLU annual dinner. [2002 -Anthony Romero, ACLU executive director; 2000 - Gina Russell of Ames, ACLU scholarship award winner].

The New York attorney also spoke of his long time friend, Louise Noun, who left this world on her own terms last summer at the age of 94. Noun, considered the matriarch of the ICLU, served as ICLU President during Dan's run with the organization, and proved instrumental in helping to convince her colleagues in the ICLU to take the case. In fact, she even financed the Tinker litigation and went on help transform the ICLU into a viable and financially stable ACLU affiliate.

Johnston announced that the ICLU was in the process of creating a Louise Noun Award, the first of which will be given out at the 2004 Annual Dinner.

During the Q & A period, the speaker addressed his comments to the current state of civil liberties in America. While somewhat discouraged (he anticipates that Roe v. Wade will likely be overturned), he believes the repression we are facing as a nation might serve to awaken a passion for freedom in the American people

that has never really been fully tapped.

"I've always thought that it might have been preferable to gain some of our civil liberties victories in the legislature rather than in the courts, because it would have made us better able to sustain our freedoms over the long haul," said Johnston. "But now it's likely we'll have that chance," he added.



*Dan Johnston wears Tinker armband as he reminisces at Annual Dinner in Iowa City.*

As we send this copy of the Defender to the printer, the special session is in progress, the FCC media monopoly rule change vote looms, and the deadline for vetoes from the governor is near. For these reasons, we wanted to wait a few more days before putting the Defender "to bed." However, considering the lateness of this edition of the Defender, we decided we couldn't wait any longer. Please check our website for an update: [www.iowaclu.org](http://www.iowaclu.org)

### Civil Liberties History

June 14, 1777 - Continental Congress Adopts the Stars and Stripes

June 19, 1865 - Black Texans learn they are free from Union Soldiers

June 27, 1969 - Stonewall Inn raided by New York City police

# Sentencing 'Deform,' Christian Prison 'Reform,' & the Turnip Truck

Marty Ryan, the ICLU's seasoned lobbyist, describes this past legislative session as one of the worst he's ever experienced. Considering the crap, lies and headaches he's endured over the previous eleven sessions, that's really saying something!

Thankfully for the ICLU and civil liberties, Ryan is a glutton for punishment. If he wasn't, there would be less freedom in Iowa today -- a whole lot less. So while our legislative director tends to report on the fights he ultimately loses, we all need to remember that his skills and vigilance make a difference every day. Not only has he worked to kill an increasing number of bills each year, but his mere presence as THE lobbyist for the Bill of Rights probably thwarts lawmakers from even considering bills that would meet with his wrath -- and yours!

## Sentencing reform isn't

Prior to the session, the ICLU proclaimed sentencing reform a priority. And even though we sought something "meaningful" in this area, the ICLU and our allies couldn't make it happen. In fact, it got so bad we ultimately opposed SF 422! In the end, the bill narrowed the disparity between crack cocaine and powder cocaine by making it easier to lock up cocaine users for longer terms, rather than reducing the penalties on crack users, as we and other reformers had asked. Obviously, this actually intensifies the War on Drugs! Thus our disapproval, notwithstanding our recognition of the move toward equity in treatment of crack and cocaine offenders.

The bill also eliminates "determinate" (kind of like "minimum") sentences for certain class "D" felonies, which is good, but it affects so few inmates that it makes little difference. A correctional impact statement, prepared by the non-partisan Legislative Fiscal Bureau, predicts that this segment of the bill will reduce the prison population by approximately 22 inmates over a five-year period.

Other provisions deal with the infamous "85 percent rule," which has the

effect of mandating that prisoners convicted of certain crimes serve at least that much of their sentence before they can even be considered for parole. This rule has had a great deal to do with crisis in Iowa's prison system.

One part of SF 422 lowers the percentage to 70% for some prisoners, which is good, except that it does not apply retroactively to prisoners already serving time. Instead, it stipulates that the only way a current prisoner could qualify for a reduction to 70 % is for the county attorney who prosecuted the defendant to file a motion to reopen the case. Since such motions will be filed rarely, the benefits of this provision won't be realized until the new defendants serve 70 percent of their sentences. It is also worth noting that the bill actually adds the crime of vehicular homicide to the group of felonies subject to the 85 (now 70) % category.

## Governmental Christianity is fundamental

The "Healthy Iowans Tobacco Trust" fund (HITT) contains a provision to appropriate \$250,000 to the InnerFaith Freedom Initiative (IFI), the fundamentalist Christian-based Chuck Colson program at the Newton Correctional Facility that evangelizes selected inmates. An amendment added additional \$60,000 (\$310,000 total) to "establish" a "similar" program at the Mitchellville facility for women.

