

By CHRIS TEMPLE

Supreme Court Rejects Indiana Appeal on Ten Commandments

High Court's "Indecision" Allows Historically Erroneous View of "Separation of Church and State" to Continue

On February 25, the U.S. Supreme Court rejected an appeal from the State of Indiana that it should be allowed to erect a limestone monument with the Ten Commandments on the statehouse lawn in Indianapolis. The display, the state had argued, would merely replace a Ten Commandments plaque that was destroyed by vandals back in 1991. In addition, the proposed monuments would include the Bill of Rights as well as the Preamble to Indiana's own constitution.

The state was banking on the strategy that if the Ten Commandments was part of a more "historical" display, the overall monument would pass muster with the high court, since it would not have been of an exclusively "religious" nature. Indiana argued in an appeal from a decision rendered by the U.S. Court of Appeals in Chicago that the First Amendment to the U.S. Constitution permitted the state's desired display to "memorialize the role the Commandments have played in the development of the rule of law and of the American legal system."

However, the appellate court did not bite; and, without comment or dissent, the Justices of the U.S. Supreme Court decided against even hearing the case, in spite of support for Indiana's position by Alabama, Mississippi, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah and Virginia.

Victorious in this particular skirmish over whether Americans can recognize their religious and cultural heritage was the Indiana Civil Liberties Union, which was joined by other organizations in opposing Indiana's appeal. The ICLU – as does the American Civil Liberties Union nationally – has generally opposed any such effort on the part of local governments, states and others to "endorse religion" in any way. These

groups – abetted in recent decades by the very Christian leaders who claim to be trying to defend America's roots as a Christian nation – have long since successfully seized the debate over the First Amendment. (I'll explain in a moment how these "leaders" have accomplished this.) Further, they have successfully been able to redefine the First Amendment and the alleged "separation of church and state" to mean something radically different than what was universally accepted over two centuries ago.

When the First Amendment Meant Something Else

Most of us realize that history has regularly been either kidnapped or rewritten; and this is especially – and tragically – the case where the First Amendment is concerned. Today, it is accepted by the majority of Americans that the First Amendment prohibits public affirmation of faith in God, as well as any public affirmation of or defense of the Christian faith. Those pushing this idea claim that the First Amendment's "establishment clause" prevents any public defense of or advocacy for Christian principles, even in a general sense. Any who have read the debates surrounding this issue among the Constitution's Framers know better; all they were attempting to do with the establishment clause was to prevent the federal government from endorsing one particular denomination of Christianity over another, and/or making one, in effect, the "state church" for the new nation. Previously, as British subjects, they had to live under a system where the Anglican Church was the official state church; and the Framers merely wanted to avoid such a national endorsement of one Christian denomination. Never did they intend, though, to remove the Christian faith *generally*

from public life, as virtually all agreed with the notion that the United States of America, the new republic, owed its very life to the God of the Bible.

Virtually all state constitutions mirrored the intent and language of the U.S. Constitution's First Amendment. And, on both the federal and state levels, early cases concerning the subject of any "state endorsement" of religious faith were virtually unanimous in their understanding that the United States of America was indeed a Christian nation.

A number of years ago while doing some research at the Cornell University law library, I stumbled across an 1811 case from New York State's Supreme Court, which was one of many indicative of the early understanding of this issue. The case involved a man by the name of Ruggles, who was appealing a conviction he received in Kingsbury, New York, that socked him with a \$500 fine and three months in prison.

His crime, you ask?

According to the case summation, Mr. Ruggles had "...wickedly, maliciously and blasphemously uttered, and with a loud voice published, in the presence and hearing of diverse good and Christian people, of and concerning the Christian religion, and of and concerning Jesus Christ, the false, scandalous, malicious, wicked and blasphemous words following, to wit, 'Jesus Christ was a bastard, and his mother must be a whore.'" The summary stated that this was viewed as, "in contempt of the Christian religion, and the laws of this state, to the evil and pernicious example of all others."

Ruggles' attorney at the Supreme Court of New York, a man named Wendell, would have made a good ACLU lawyer today. Arguing in favor of his client's conviction being thrown out, he claimed that – though Christianity

was indeed a part of England's common law – it was not a part of the common law of either New York or the United States. Thus, his client could not properly be prosecuted for an attack on Christianity, no matter how “impious” his views. “The Constitution allows a free toleration to all religions and all kinds of worship,” he added.

Countering this, the state's attorney said, in part, “While the constitution of the state has saved the rights of conscience, and allowed a free and fair discussion of all points of controversy among religious sects, it has left the principle engrafted on the body of our common law, that Christianity is part of the laws of the state, untouched and unimpaired.”

In rendering the decision of the court to affirm *Ruggles'* conviction, Chief Judge Kent immediately established that this crime was indeed properly punishable at law. Referring first to an English case, Judge Kent stated that, “On a like conviction, the court said they would not suffer it to be debated whether defaming Christianity in general was not an offense at common law, for that *whatever strikes at the root of Christianity, tends manifestly to the dissolution of civil government.*” (emphasis added)

My, how times change – how many Christians in America even realize that two centuries ago the Christian faith and civil government were actually deemed in a sense to be intertwined?

