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## Lisa Herdahl and Religious Liberty

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# LISA HERDAHL AND RELIGIOUS LIBERTY

NADINE STROSSEN<sup>1</sup>

Thank you so much, Rob, for that gracious introduction. And thanks again to you and your committee, and the ACLU staff, for your outstanding work in organizing this superb conference.

Along with everyone else here, I've had a wonderful time seeing old ACLU friends from all over the country, and also making new friends. The formal program and written materials have been great sources of *information*, of course, but at least as important is the *inspiration* one gets from mingling with so many dedicated civil libertarians, from all walks of life, and from every corner of the country. YOU are what makes the ACLU such a unique and critically important organization. We are the only nationwide network of activists dedicated to defending all fundamental freedoms for everyone.

A few years ago, our Workers Rights Task Force made an estimate of the number of calls for help ACLU offices receive all over the United States. They discovered that we receive more than 300,000 such requests each year.<sup>2</sup> And those requests come from a rich cross-section of the population—people from all walks of life—and of every background, political persuasion, and religious belief.<sup>3</sup>

Most of these people are not ACLU members—indeed, many of them would probably never dream of joining the ACLU.<sup>4</sup> Yet they know that, despite this—and regardless of who they are or what they believe—we are there to fight for their freedom. These people are entrusting us with the defense of their precious liberties. I can't imagine a more meaningful or more well-deserved

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<sup>1</sup>President, American Civil Liberties Union; Professor of Law, New York Law School. For research and administrative assistance with this piece, the author thanks her Chief Aide, Raafat S. Toss, her Academic Assistant, Amy L. Tenney, and her Research Assistant Andrew G. Sfougatakis.

<sup>2</sup>Telephone Interview by Amy L. Tenney with Lewis Maltby, Director, ACLU Workplace Rights Task Force (Nov. 11, 1997).

<sup>3</sup>See Michael Winerip, *Our Towns; Hello A.C.L.U.? I'm A Republican, But I Need Help!*, N.Y. TIMES, Sept. 16, 1988, at B1 (noting that a survey of the Nassau County Civil Liberties Union demonstrated that its clients were a mirror-image of the region's demographic profile; finding that, out of 21 clients who could be contacted, four said they had no political leaning; seven said they were either Democrat or liberal; 10 said they were either Republican or conservative; finding these results consistent with the political makeup of the county where Republicans outnumber Democrats three to two).

<sup>4</sup>Jeffrey T. Leeds, *The A.C.L.U.: Impeccable Judgments or Tainted Policies?*, N.Y. TIMES, Sept. 10, 1989, § 6, at 72 (noting that a student affiliated with the conservative *Dartmouth Review*, which the ACLU successfully represented in a censorship case, said he would not become a member of the ACLU because it defended the rights of the Nazi party).

vote of confidence. And that's something for which I thank and congratulate each and every one of you.

This essential front-lines, grassroots aspect of our work is closely tied to this year's Roger Baldwin Medal of Liberty presentation. Our 1997 awardee is one of the courageous individuals who sought and got help from the ACLU in a lonely, controversial civil liberties crusade. But before I say more about our impressive honoree, let me tell you about the award.

The ACLU established the Roger Baldwin Medal of Liberty Award—named in honor of our principal organizer—in 1989, thanks to a generous grant from Charles and Diana Daniels of the Ortmann Foundation. It is presented biennially to recognize either distinguished *lifetime* contributions, or an exceptional *particular* contribution, to civil liberties in the United States. The Medal, which carries a \$25,000 stipend, is the highest honor that the ACLU bestows. It is intended to represent the pinnacle of achievement for those dedicated to the Bill of Rights. Past Medal winners include: Anne Braden, lifelong leader of the movements for racial justice, labor rights, and peace in the South (1989); Stephen Bright and Bryan Stevenson, heroic opponents of the death penalty (1991); Dolores Huerta, dedicated champion of the rights of migrant workers (1993); and Don Edwards, consistent and courageous advocate of civil liberties throughout his long and influential career in Congress (1995).

For this year's award, we received many nominations from activists, lawyers, judges, elected officials, journalists, and others. The nominations were considered by a distinguished screening committee: Drew Days, Professor at Yale Law School and former Solicitor General of the United States; Dr. Joycelyn Elders, Professor at the University of Arkansas Medical School and former Surgeon General of the United States; Katha Pollitt—Columnist and editor of the *Nation* magazine; Oliver Thomas (better known to his colleagues as "Buzz"), Baptist minister and First Amendment lawyer, who is Special Counsel to the National Council of Churches and the Freedom Forum First Amendment Center; Arlinda Locklear, a leading attorney specializing in Native American rights; and Diana Daniels, Vice President and General Counsel of *The Washington Post* Company.