As one might guess, the ICLU lobbied furiously against this provision, to no avail. We have submitted a request to the governor asking for a line-item veto.

## Voting rights -- or wrongs

House File 614, related to the federal Help America Vote Act (HAVA), was a piece of controversy that has not yet been sent to the governor. Some highlights of the bill include provisions that close polls an hour earlier, narrow the window of time in which absentee ballots may be requested and submitted, and the creation of a class "D" felony for returning an absentee ballot if the returnee is not the person who voted

absentee or a particular relative of the absentee voter. Although the bill passed both houses, its future remains uncertain as it takes its place on the Senate's unfinished business calendar. It could be an issue for the special session.

## Taxing the proverbial turnip

For several years now, the Iowa legislature has been obsessed with the idea of paying for the criminal justice system by assessing fees, fines, surcharges, and rent on inmates -- almost all of whom are dirt poor. This trend continued unabated in the 2003 session. House File 650, which is on the governor's desk, is a bill that would allow city and county jails to assess a fee for searching, fingerprinting, photographing, and booking any defendant eventually convicted of a crime.

The story of this bill is telling. Soon after the bill was introduced, ICLU intern Rosalind Sargent started working for an amendment that would have placed a cap on the fees, but the floor manager of the bill in the Senate told her that this bill was going nowhere, so we moved on to other issues. Much to our surprise, the bill came up for consideration as the last bill prior to the second funnel deadline. In an effort to delay the bill, we managed to convince Senate Majority Leader Stewart Iverson that it made sense to refer the bill to the Committee on Ways & Means. At that point we urged Senator Joe Bolcom (D-Iowa City) to introduce an amendment for us in that committee, which he did. However, in the end, pressure by the county sheriffs and municipalities was more than enough to get the amendment scratched.

Another bill, Senate File 399, fell off the turnip truck -- with a little help from the ICLU. Initiated by the Department of Public Safety, the bill would have required persons convicted of a crime in which the criminalistics laboratory had to conduct lab tests to pay a surcharge equal to 20% of the fine. The proceeds were to be used to update equipment and other items within the criminalistics laboratory. The ICLU, which

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# Frequently Asked Questions about the ICLU and ACLU

1) **How does someone become a member of the ICLU?** To join, one can simply go to our website at [www.iowaclu.org](http://www.iowaclu.org) and download a form that can be filled out and mailed to us here in Des Moines. The check should be made out to "ACLU" -- cost is \$5.00 student/\$20 single/\$30 joint. Or people can call, write or email us here in Des Moines and we'll send a membership envelope to them.

2) **When I become a member of the ACLU, does that automatically make me a member of the ICLU?** Yes, everyone in Iowa who has paid membership dues to the ACLU is also a member of the ICLU.

3) **If I make a gift to the ICLU Foundation, does that make me a member?** No, but it does make you a "supporter." See response to the next question.

4) **Is it possible to contribute to the ICLU Foundation without officially becoming a member of the ICLU or the ACLU?** Yes it is possible to be a "supporter" without being a "member." But you do not have to be a member to receive ICLU and ACLU mailings. Iowans who only donate to the ICLU Foundation receive both our newsletter, The Defender, and mailings and newsletters from the national ACLU office. But it is important to remember that donations to the ICLU Foundation do NOT maintain your membership in the ICLU/ACLU. The only way to maintain your status as a member is to annually make out a check to the "ACLU," NOT the ACLU Foundation or the ICLU Foundation.

5) **Does the ICLU/ACLU ever reveal the names of its members or supporters?** No. Membership is strictly confidential and the names of contributors to the Major Gifts Campaign are printed in the Defender only if donors agree to it. From time to time the national office will allow some kinds of nonprofits to mail to ICLU members, but it is done in a manner which keeps the identity of everyone a secret. And members can ask that their name and address not be shared in this manner. They just need to call us or send a note requesting it.

6) **Why did I not receive a ballot earlier this year so I could vote for the ICLU Board of Directors?** You may not a "member" or your membership may have "lapsed." If you think you are a member, but did not receive a ballot, please contact the ICLU office.

7) **When I send money directly to the ACLU in New York, does that money help fund ICLU programs here in Iowa?** As a smaller, subsidized affiliate, the ICLU annually receives from the national office a significant distribution of funds -- much more than the total amount donated by Iowans to the ACLU. However, checks sent by Iowans to the national office ultimately help reduce that portion of our distribution that is considered a subsidy, thus freeing up such money for use in other small affiliates like Mississippi and Alabama. Just keep in mind that the best way to contribute to the ICLU's work is to make a gift directly to the ICLU Foundation.