Judge Kent was just warming up. “And why should not the language contained in the indictment be still an offense with us?” he continued. “...The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice; and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. Nothing could be more offensive to the virtuous part of the community, or more injurious to the tender morals of the young, than to declare such profanity lawful.”

Kent went on to describe how even things such as “obscene actions, prints and writings” would fall into the same category as *Ruggles'* speech. Today, of course, such things as the recent elephant-dung-on-Mary, the mother of Jesus and “Piss Christ” are not only not prosecuted, but are deemed themselves

to be “protected” forms of expression under a new interpretation of the First Amendment *which even major Christian leaders such as Billy Graham and Jerry Falwell have embraced!*

Finally, Kent went on to give a history lesson of sorts to explain the “establishment” clauses of the New York State Constitution which – as with most states – mirrors the federal Constitution. “The subject of the 38th article of the (state) constitution,” he wrote, “was to ‘guard against spiritual oppression and intolerance’ by declaring that ‘the free exercise and enjoyment of religious profession and worship, without discrimination or preference, should for ever thereafter be allowed within this state, to all mankind.’

“How many Christians even realize that two centuries ago the Christian faith and civil government were actually deemed in a sense to be intertwined?”

“This declaration,” Kent affirmed, “noble and magnanimous as it is, *when duly understood*, never meant to withdraw religion in general, and with it the best sanctions of moral and social obligation from all consideration and notice of the law... To construe it as breaking down the common law barriers against licentious, wanton and impious attacks upon Christianity itself, would be an enormous perversion of its meaning.” (emphasis added)

How Did We Arrive at Today's Interpretation?

It is clear from this case and countless others from our nation's early history that all knew and accepted that we were founded as a Christian nation. The Christian faith enjoyed public sanction

at every level of government, and among all of society. More telling is that virtually all other religions plainly did not enjoy such acceptance and endorsement by government. As Judge Kent stated elsewhere in his decision affirming the conviction in *The People against Ruggles*, “...Nor are we bound, by any expressions in the Constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the grand Lama; and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those imposters.”

Yes, Judge Kent expressed the sense of early Americans not only in his general defense of Christianity as the religion and faith of virtually all Americans, but in the rejection of any “imposter.” Today, however, these and other “imposters” enjoy a level playing field with Christianity; in fact, it should not escape notice that other religions seem to occasionally enjoy preference! Consider the tendency, for example, of our leaders from President Bush on down tripping over one another following September 11 to make sure that practitioners of Islam not suffer any injury to their persons or even their feelings by an angered populace. Harsh as it is to say, the America of Judge Kent's time contained little other than Christian churches; and it would have been unthinkable that large enclaves would be built up (abetted in recent years by America's suicidal immigration policy) supporting religions not only anathema to Christianity but – in the case of Islam – one which for centuries was bent on removing Christianity from the then-known world.

Coincidentally, on the day that the news came out that the U.S. Supreme Court refused to hear Indiana's appeal, I had lunch with the chairman of the ICLU, John Krull, in Evansville. Arranging our lunch meeting was local attorney Mark Miller, who has worked for us here at *Media Bypass*, and is himself on the board of the ICLU. Believe it or not, there were more areas on which we agreed than disagreed; in particular, the ICLU (as well as the ACLU) have been energetic in their attempts to slow down

continued on page 39

the further implementation of a police state following 9/11. For this I applaud them. However, we could not disagree more on the Ten Commandments case, and many that are related to this which seek to keep the Christian faith out of America's public life.

Though many Christians blame these organizations for their "attack" on Christianity over the last few decades, I place the blame elsewhere. I blame the Christian leaders of modern times for being so concerned over their public image, and who are so concerned about being hit with labels of "intolerance" and such, that *they have themselves accepted the notion that, under the First Amendment, all religions are "created equal."* The other night on Chris Matthews' show on CNBC, Jerry Falwell once again discussed how America was so wonderful and tolerant that any Tom, Dick or Harry of a religion could be freely practiced here in America, and receive equal protection with Christianity. He was intending to provide this unfortunate truth as a contrast with Muslim nations, for instance, where preaching the Christian Gospel (or any other religion for that matter) was prohibited.

He and other Christian leaders have made their own bed; and, by extension and the results of their actions, have made it for all of Christianity. They are the ones – not the ACLU and others – who, in order to be accepted at White House dinners and as regular guests in the media, have sold out their own faith. They have accepted the premise, no matter how much they might occasionally complain, that America in this age can and should tolerate any religious persuasion, no matter how vulgar or how destructive to the Christian faith and what is left of the morals of the nation. Were they to say differently, let alone if the Falwells, Pat Robertsons and Billy Grahams of the world were to try to revert back to the intent of the Framers and the clearly established laws of our founding as so eloquently stated by Judge Kent, they would risk losing tax exemptions, and would be pilloried as never before. And, it's safe to say that these Christian leaders wouldn't be welcomed to dinner even in the "conservative" Bush White House.

So, next time you hear these defenders of the Faith rail against the "secular humanists" at the ACLU, the ICLU and elsewhere, consider instead how it is they who have surrendered our Christian nation. ■