The honoree we chose is a brave young woman who dared to stand up for religious liberty and to oppose government-sponsored religion in a very hostile setting: namely, a small town in north central Mississippi, which proudly calls itself the "buckle of the Bible Belt."<sup>5</sup> Her name is Lisa Herdahl, and she ultimately won an important legal victory in a federal court case called *Herdahl v. Pontotoc County School District*.<sup>6</sup> Here's how one newspaper described Lisa's courageous contribution to civil liberties:

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<sup>5</sup>Laurie Ann Lattimore, *The Herdahl Family's Hurdle*, LIBERTY, May/June 1996, at 18.

<sup>6</sup>See *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582 (N.D. Miss. 1996) (enjoining permanently any teacher from authorizing or transmitting prayers or Bible verses over the intercom, designating a student to conduct prayer, separating students to facilitate prayer, and "encouraging," "endorsing," or inviting classroom prayer in any

For half a century, God and Jesus Christ were in the classrooms of Pontotoc County, Mississippi. Schools offered courses in biblical history. And school children prayed at the start of each day—for the past twenty years over the intercom.

Then Lisa Herdahl moved south.

Because of a lawsuit Herdahl filed, a federal judge ruled that there would be no more lunchtime blessings before children trooped to the school cafeteria. No more prayer over the intercom. And no more showing of the video "America's Godly Heritage."<sup>7</sup>

This newspaper account of Lisa's legal victory went on to say:

One woman, with the help of the American Civil Liberties Union and People for the American Way, stopped what generations in northeast Mississippi were accustomed to doing—despite 1962 and 1963 Supreme Court bans of school prayer and Bible readings.<sup>8</sup>

Thanks to the federal court ruling in her case, Lisa vindicated not only First Amendment rights for herself and her children—but also, of course, for everyone in her community—and, ultimately, for everyone in the country. Yet Lisa has paid and continues to pay an extremely high personal price for this legal victory she has won for us. She and her children have been ostracized, demonized, and vilified.<sup>9</sup> Her children, who were baptized Lutheran and are being raised Christian, have been called atheists and devil-worshippers, including by teachers in front of their classes.<sup>10</sup> She has received bomb threats and death threats.<sup>11</sup> She lost her job and can't find another one; she has been

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manner); *see also* Herdahl v. Pontotoc County Sch. Dist., 887 F. Supp. 902 (N.D. Miss. 1995) (granting Herdahl's motion for preliminary injunction and holding that schools violated Establishment Clause by allowing student-led prayers in individual classrooms during school hours, and that excusing objecting students from class did not cure the constitutional violation).

<sup>7</sup>Jeanine F. Brooks, *A Mother's Crusade Halts Prayer in Schools*, SAN DIEGO TRIB., July 5, 1996, at A1. As an aside, I should note that this movie was made by an extreme right group, the Coral Ridge Ministry, which demonizes the ACLU as the arch-enemy or anti-Christ. The video includes manipulatively edited excerpts of interviews with Ira Glasser and myself. To respond to its distorted message, our own Public Education Department produced a video entitled "America's Constitutional Heritage." Accordingly, we're especially grateful to Lisa for purging "America's Godly Heritage" from the public school curriculum in her community!

<sup>8</sup>Brooks, *supra* note 7.

<sup>9</sup>*See* Stephanie Saul, *A Lonely Battle in the Bible Belt; A Mother Fights to Halt Prayers at Mississippi School*, NEWSDAY, Mar. 13, 1995, at A8.

<sup>10</sup>Brooks, *supra* note 7.

<sup>11</sup>Telephone Interview with David Ingebretsen, Executive Director, ACLU of Mississippi (Aug. 23, 1995). *See also* Nadine Strossen, *How Much God In The Schools?*, 4 WM. & MARY BILL. RTS. J. 607, 614 (1995).

called unemployable in the entire State of Mississippi.<sup>12</sup> After ceaseless harassing phone calls, Lisa's family was forced to move to an undisclosed location, and she still fears for her children's safety. In her own words: "Whenever I leave the house, I don't know if it'll still be here when I get back. I carry a gun at all times, and worry almost every minute."<sup>13</sup>

A *Washington Post* story well captured the pariah status of Lisa and her family in the following passage: "People [in Pontotoc County] breathe religion like the air, and Lisa Herdahl seems as alone as Hester Prynne of *The Scarlet Letter*—although the letter "A" she symbolically wears is not for adultery, but for the ACLU."<sup>14</sup>

