

History of veterans victory over ACLU in Mt. Soledad Cross case

“Never give up – never, never, never give up!” –Winston Churchill

Victory has finally been achieved in the Mt. Soledad National Veterans Memorial Cross Case, the longest running, most important current Establishment of Religion case: After twenty-seven years of litigation to destroy the Cross by the extremists of the ACLU, which has become the Taliban of American liberal secularism, the Cross has been saved “as it was, where it was” since 1954. It will now continue to honor veterans into perpetuity as a universally recognized symbol of selfless service and sacrifice for others.

U.S. District Judge Lawrence Byrne’s final order in *Trunk vs. City of San Diego* was filed on Sept. 13, 2016. It dismissed the ACLU’s lawsuit once and forever as moot, due to the transfer of the Mt. Soledad Memorial from the federal Department of Defense to the private, non-profit Mt. Soledad Memorial Association by purchase for \$1.4-million. The purchase was authorized by Congress in legislation sponsored by Rep. Duncan Hunter (R-CA), the former combat Marine who represents the District.

Many thanks for this victory are owed attorneys and members of the Liberty Institute in Texas, the Alliance Defending Freedom in Arizona, the Thomas More Law Center in Michigan, the Pacific Legal Foundation in California; former Congressmen Jerry Lewis (R-CA), Rep. Duncan Hunter (R-CA), former Rep. John Hostettler (R-Indiana) and other legislators; veterans of The American Legion, and other veterans service organizations, as well as individual veterans and other patriots; and most of

all to San Diego Attorney Charles S. LiMandri, founder of the Free-dom of Conscience Defense Fund (FCDF) who has done more than any other single American to save the Mt. Soledad Cross "as it was, where it was," to honor veterans.

WHY MT. SOLEDAD CROSS VICTORY IS SO IMPORTANT

The importance of this victory cannot be overemphasized. What has been at stake in the Mt. Soledad Cross Case, and the companion Mojave Desert Veterans Memorial Cross Case, is whether 300-million Americans will continue to have the ability to honor their war dead as they choose in their communities, including by use of the Cross or other symbol or expression with a religious aspect; or whether intolerant atheists, agnostics, or extremist progressive liberal secularists epitomized by the ACLU, who are "offended" by the sight of the Cross, the Ten Com-mandments, or a monument bearing a religious symbol or expression honoring veterans, will have a veto power over those choices.

What is beyond any doubt is that, if the Mt. Soledad Case had been lost, the precedent estab-lished would create a tsunami of lawsuits by the ACLU, or other progressive liberal extremist organizations of its ilk, suing veterans memorials all across the country at which the Cross, or monuments containing any religious expression, exists honoring veterans.

In each of those cases the ACLU would seek judge ordered-taxpayer-paid attorney fee "awards" for destroying the Cross. Indeed, most Americans are unaware that the ACLU has reaped mil-lions of dollars in profits through judge-ordered, taxpayer-paid attorney fee "awards" in Estab-lishment of Religion Clause lawsuits which most Americans abhor, cases to destroy Crosses, the Ten Commandments, public seals, or monuments containing religious quotations or expressions.

HISTORY OF VETERANS ROLE IN VICTORY NEEDS TO BE KNOWN, EMULATED

Veterans played a significant role in fighting the ACLU to preserve the traditional Crosses at Mt. Soledad and Mojave Desert Veterans Memorials. That history needs to be known to inspire the same kind of commitment in other important "grass roots" battles for the preservation of freedom and traditional American values against rich and powerful special interests, like the ACLU, who would destroy those values. Therefore, without diminishing the importance of the efforts of all veterans and patriots in the victory, the history of the role of veterans of the American Legion will be focused on as it sheds light on what can be achieved when veterans and patriots unite to fight with "Audacity, Audacity, Audacity – always Audacity," as Gen. George Patton taught, and to "never, never, never give up," as Winston Churchill taught.