8) **How does one become a major gifts donor?** Contributors who have demonstrated a particularly strong financial commitment to civil liberties are given the opportunity to be recognized in our Major Gifts Fund Campaign. Major Gifts prospects are personally contacted by members of the ICLU board and other volunteers to talk about the work of the ICLU and inquire into their interest in becoming a donor to the

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## Legal Notes

Animal Feeding Operations--Nuisance Immunity:

We expect oral arguments before the Iowa Supreme Court to be scheduled soon in our attack upon Iowa Code Section 657.11 which immunizes concentrated animal feeding operations from being sued over nuisances that they create. The ICLU has challenged the law by joining with nuisance attorneys and has succeeded in convincing a number of courts that the law is unconstitutional under the theory that it effects a taking without just compensation. Additionally we argue that the statute violates Iowa's constitutional right to acquire and defend property under Article I, Section 1 of the Iowa Constitution.

Other Issues currently in litigation include:



- Failure to provide treatment to a schizophrenic prison inmate
- A challenge to the solitary confinement of persons being held for possible civil commitment under Iowa's new Sexually Violent Predator act.
- Defense of a District Court's deci-

sion applying Iowa's Student Search statute to throw out the locker search of a student.

- A lawsuit seeking justice for a hispanic woman who, despite any reasonable evidence of guilt, was coerced into confessing to a bad check charge by a detective who threatened her with loss of her children and deportation of her non-citizen husband.

- An appellate amicus brief filed with the 8th Circuit U.S. Court of Appeals, calling that court's attention to the fact that non-English proficient defendants in Iowa are being denied access to reliable qualified interpreters.

- A challenge to the facial validity of Iowa's Flag Desecration statute.

- A challenge to an alleged building and zoning code violation that prevents a Zen Center from operating within a residence even though meditation sessions seldom involve more than 5 people.



Board Members and others listen as Ben Stone speaks at the Rally for the Constitution in Iowa City.

## ICLU and ICLU Foundation 2003-04 General Funds Operating Budget

### INCOME:

ICLU Share of Current Member Dues	41,000
New Member Dues - ICLU share	5,100
ACLU subsidy to affiliate	59,000
ICLU share of certain gifts to ACLU	4,500
ICLUF Major Gifts Fund Campaign	110,000
Other gifts to ICLUF	1,500
ICLUF Annual Dinner	3,100
Interest	1,250
Other	4,550
2002 monies carried forward	75,000
<b>TOTAL</b>	<b>305,000</b>

### EXPENDITURES:

Staff Salaries and benefits	187,445
Rent and Utilities	10,688
Office and Malpractice Insurance	3,500
Postage/Mailhouse	6,150
Telephone/Internet/Website	4,900
Printing	3,300
Office Supplies/Copy Services	3,250
Staff/Biennial Travel	5,000
Equipment Purchases & Care	3,400
Education Efforts	500
Accounting	2,900
Litigation Expenses	11,500
Annual Dinner Costs	2,700
Misc.	1,000
Reserve for 2004-05	58,768
<b>TOTAL</b>	<b>305,000</b>

Thanks to the financial sacrifice of dedicated ICLU supporters, the 2003 budget exceeds the 2002 budget by about \$4,000. This year's budget includes monies for the purchase of a new computer for the legal director, plus sizeable increases in our litigation, health insurance (30% Yikes!), postage and rent line-items. In regard to income, the budget anticipates increases of between 7 and 3 percent in membership dues and major gifts income. As one can see, by far the largest source of income to the ICLU is the annual major gifts fund campaign.

campaign. Anyone who would like to be included in future major gifts campaigns need only indicate so on the donation coupon found in any Defender.

10) **How does someone become a board member?** The ICLU has a nominating committee which approaches selected supporters to ask if they are interested in running for election to the board. The nominating committee attempts to recruit qualified candidates who can help diversify the board consistent with our affirmative action policy, which includes such factors as race, gender, sexual orientation, geography and occupation. Once a list is compiled, it is forwarded to the entire board for ballot approval. In addition, persons can become a candidate for the board by petition of five (5) members prior to December 31. The ballots are sent out to ICLU "members" on February 1st of each year. Anyone interested in becoming a candidate for the board should contact the ICLU office.

11) **What are the duties of a board member?** Board members must be able to regularly attend our board meetings every other month, serve on at least one committee, and participate as a solicitor in our annual Major Gifts Fund Campaign.

12) **How many legal intakes or requests for assistance does the ICLU receive annually?** Our best estimates are that we receive over 2,000 "intakes" a year: about 300 through the U.S. mail (mostly from prisoners), approximately 700 over the phone during our intake periods, and at least 1,000 by email.