Despite all this shunning and persecution, though, Lisa remains unwavering in her devotion to the First Amendment. She has said that she wants to teach her children to stand up for their rights and for what is right.<sup>15</sup> Again, in her own words: "My children are learning what being a minority means. One of the biggest lessons they're learning is to stand up for what they believe in, no matter whether the majority thinks that's right or not."<sup>16</sup> And that lesson has been learned. Lisa's oldest son, Kevin, who was 16 at the time, said the following about his family's ordeal: "It is hard. But I've never had a doubt about it. I'd do it again. If you believe in something, stand up for it; don't just blend in."<sup>17</sup>

Kevin has also said that he wants to be a lawyer so he can help people who don't have money to fight for what is right.<sup>18</sup> And as for those who attack Lisa and her children, Lisa says: "I hope one day they see that I am fighting for *them* too, for *their* right not to let anyone tell *their* children how to pray."<sup>19</sup>

Ironically, the fact that these attacks have been made by Christians, ostensibly in the name of Christianity, has undermined Lisa Herdahl's effort to raise her children as Christians. Lisa expressed this concern when she was invited to testify in Congress a couple of years ago. She said:

Once, one of my children asked me if the people at school and in town who were making things so hard for us were Christians. I said that they were. He replied that in that case, he didn't want to be Christian because he didn't want to be like them. I did my best to explain, but as

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<sup>12</sup>See Lattimore, *supra* note 5, at 18.

<sup>13</sup>See THE CLARION-LEDGER, Jan. 15, 1995, at 3B.

<sup>14</sup>William Booth, *Fight Over School Prayer Riles Up Mississippi Town*, WASH. POST, Mar. 26, 1995, at A03.

<sup>15</sup>See Lattimore, *supra* note 5.

<sup>16</sup>Doug Cumming, *Q & A; Lisa Herdahl*, THE ATLANTA JOURNAL AND CONSTITUTION, Feb. 10, 1996, at 2A.

<sup>17</sup>See Lattimore, *supra* note 5, at 19.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 21.

a parent and a Christian, that disturbed me very much. I hope it goes without saying that I'm not making any generalizations about Christians.<sup>20</sup>

As illustrated by Lisa herself, many of the staunchest supporters of separation of church and state—and ACLU activists—are devout Christians. To cite just one other example, the narrator of the ACLU video, "America's Constitutional Heritage," is a Baptist Minister, William Firlator. He strongly supports strict enforcement of the Establishment Clause, barring government-sponsored religion, not *despite* his religious beliefs, but precisely *because* of them.

This points to one of the most false and dangerous misconceptions that propels the so-called "Religious Right," including its drive to amend the Constitution to allow government-sponsored religious exercises in public schools and other public places:<sup>21</sup> the notion that those who want to maintain the proverbial "wall of separation" between church and state in Thomas Jefferson's famous phrase<sup>22</sup> are somehow hostile to religion.<sup>23</sup> For example, the *Washington Post* article I previously mentioned said: "People here[in Pontotoc County] breathe religion like the air, and Lisa Herdahl seems as alone as Hester Prynne of 'The Scarlet Letter'—although the letter 'A' she symbolically wears is not for adultery, but for ACLU, an organization that many here see as committed to stripping religion from public life."<sup>24</sup>

Too many people wrongly think that the ACLU's—and our clients'—defense of the Establishment Clause reflects hostility toward religion. They are therefore, deeply hostile to us.

For example, I'm sure you've all seen graffiti that mocks our organization by suggesting other phrases for which our acronym "ACLU" could stand. Common examples include, "All Criminals Love Us" and "All Communists Love Us." The satirical title that illustrates my present point, though, is "Anti-Christian Liberties Union." In that same spirit, so to speak, the American Family Association sent out fundraising letters about Lisa's case, all over the

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<sup>20</sup>FDCH *Congressional Testimony: Religious Freedom: Before the Senate Judiciary Comm.*, 103rd Cong. (1995) (statement of Lisa Herdahl).

<sup>21</sup>See H.R.J.Res. 78, 105th Cong. (1997) (proposing a constitutional amendment allowing prayer in schools); see also Katharine Q. Seelye, *Religion Amendment Is Introduced*, N.Y. TIMES, May 9, 1997, at A26 (noting that Representative Istook proposed an amendment to the Constitution that would "explicitly allow prayer in public schools").