There has been a Cross at Mt. Soledad, in various forms, since 1913. In 1954, Mt. Soledad, in La Jolla, CA, but owned by the City of San Diego, became a memorial honoring the veterans of the Korean War. The American Legion Post in La Jolla played a leading role in its creation. Later, the scope of the memorial was expanded to honor all veterans. As the memorial grew, so did the Cross honoring veterans. Today, it is 29 feet tall, mounted on a 43-foot base, a majestic presence above more than 3,000 plaques honoring veterans on circular walls below.

ACLU ATTACKS MT. SOLEDAD MEMORIAL CROSS IN 1989

ACLU litigation to destroy the Cross began in 1989. A single atheist who claimed he was "of-fended" by the Cross, Phillip K. Paulson, a Vietnam veteran, sued to destroy the Cross as in violation of the Establishment of Religion Clause. (Paulson vs- City of San Diego). In 1991, based on this complaint by a single atheist, the U.S. District Court in San Diego ordered the Cross removed or destroyed. Appeals, related litigation and legislation, ensued, including a referendum in which San Diego citizens voted overwhelmingly (i.e., by 76 per cent) to override the San Diego City council vote to surrender and remove the Cross, and instead to retain the memorial "as it

is, where it is" with Cross intact.

The legal defense of the Mt. Soledad Memorial Cross was led from the beginning by San Diego Attorney Charles S. LiMandri, who has expended untold attorney hours pro bono to save it "as it where it is," including later as founder of the Freedom of Conscience Defense Fund. (www.FCDF.org.)

ACLU ATTACKS MOJAVE DESERT MEMORIAL CROSS IN 2000

As the Mt. Soledad Cross litigation progressed, the extremist ACLU in 2000 filed a related law-suit to destroy the Mojave Desert Veterans Memorial Cross. That Cross was erected in 1934 by members of the Veterans of Foreign Wars to honor their fallen comrades who died in WWI. The Cross consisted of two pipes strapped together and mounted on a rock outcrop known as Sunrise Rock in the remote Mojave Desert, twelve miles off of the highway. It is necessary to drive to it to be offended by it.

For sixty-six years, there had not been a single complaint against the old rugged cross in the de-sert. Nonetheless, Frank Buono, Ass't Mojave Preserve Superintendent, waited until he retired, moved to Oregon on his federal pension, then, as ACLU's poster boy plaintiff, sued to destroy the Mojave Cross honoring veterans 1,000 miles away because it "offended" him. He was later joined by a Jewish member of the VFW who admitted in his deposition he had never seen the Cross in person, but was offended by it just knowing it was out there in the desert. The U.S. District Court in Riverside, CA, ordered the Cross destroyed in 2002, which was upheld by the Ninth Circuit Court of Appeals. (Buono vs. Salazar).

THE AMERICAN LEGION ENTERS BATTLE AGAINST ACLU IN 2002

The American Legion fightback against the ACLU's Cross-destroying campaign began in 2002 when it was learned the Mojave Cross was ordered destroyed by the U.S. District Court in Riverside, CA.

As Judge Advocate of San Geronio Pass Post 428, I contacted then-Congressman Jerry Lewis (R-CA) and requested he initiate Congressional action to save the Mojave Desert Memorial. Rep. Lewis did. Lewis introduced legislation authorizing the one-acre Mojave Desert Veterans Memorial on public land to be exchanged for five acres of private land owned and donated by patriotic desert ranchers Henry and Wanda Sandoz. For many years they had been volunteer caretakers of the Mojave Memorial in fulfillment of a death-bed request of a VFW member who helped erect the Cross in 1934.

In 2003, as San Geronio Pass Post 428 Commander, I wrote a resolution entitled "Support Legislation Of Rep. Jerry Lewis To Save Mojave Memorial." It was adopted by the California Department Convention 2003. At the National Convention, it was referred to the Standing Committee for further study, then was later adopted by vote of the National Executive Board. That put the American Legion, the nation's largest veterans service organization, solidly behind Rep. Lewis' land-exchange legislation to save the Mojave Memorial.