13) **How many attorneys work for the ICLU?** The only paid staff attorney at the ICLU is our legal director, Randall Wilson. The executive director is an attorney, but does not serve as counsel of record on any ICLU cases. (He has occasionally represented indigent defendants as a private court-appointed attorney, but not in his capacity as an ICLU staffer.) Attorneys in private practice who assist in our cases are called "cooperating attorneys" and do so on a volunteer basis. We probably have a dozen or so such attorneys at our disposal here in Iowa. (We are constantly looking to expand our potential pool of cooperating attorneys -- please let us know if you or someone you know is interested in helping.)

14) **Does the ICLU receive any funding from the government?** No. We receive our funding from individual supporters in the form of membership dues and tax-deductible foundation gifts. The only time we receive money from the government is when our clients prevail in federal court and there are statutory provisions for the reimbursement of attorney fees by the losing side.

15) **How does the ICLU compare to other ACLU affiliates?** With a staff of four, the ICLU is one of the smaller, mid-sized affiliates. Staff sizes range from two in affiliates like Louisiana, Arizona, West Virginia and Oklahoma, to 35 in Southern California, 26 in Illinois, and 15 in the state of Washington. Other affiliates with the same number of staff as the ICLU include: Virginia, Hawaii, Minnesota, Montana, North Carolina, and South Carolina.

16) **How many members does the ICLU currently have?** In May 2003, the ICLU had 2,624 members, plus another 440 "non-member/foundation" donors, for a total of 3,064 "supporters." Since September of 2001, this number has grown by 552 people-- a 22 percent increase. There is now one ICLU supporter for every 963 Iowans.

17) **What is the relationship between the national ACLU and its affiliates?** While the national board of the ACLU makes decisions regarding the ACLU's position on a certain issue, state affiliate boards are autonomous in that they may take positions in opposition to the policy of the national board. This is rather unique among nonprofit organizations, most of whom do not allow for such local board autonomy.

18) **How many ACLU affiliates are there?** The ACLU has affiliates in 47 states and Puerto Rico, and staffed "national chapters" in Wyoming and the Dakotas. All affiliates have at least two full-time staff persons. You won't find that kind of geographic staff coverage in any other public interest organization in America. Of these affiliates, about 28 have a legal director, while only about 15 have a full-time lobbyist on staff. Interestingly, the ICLU is one of only about ten affiliates with both.

19) **How experienced is the ICLU staff?** Randall Wilson, our legal director, has been with the ICLU for fifteen years, and has over 28 years of experience as a lawyer. Our legislative director, Marty Ryan, came to the ICLU eleven years ago. Ben Stone, the executive director, has been at the ICLU for seven years. Finally, Skywalker Payne, the ICLU's community programs coordinator and a professional storyteller, joined the staff two years ago. She has over twenty years of administrative and non-profit work experience.

20) **What is the best way to support the ICLU's programs here in Iowa?** Become a contributor to the ICLU Major Gifts Fund Campaign or simply send a tax-deductible donation in any size to the ICLU Foundation here in Des Moines. Every dollar received in this manner stays in Iowa to fight for civil liberties in our state. (See the donation coupon on page 6).

## Reform, continued from page 2

believes that the people of Iowa have a Constitutional duty to finance the criminal justice system, strongly opposed this bill. It died in the House Judiciary Committee.

If anyone figures out how to get blood from a turnip, please contact the Iowa General Assembly soon. Better yet, if you can prove that it can't be done, call now!

**Politicians muddle reproductive health -- again**

House File 206, which also awaits the governor's signature, raises the age at which mandatory reporters are required to report possible sex abuse from age 11 to age 15. This would have the effect of forcing a reproductive health care worker, doctor or nurse to report to the government when she or he sees evidence that a 15 year old girl is having sex with someone--even if it is her teenage partner. As a

result, if signed into law, this bill will discourage many teenagers from seeking reproductive health care services, thus endangering their health and threatening their ability to exercise their right to privacy and bodily autonomy. As if we needed another reason to oppose the bill, we also objected to the bill's provision adding clergy to the category of

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mandatory reporters as a government intrusion into religious affairs.

The ICLU also played a role in effecting literally dozens of other bills, some of which died, others of which were enacted. If you wish to learn more about these, you'll have to talk to the legislative director, as we are out of space.

The ICLU thanks the Legislative Practice Program at the Drake University College of Law for providing the ICLU with a student legislative intern for the second consecutive year. We were fortunate this session to have Rosiland Sargent intern with us. Good luck and best wishes in the future for Rosiland.

**"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."**

-Justice Louis Brandeis

*Throughout our history, civil liberties have been most imperilled during times of crisis and fear. Unlike most lowans, ICLU members understand this. Please help make America both SAFE AND FREE by sending a tax-deductible gift to the ICLU Foundation.*

Here is my tax deductible gift of \_\_\_\_\_ toward the work of the ICLU Foundation.

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