<sup>22</sup>See THE WRITINGS OF THOMAS JEFFERSON: CONTAINING HIS AUTOBIOGRAPHY, NOTES ON VIRGINIA, PARLIAMENTARY MANUAL, OFFICIAL PAPERS, MESSAGES AND ADDRESS, AND OTHER WRITINGS, OFFICIAL AND PRIVATE, NOW COLLECTED AND PUBLISHED IN THEIR ENTIRETY FOR THE FIRST TIME 281-82 (Albert E. Bergh ed., 1907) (1802).

<sup>23</sup>See, e.g., M.G. "Pat" Robertson, *Religion in the Classroom*, 4 WM. & MARY BILL RTS. J. 595 (1995).

<sup>24</sup>See Booth, *supra* note 14.

country, denouncing Lisa and the ACLU. I have one of these letters here; every time it refers to the ACLU, it precedes our initials with the adjective "Anti-Christian."<sup>25</sup>

In refuting this accusation in this audience, I realize I am preaching to the converted, if I dare use a religious metaphor! But I want to take just a moment to underscore how false this charge is,<sup>26</sup> because it is spread so widely by those who seek to impose their own religious beliefs on everyone else, in service of that insidious mission to undermine the Establishment Clause.<sup>27</sup>

In the words of former Justice Harry Blackmun in a majority opinion that upheld an Establishment Clause claim brought by the ACLU, "nothing could be further from the truth" than to "misperceive [a] respect for religious pluralism, a respect commanded by the Constitution, as hostility or indifference to religion."<sup>28</sup> The Establishment Clause was intended at least as much to protect the private, sacred domain of religion, as to preserve the secular, pluralistic nature of our government.<sup>29</sup> Even government measures that seem to support religion in the short run—for example, the parochial

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<sup>25</sup>Letter from Donald E. Wildmon, President American Family Association, *ACLU and People for the American Way Oppose AFA in Lawsuit*, ACTION! PAGE, (Feb. 1995) (on file with the Cleveland State Law Review).

<sup>26</sup>For a more extended discussion of this point, see Nadine Strossen, *How Much God in the Schools?*, 4 WM. & MARY BILL RTS. J. 607, 620-26 (1995).

<sup>27</sup>The widespread nature of the misconception that defense of the Establishment Clause reflects a negative attitude toward religion is illustrated by an Op-Ed piece that was published in the *New York Times* by Harvard Law School Professor Mary Ann Glendon. She equated the Supreme Court's vigorous enforcement of the Establishment Clause, in the past, with "hostility to religion." See Mary Ann Glendon, *Religious Freedom and Common Sense*, N.Y. TIMES, June 30, 1997, at A11. But see Letter to the Editor from Nadine Strossen, N.Y. TIMES, July 4, 1997, at A18 (noting that vigorous enforcement of the Establishment Clause protects the free exercise of religion).

<sup>28</sup>*Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 610 (1989). Justice Blackmun's majority opinion held that a government-sponsored religious display violated the Establishment Clause. In response to Justice Kennedy's dissent, Justice Blackmun observed:

Although Justice Kennedy repeatedly accuses the Court of harboring a "latent hostility" or "callous indifference" toward religion, nothing could be further from the truth, and the accusations [are] as offensive as they are absurd. Justice Kennedy apparently has misperceived a respect for religious pluralism, a respect commanded by the Constitution, as hostility or indifference to religion. No misperception could be more antithetical to the values embodied in the Establishment Clause.

*Id.*

<sup>29</sup>See, e.g., *Lee v. Weisman*, 505 U.S. 577, 590 (1992) (noting "[e]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation." (quoting James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785)), reprinted in 8 THE PAPERS OF JAMES MADISON 1784-1786 295, 301 (Robert A. Rutland et al. eds., 1973); see also *Engel v. Vitale*, 370 U.S. 421, 431 (1962) ("union of government and religion tends to destroy government and to degrade religion").

school aid program that a bare majority of the Supreme Court recently upheld—<sup>30</sup> in the long run endanger religion's independence and vitality. As stated by the First Amendment's author, James Madison, "Religion flourishes in greater purity, without than with the Aid of Government."<sup>31</sup>

The importance of maintaining the Jeffersonian wall as a buttress to religion and religious freedom was eloquently explained by Justice David Souter, dissenting from the Supreme Court's recent parochial decision:

The rule [against government subsidization of religion] expresses the hard lesson learned over and over again in the American past and in the experiences of the countries from which we have come, that religions supported by governments are compromised just as surely as the religious freedom of dissenters is burdened when the government supports religion. . . . The ban against state endorsement of religion addresses the same historical lessons. . . . The human tendency, of course, is to forget the hard lessons, and to overlook the history of governmental partnership with religion when a cause is worthy, and bureaucrats have programs. That tendency to forget is the reason for having the Establishment Clause (along with the Constitution's other structural and libertarian guarantees), in the hope of stopping the corrosion before it starts.<sup>32</sup>