In 2004, I wrote a second resolution to fight the ACLU. It was initiated by Riverside Post 79, then adopted at the Department of California Convention 2004. Sponsored by California, it was adopted at the 2004 National Convention as Resolution 326, "Preserve Mojave Desert Veterans Memorial." It calls for Congress to rescind the authority of judges to order "taxpayer paid" attorney fee "awards" under the Civil Rights Act, 42 U.S.Code Section 1988, to the ACLU, or anyone else, who sues to destroy the Cross or other religious symbols, including the Ten Commandments, or religious expressions at veterans memorials or other public places.

This Congressional reform is necessary because the very threat of having to pay ACLU's attorney fees in Establishment of Religion Clause cases has been used as a club by the ACLU to bludgeon towns, cities, counties, school boards and other public entities into surrendering rather than fighting against

ACLU's secular-cleansing demands to destroy Crosses, public seals, or other public expressions of religion for fear that taxpayer-funds will be diverted from needed community services to pay ACLU "attorney fee awards" ordered by judges. Therefore, the original Resolution 326, has been reiterated biannually at every American Legion National Convention on even years and introduced in each new Congress.

LEGION FIGHTS ACLU: "IN THE FOOTSTEPS OF THE FOUNDERS"

Adoption of Resolution 326 by the 2004 National Convention authorized the National Legion to launch, for the first time, a nationwide fightback against the ACLU's abusive Establishment of Religion Clause attacks against Crosses, the Ten Commandments, the Boy Scouts, public seals, and seemingly any expression of religion at veterans' cemeteries or other public spaces. As author of Resolution 326, I was asked by National to participate in drafting a guide on making that fight. The final version is entitled: "In The Footsteps Of The Founders: Grassroots Guide For Fighting The ACLU." It had a first printing of 50,000 copies distributed to the then-15,000 Legion Posts. It was followed by additional printings.

In 2005, a third resolution, Equal Access To Justice, which I authored and was adopted by Riv-erside Post 79, the California Department Convention, and ultimately the National Convention 2005. It calls on Congress to rescind the authority of judges to award taxpayer-paid attorney fee "awards" to the ACLU, or anyone else, in Establishment of Religion Clause lawsuits not only under the the Civil Rights Act, 42 U.S.Code Sec. 1988 but under any and all federal statutes. It has been reiterated with every new Congress by incorporation in the reiteration of the original Resolution 326.

2006: COURT ORDERS MT. SOLEDAD CROSS DESTROYED; FIGHT ESCALATES

In 2006, the U.S. Judge in San Diego ordered San Diego to

remove or destroy the Mt. Soledad Cross or he would fine the city taxpayers \$5,000 per day, escalating the fight.

In response, in order to enter the litigation, Attorney Joseph Infranco of the Alliance Defending Freedom based in Arizona, and I co-founded the Defense of Veterans Memorials Project of the Department of California and the ADF. The Department Executive Committee voted unani-mously and enthusiastically to establish the Project in March, 2006.

A press conference was held at Mt. Soledad, beneath the Cross, to announce that the American Legion, for the first time, was entering litigation to fight the ACLU in support of the efforts of attorney Charles S. LiMandri, founder of the Freedom of Conscience Defense Fund (FCDF), lead attorney in the fight against ACLU to save Mt. Soledad "as it is, where it is," with Cross intact. The California Defense of Veterans Memorials Project thereafter participated in the court court fight by filing friend-of-the-court briefs in the California Court of Appeal, the U.S. District Court(s), the Ninth Circuit Court of Appeal, and in the U.S.Supreme Court.

