

## **A Brief History of the Mojave Cross Case**

The Mojave Cross was erected in trespass on Federal public land that was transferred to National Park Service (NPS) control as part of the Mojave National Preserve in October 1994. In 1999 the ACLU of Southern California requested that the NPS remove the Cross, but the NPS failed to do so. NPS Superintendent Mary Martin met with the private person responsible for the Cross and asked if he would remove it.

The responsible party refused and defiantly threatened to put the cross back if the NPS removed it. Taking “no” for an answer, Ms. Martin acquiesced. At the same time Ms. Martin denied a request from another party to install a Buddhist stupa at the site of the Cross. Her handwritten note, at the bottom of the letter of denial, threatened the individual with citation or arrest if he attempted to place a stupa on Federal park land.

In July 2002 a District Court found the conduct allowing the continued display of the Cross on Federal land violated the First Amendment. A three-judge panel of the Ninth Circuit unanimously upheld that conclusion in June 2004. (Note: the 2004 three-judge panel was not the same as the panel in the 2007 decision). The Department of Justice (DOJ) did not appeal that ruling to the Supreme Court. For the District and Circuit Courts, there was no question of unconstitutional conduct, in part, because the NPS restricted the site of the Cross to religious symbols of only one religion.

Throughout this process, Congressman Jerry Lewis (R-Redlands, CA) intervened. He introduced riders to Defense Appropriations Acts to forbid use of government funds to remove the Cross, designating the Cross as a “national memorial” and finally (in 2003) mandating a land exchange that would convert the Federal land with the Cross into private land.

Having found the Cross unconstitutional, the remaining question was whether the Lewis land exchange was a proper solution to the constitutional violation. In April 2005 the District Court ruled that the Lewis land exchange was “invalid” and enjoined the NPS from implementing it. The DOJ appealed that decision to the Ninth Circuit. On September 6, 2007 the Ninth Circuit upheld the lower court and rejected the DOJ appeal.

On November 20, 2007, DOJ petitioned the Ninth Circuit for a re-hearing on the September 2007 decision.