Not coincidentally, many of the staunchest separationists (from early Americans such as Roger Williams,<sup>33</sup> through contemporary Supreme Court Justices such as William Brennan),<sup>34</sup> not only have advocated the most robust

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<sup>30</sup> *Agostini v. Felton*, 117 S.Ct. 1997 (1997) (overturning *Aguilar v. Felton*, 473 U.S. 402 (1985), and holding that the Establishment Clause was not violated by a government program under which public school teachers are sent into parochial schools to teach remedial classes there).

<sup>31</sup> Letter from James Madison to Edward Livingston (July 10, 1822) in 9 THE WRITINGS OF JAMES MADISON 1819-1836, at 98, 103 (Gaillard Hunt ed. 1910).

<sup>32</sup> *Agostini*, 117 S. Ct. at 2021 (Souter, J., dissenting) (internal citations omitted).

<sup>33</sup> See MARK D. HOWE, *THE GARDEN AND THE WILDERNESS* 6 (1965) (noting Roger Williams' view that "wordly corruptions. . . might consume the churches if sturdy fences against the wilderness were not maintained").

<sup>34</sup> See Nina Totenberg, *A Tribute to Justice William J. Brennan, Jr.*, 104 HARV. L. REV. 33, 37 (1990). "Justice Brennan is a religious man, a devout Catholic who attends mass every week. Yet, . . . he is the author of opinions erecting a high wall of separation between church and state, including decisions banning parochial school aid . . . ." *Id.* Justice Brennan was, for example, the author of the 1985 Supreme Court decision holding that the Establishment Clause barred public school teachers from teaching remedial classes in parochial schools, which the Court narrowly overturned in 1997. See *Aguilar v. Felton*, 473 U.S. 402 (1985), *overruled by Agostini v. Felton*, 117 S.Ct. 1997 (1997).

Justice Blackmun was equally firm in his belief that breaking down the wall between church and state debased religion. In *Lynch v. Donnelly*, 465 U.S. 668 (1984), the majority narrowly rejected an Establishment Clause challenge to a city-sponsored nativity scene; Justice Blackmun's dissent stressed that this ostensible government support in reality undermined religion. Justice Blackmun wrote,



free exercise of religion, but also have been deeply devout individuals. For all of these reasons, we have to persistently explain, in staunchly defending the Establishment Clause, that the ACLU along with our clients, such as Lisa Herdahl, seeks to protect not only the secular, pluralistic nature of our government, but also the holy, sacred nature of religion.

The charge that the ACLU is hostile to religion is false for another reason as well. In addition to vigorously defending the Establishment Clause throughout our history, we also have defended the First Amendment's other religious liberty guarantee, the Free Exercise Clause, with equal vigor. We have played a leading role in the Supreme Court's cases concerning free exercise rights. When the Court truncated the scope of constitutionally-guaranteed free exercise of religion in a 1990 decision,<sup>35</sup> the ACLU played a leading role in the coalition that persuaded Congress to enact the Religious Freedom Restoration Act (hereinafter RFRA).<sup>36</sup> Most recently, the ACLU joined a brief urging the Supreme Court to uphold RFRA's constitutionality<sup>37</sup> and, in the wake of the Court's decision striking it down, we are exploring other avenues for securing religious liberty.<sup>38</sup>

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While certain persons, including the Mayor . . . , undertook a crusade to "keep Christ in Christmas," the Court today has declared that presence virtually irrelevant . . . . The creche has been relegated to the role of a neutral harbinger of the holiday season, useful for commercial purposes, but devoid of any inherent meaning and incapable of enhancing the religious tenor of a display of which it is an integral part. The city has its victory—but it is a Pyrrhic one indeed.

The import of the Court's decision is to encourage use of the creche in a municipally sponsored display, a setting where Christians feel constrained in acknowledging its symbolic meaning and non-Christians feel alienated by its presence. Surely, this is a misuse of a sacred symbol . . . . I cannot join the Court in denying either the force of our precedents or the sacred message that is at the core of the creche.

*Id.* at 726-27 (Blackmun, J., dissenting) (citations omitted).

<sup>35</sup>Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990).

<sup>36</sup>See Roger K. Newman, *Suits With Agendas; Public Interest Firms Crop Up on the Right*, NAT'L L.J., Aug. 26, 1996, at A1 (noting how the ACLU was the most notable group to "join forces" to pass the Religious Freedom Restoration Act). (I personally had the honor of testifying on behalf of that Act before both the Senate and the House Judiciary Committees.)