The National American Legion, after the initial action by the Department to enter the Mt. Sole-dad litigation in San Diego, also entered the litigation at all stages, represented by the Liberty Institute in Texas, which, like the ADF, specializes in defense of religious liberty. The California Defense of Veterans Memorials Project was adopted as a National American Legion Project in 2007.

In Congress in 2006, two bills of great importance in this fight had different fates:

First, then-Rep. John Hostettler (R-Ind.), joined by Rep. Jerry Lewis and other Republican Rep-resentatives as well as some Democrats, sponsored a Legion-sponsored bill pursuant to Resolu-tion 326, entitled Veterans Memorials, Boy Scouts, Public Seals, and Other Public Expressions of Religion Act

("PERA"). It would rescind the power of judges to grant taxpayer-paid attorney fees to the ACLU, or anyone else, in Establishment of Religion Clause cases attacking Crosses at veterans memorials and other public expressions of religion. I had the honor being appointed to represent the National American Legion at hearings on the PERA bill before the U.S. House and Senate.

The day of the vote in the House, every member of the House received a joint statement in support of the PERA bill by two of America's greatest military heroes: Maj. Gen. Patrick H. Brady, Medal of Honor (Vietnam), considered America's most decorated living veteran, and the late Rear Admiral Jeremiah A. Denton, Navy Cross, legendary P.O.W. resistor for seven years, seven-months in Vietnam and later U.S. Senator for Alabama. The PERA Bill was adopted by the House by a substantial margin.

However, PERA was blocked from being voted on in the Senate by then Republican, later Democrat, Arlen Specter, then head of the Senate Judiciary Committee. Specter stalled the PERA Bill in Committee and blocked a floor vote so long that the Democrats took control of Congress in the elections of November 2006, and effectively killed the PERA Bill.

However, also in 2006, and of great importance, the legislation sponsored by Rep. Jerry Lewis (R-CA), which authorized the land swap transferring the one-acre Mojave Memorial from public land to the private hands of Henry and Wanda Sandoz for their five-acres of private land, was adopted by Congress—unanimously by the House, and without opposition in the Senate.

It was thought that had saved the Mojave Desert Veterans Memorial. But the Taliban-like fanaticism of the extremist ACLU knows no bounds: The ACLU then filed a new lawsuit in Riverside U.S. District Court, this time suing Congress itself. ACLU alleged that Congress violated the Establishment

of Religion Clause because its real intent was not to preserve a memorial in order to honor veterans, but to advocate a particular religion, Christianity, by preserving the Cross. The then-Federal Judge in Riverside nullified the Act of Congress, and ordered then-President George Bush to destroy the Cross. President Bush didn't. Appeals were filed against the destruction order.

VICTORY IN USSC IN MOJAVE DESERT CROSS CASE; ACLU SURRENDERS

In 2010, the U.S. Supreme Court overruled the Cross destruction order of the U.S. District Court in Riverside, and the Ninth Circuit decision upholding the destruction order. The Supreme Court held the District Court exceeded its authority in nullifying an Act of Congress, and remanded the entire case back to the Riverside Federal Court for action in light of the Supreme Court's opinion.

In April, 2012, after ten years of litigation to destroy the Mojave Desert Veterans Memorial Cross, the ACLU finally surrendered. It agreed to cease its litigation to destroy the Cross – after the government agreed to give ACLU an undisclosed amount in taxpayer-paid attorney fees.

Meanwhile, the Mt. Soledad Cross had not been destroyed because Congress exercised the power of eminent domain to put Mt. Soledad in control of the Department of Defense. That nullified the order of the federal court in San Diego to destroy the Cross. The ACLU then filed a new suit against the DOD.

The original plaintiff, Paulson, had died. He was replaced as plaintiff by another atheist, Stephen Trunk. ACLU, which is its custom, sought to divide and conquer and pit people against one another by joining as plaintiffs with atheist Trunk: A Jewish M.D. and his Muslim wife, who said they were "offended" when they visited her relatives in San Diego because they could see the Mt. Soledad Cross from the

relatives' house; a female Jewish lawyer who said she was "offended" when seeing the Cross when driving to work; and the Jewish War Veterans (the national organization but not the San Diego chapter, which voted to support Mt. Soledad "as it is, where it is" with cross intact).