<sup>37</sup>See Brief of Amicus Curiae of the Coalition for the Free Exercise of Religion in Support of Respondents, *Boerne v. Flores*, 73 F.3d 1352 (5th Cir. 1995) (No. 95-2074)(co-signed by National Council of Churches, Baptist Joint Committee on Public Affairs, Center for Law and Religious Freedom at the Christian Legal Society, Union of Orthodox Jewish Congregations of America, Home School Defense Association, American Jewish Committee, People for the American Way, Agudath Israel, Americans United for Separation of Church and State, Association of American Indian Affairs).

<sup>38</sup>See Robert D. McFadden, *High Court is Criticized for Striking Down Federal Law Shielding Religious Practices*, N.Y. TIMES, June 27, 1997, at A22 (quoting Ira Glasser, Executive Director of the ACLU, on the decision in *Boerne v. Flores* as stating, "Decisions are sometimes greeted by such criticism that it forces the Court to rethink what it did.

In addition to our defense of religious freedom at the national level, the ACLU has always handled countless cases at the local level, all over the country, defending religious freedom for particular individuals or groups, whatever their faiths, whenever government suppresses their free exercise rights. In the spring of 1997, as I was preparing to debate the Chief Counsel of the American Center for Law and Justice (hereinafter ACLJ), the litigating arm of the Christian Coalition, my office conducted an informal survey of ACLU affiliates, asking them to tell me about religious freedom cases they have recently handled. Although the survey was incomplete,<sup>39</sup> I was still impressed, but not surprised, by the number and diversity of these cases.<sup>40</sup>

At the grassroots level around the country, the ACLU consistently defends religious freedom rights for everyone, including for many fundamentalist and evangelical Christians. Indeed, in a number of cases, we have collaborated with the ACLJ and other organizations that focus on the religious freedom rights of Christians. Therefore, these organizations should know better than to denounce the ACLU as hostile or indifferent to religion and religious liberty. Nevertheless, such denunciations persist, and therefore, we must redouble our efforts to counter them.

In April, 1997, following a talk I gave at Oklahoma City University School of Law, a junior high school student and her mother approached me to describe and complain about the prayer and other religious indoctrination being led by one of the girl's teachers during social studies classes. Both mother and daughter stressed to me that they were devout Christians, but—or, I should say, *and therefore*—they believed the appropriate place for religious exercises was in the home and the church, not the public school classroom. "Isn't this unconstitutional?" they asked me; and "If so, how can it go on?" I answered, of course, that many clearly unconstitutional practices—as these teacher-led religious exercises clearly were—take place all over the country, every day. The ACLU's very reason for existence is to help people like them translate constitutional guarantees that exist in theory into actual respect for such rights by particular government officials, in practice. The mother-daughter pair then, to my distress, pressed me as to whether the ACLU would assist them in standing up for separation of church and state and religious liberty, "despite the fact that we are Christians." Apparently they had been victimized by the

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It could happen here. The Justices need to think about how they have exposed people for doing nothing more than exercise their religious rights.").

<sup>39</sup>Given the relatively short time for responding, and how busy and understaffed so many of our affiliate offices are, I understandably did not hear back from many—including some that have recently handled religious freedom cases, as I happen to know from other sources, such as seeing their newsletters or litigation dockets.

<sup>40</sup>This survey is on file with the *Cleveland State Law Review*. I would like to acknowledge my Chief Aide, Raafat S. Toss, and my Academic Assistant, Amy L. Tenney, who conducted the survey, and the various ACLU affiliate staff members who took the time to answer it.

dangerous distortions I just discussed: that the ACLU is allegedly hostile or callous toward religion and religious individuals.

Ironically, as this episode illustrates, the "Religious Right" extremists who purvey this myth are undermining the religious freedom of Christians such as these two women; the false charge had deterred them from pursuing what was apparently their only avenue of assistance in defending their religious liberty. Fortunately, I was able to dispel this misconception and refer these two women to Joann Bell, Executive Director of the ACLU of Oklahoma—coincidentally, herself a Christian, who had originally come to the ACLU as a client in an Establishment Clause case—who had also been in the audience.

Thanks to the persistence of the defamatory claim that separationists are anti-religion, ACLU offices and employees around the country have suffered from the same kind of verbal abuse that Lisa Herdahl and her family have endured. Someone recently compiled a sampling of the typical Christmas greetings that we receive from some of those folks around the country. To inject a bit of a light note, I decided to share just a few of these with you. After all, on the subject of various other phrases for which "ACLU" could stand, my favorite, suggested during a chat in one of our on-line discussion groups, was, "Aw, C'mon, Lighten Up!"

Here's one Christmas message that was left on the answering machine of the ACLU of New Jersey: "Don't you people realize that Jesus is our savior? - I hope you all die of cancer." And here's a Christmas greeting that was left on the answering machine of the ACLU of Northern Virginia: "When Jesus Christ comes back to earth you people will be a grease spot on the pavement! . . . Why the *hell* don't you go back to Russia or wherever the *hell* you came from?"

And, finally, here's a holiday wish that was sent to Sheila Kennedy, Executive Director of the Indiana Civil Liberties Union: "Dear Sheila: As we celebrate the birthday of our Lord and Savior, Jesus Christ, we pray the ACLU, and you, will stop doing Satan's work. . . . I know you are trying to make a job for yourselves. But in so doing, you are greatly contributing to national unmorality [sic]. May God Bless Your New Year."

The profound misunderstandings about the Establishment Clause that abound in our society—thanks to propagandizing by the Christian Coalition and similar groups—are typified by our beloved Speaker of the House. When he was asked about our legal victory in the *Herdahl* case, Newt had the following comment: "It is nonsense . . . that one person could dictate to 3,000."<sup>41</sup>

Newt then came up with the brilliant idea that we should "solve" one Establishment Clause violation by creating yet another one. Here's his sage advice to Lisa: "We'll give you a *voucher* for the value of your children's education. Go find a school you like."<sup>42</sup> Showing that she has a far better

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<sup>41</sup>*Mississippi Mom Calls Gingrich Idea "Completely Nuts"* REUTERS, June 18, 1995, available in LEXIS, News Library, REUNA File.

<sup>42</sup>*Id.* (emphasis added).

understanding of constitutional values than Professor Gingrich, Lisa had the following response to his suggestion: "I think it's completely nuts to have vouchers to attend the schools. Are you going to give vouchers for different religious groups? Catholics go to one? Baptists go to another? I can't believe that."

I could go on and on about Lisa's remarkable character, and her dramatic story. But nothing I or anyone else could say ABOUT her could match Lisa's own eloquent, powerful voice. As David Ingebretsen, Executive Director of the ACLU of Mississippi, said: "Like many people, Lisa knew very little about the ACLU or the First Amendment when she started this struggle. Today she is an exceptionally intelligent and articulate supporter of both."<sup>43</sup> So I'm only going to tell you the part of Lisa's story that links her to the ACLU, and to underscore why she is such an eminently worthy winner of the ACLU's highest award.

After Lisa discovered the religious activities that her children's school was sponsoring, she struggled for a year to get the school to honor the First Amendment and the Supreme Court decisions enforcing it. But every road she traveled was a dead end. Many people told her that they agreed with her and supported her—but only privately, confidentially, and off the record. No one stepped forward to help her.<sup>44</sup>

Finally, in desperation, she wrote a six-page, handwritten letter to the ACLU of Mississippi.<sup>45</sup> This entire letter is a moving document. But now I'll only share with you the words with which it opened, and which were repeated again at the end: "*You are my last hope.*"

As I said earlier, we should all be proud that our organization is always there, when all else fails, to take on even the most unpopular civil liberties causes and clients. We are not only the *last* hope for Lisa Herdahl and all others who are committed to civil liberties; we are also their *first* hope and their *best* hope.

Along with all other constitutional guarantees, the First Amendment and its Establishment Clause, and Supreme Court decisions enforcing them, are all worth only the paper they are written on without advocates who are willing to defend them in court. But *we* can't advocate these principles in court without *clients* who are willing to press their cases. And, given the enormous personal cost to oneself and one's family, often there is no one who is willing to challenge even blatantly unconstitutional practices.

The personal threats and attacks are particularly severe when it comes to Establishment Clause cases. We all know too many examples. One is, of course, our own Joann Bell, now the Executive Director of our Oklahoma affiliate, who—as I already noted—originally came to us as a client. While we won

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<sup>43</sup>See Letter from ACLU of Mississippi, *Lisa Herdahl-Reasons for Nomination*, (on file with *Cleveland State Law Review*).

<sup>44</sup>Jeanne F. Brooks, *A Mother's Crusade Halts Prayer in Schools*, SAN DIEGO TRIB., July 5, 1996, at A-1.

<sup>45</sup>Copy is on file with *Cleveland State Law Review*.