MT. SOLEDAD CROSS CONTINUES FOUR MORE YEARS UNTIL ACLU SURRENDER

In 2008, U.S. Federal Judge Lawrence Byrnes, who had been assigned to the new ACLU case against DOD ruled that the Cross did not violate the Establishment of Religion Clause because a reasonable person would perceive it as honoring veterans for their service, and would not perceive it as the federal government advocating one religion, Christianity, over any other, or advocating religion generally. ACLU appealed to the Ninth Circuit.

The Mount Soledad litigation would continue four more years after the Mojave Desert Cross case was won. Then an ironic thing took place: The ACLU had cited the Mojave Desert Case as a precedent for destroying the Mt. Soledad Memorial prior to the Supreme Court's decision in 2010. However, after that decision, the Mojave Desert Cross case became a precedent for saving Mt. Soledad.

That is, as the litigation continued, Congressman Duncan Hunter sponsored legislation for a land swap, similar to Rep. Jerry Lewis' land exchange authorized by Congress in the Mojave Desert case. Rep. Hunter's bill authorized transferring Mt. Soledad by sale to the private, nonprofit Mt. Soledad Memorial Association for \$1.4-million. That legislation was passed and an agreement was reached for the sale in July, 2015. While the ACLU continued the litigation for another year, seeking, among other things, attorney fees, the ACLU finally surrendered. The Ninth Circuit declared ACLU's lawsuit "moot," and directed Judge Byrne to dismiss it. Judge Byrne did, ending the long Mt. Soledad Memorial fight once and for

all on Sept. 13, 2016, twenty-seven years after it began.

LESSONS OF THE HISTORY OF VETERANS FIGHT AGAINST ACLU

I have written long on part of the history of veterans' role in the the fight to save Crosses honoring veterans at the Mt. Soledad and Mojave Desert Veterans Memorials, because it has been a long battle, and this history of the grass roots victory over the ACLU needs to be known, and emulated, as there are many more causes to fight with the same determination, the same commitment. the same spirit.

Veterans were told when this fight with the ACLU began that it could not be won—"ACLU has too much money, too many lawyers; you just can't beat them." But veterans stood, fought, heard the echo of Churchill's words "Never give up—never, never, never give up," and ultimately with other patriots, won an honorable battle to preserve the Mt. Soledad National Veterans Memorial, and the Mojave Desert Veterans Memorial.

This victory could not have been without the litigative efforts in court of lawyers like Charles LiMandri of Freedom of Conscience Defense Fund, lawyers of Liberty Institute, the Alliance Defending Freedom, Thomas More Law Center, and Pacific Legal Foundation, and the legisla-tive efforts of members of Congress like former Rep. Jerry Lewis (R-CA) and Rep. Duncan Hunter (R-CA), who authored and sponsored the land exchange bills in both cases, and former Rep. John Hostettler (R-Ind.), who was primary author and sponsor of the Veterans Memorials, Boy Scouts, Public Seals, And Other Public Expressions Of Religion Act (PERA).

But each of them, or members of their staffs, have communicated to me that this very long, very important battle with the ACLU, fought on many fronts, could not have been won without the grass-roots efforts led by veterans along with other patriots. In the end, they have told me, it was veterans who made the difference, veterans who never surrendered, who

never, ever gave up, until ultimate victory, saving the Mojave Desert Veterans Memorial, and the Mt. Soledad National Veterans Memorial, as they were intended to be, where they were intended to be, with Crosses intact, honoring veterans. Forever.

FOR GOD AND COUNTRY FOREVER; SURRENDER TO TYRANNY—NEVER!

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