Joann's case in court,<sup>46</sup> she suffered extraordinary personal losses, including having her home burned to the ground.<sup>47</sup>

We now have a graduation prayer case in Idaho where our clients are so justifiably terrified of persecution that they are proceeding anonymously. Moreover, the judge recently ruled that it would endanger them even to have their names revealed only to the government's lawyers, in closed proceedings in chambers. He therefore denied the government's request even for this limited, confidential disclosure.<sup>48</sup>

And too many of us know of school-sponsored religious exercises and other Establishment Clause violations that we can't challenge at all, because even people who deeply oppose them don't dare to become our clients, even with the shield of anonymity. For example, we recently lost a graduation prayer case in Iowa because no individual students or parents dared to become plaintiffs, even though they deeply opposed the school-organized prayer. The appellate court held that the ACLU did not have "standing" to press the Establishment Clause complaint and therefore dismissed the claim.<sup>49</sup> While the court's ruling did not even reach—let alone sustain—the school-sponsored prayer on the merits, the practical impact was precisely the same as if it had. In short, for lack of a willing plaintiff, we were unable to defend religious rights for anyone in the school district.

The special courage that it takes to stand up for Establishment Clause rights—especially in the current political climate—was expressly recognized in a Supreme Court opinion by Justice Harry Blackmun. Quoting an ACLU staff member, Justice Blackmun described the destructive divisiveness that results from government-sponsored religious exercises. As an illustration he quoted an article written by Michele Parish, who was then the Executive Director of the ACLU of Utah, and who now works for the ACLU of Colorado. According to the words of our own Michele Parish, as enshrined in the official pages of the Supreme Court Reports:

Of all the issues the ACLU takes on—reproductive rights, discrimination, jail and prison conditions, abuse of kids in the public schools, police brutality, to name a few—by far the most volatile issue

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<sup>46</sup>*Bell v. Little Axe Indep. Sch. Dist.*, 766 F.2d 1391, 1407 (10th Cir. 1985) (holding that public elementary and junior high schools violated Establishment Clause by sponsoring organized student prayer meetings at the beginning of the school day). Teachers often attended, monitored, and participated in these sessions, which were advertised on classroom bulletin boards. *Id.*

<sup>47</sup>For a fuller account of Joann's personal tribulations in successfully standing up for religious liberty under the Establishment Clause, see Strossen, *supra* note 26, at 611-13.

<sup>48</sup>See *Doe v. Madison Sch. Dist. No. 321*, Civil Case No. 90-518-E-EJL (Mem. Decision and Order Dated April 30, 1997, D. Idaho).

<sup>49</sup>See *Schanou v. Lancaster Co. Sch. Dist.*, 62 F.3d 1040 (8th Cir. 1995).

is that of school prayer. Aside from our efforts to abolish the death penalty, it is the only issue that elicits death threats.<sup>50</sup>

In honoring Lisa Herdahl tonight, we also pay tribute to the many other courageous individuals who have enabled us to breathe life into the words of the Bill of Rights. In doing so, they have managed to secure rights not only for themselves, but also for everyone else. Lisa Herdahl is thus a worthy heir to the long and distinguished tradition of religious freedom fighters and ACLU clients—stretching back to John Scopes in our so-called "Monkey Trial" case.

In saying this, I don't want to detract one whit from Lisa's unique courage, unique character, and unique contributions which have single importance at this particular point in our ongoing fight to uphold the proverbial wall between church and state. Let me again quote David Ingebretsen: "The Herdahl family's plight and struggle put a human face on the importance of protecting religious liberty. They, and especially Lisa Herdahl, have become symbols in the fight to keep the radical religious right from controlling our public schools."<sup>51</sup>

I have rarely been as moved as I was when I first met Lisa and heard her describe her experiences and her beliefs in her own words. And now you'll all have that same opportunity. Please join me in welcoming and congratulating our 1997 winner of the Roger Baldwin Medal of Liberty, Lisa Herdahl.

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<sup>50</sup>Lee v. Weisman, 505 U.S. 577, 607 n.10 (1992) (Blackmun, J., concurring) (quoting Michele A. Parish, "Graduation Prayer Violates the Bill of Rights," 4 UTAH BAR. J. 19 (June-July) (1991)).

I should note that Justice Blackmun's opinion was in the case of *Lee v. Weisman*, in which the ACLU successfully challenged school-sponsored graduation prayer on behalf of the Weisman family—brave clients and valued ACLU activists. Vivian Weisman is now the ACLU's National Board Representative from Rhode Island.

<sup>51</sup>See Letter from Mississippi ACLU, *supra* note 43.

