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## From atheism to Zappa, attorney continues fight for civil liberties

One of the most well-known atheist activists in the country recently died, when his small plane crashed in a field outside far northwest suburban Marengo. His name was Rob Sherman.

Like him or not, Sherman was an unwavering voice for strictly secular government — and a lightning rod for controversy.

Richard Grossman, of the Law Offices of Richard D. Grossman, was Sherman's attorney. Grossman discusses his former client and a legal career spent fighting for civil liberties.

### Separation of church and state

Grossman recalls Sherman pursued every opportunity to remove vestiges of religion from government, despite long odds. Sherman wrote letters, filed petitions, attended hearings, hosted radio and television shows and went to court whenever possible.

Notable cases pursued by Grossman for Sherman include:

- For a member of Sherman's atheist society, Grossman worked on a legal team that obtained an injunction against the city of Zion's official seal, which contained a religious symbol and related verbiage. The 7th U.S. Circuit Court of Appeals affirmed the hotly contested injunction, concluding that "sectarian religious imagery simply has no place on municipal seals." *Harris v. City of Zion*, 927 F.2d 1401 (7th Cir. 1991).

- Next, Grossman lost a challenge to a state school statute requiring daily recitation of the Pledge of Allegiance. The 7th Circuit found no violation because students could choose not to recite, and the phrase "under God" was a common "ceremonial reference[] in civic life to a deity" that did not violate the establishment clause. *Sherman v. Commu-*

*nity Consolidated School District 21*, 980 F.2d 437 (7th Cir. 1992).

- Grossman went on to assist Sherman in challenging the Boy Scouts' use of public school facilities, because the organization required its members to believe in God. The 7th Circuit rejected the claim, ruling the Boy Scouts were not given any special treatment apart from other groups at the school. *Sherman v. Community Consolidated School District 21*, 8 F.3d 1160 (7th Cir. 1993).

- Grossman and Sherman later revisited school prayer, protesting a law mandating a daily period of silence. A divided 7th Circuit panel vacated the trial court's injunction and upheld the law, because it did not promote religion and the required silence served a secular purpose: "To calm the students and prepare them for a day of learning." *Sherman v. Koch*, 623 F.3d 501 (7th Cir. 2010).

### Controversy on the big stage

Although Sherman is praised for his tenacious fight against government-sponsored religious elements, Grossman concedes Sherman was a complicated figure.

While Grossman declined media briefings, Sherman coveted the public eye, pursuing reporters to further his agenda, and even running for Congress on the Green Party ticket. In the early years, questionable media interviews exposed Sherman's young children to harsh public scrutiny. And later, a domestic abuse incident involving his teenage son.

Yet Sherman also paid a heavy price, Grossman added, for his relentless efforts to keep religion out of government. Sherman repeatedly endured insults, including the time a city councilman said, "You make me sick to my stomach" for opposing a Ten

### SOLE SPEAK

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Commandments monument.

Privately, he received death threats, and vandals attacked his house, making him fear for his family.

Having a forceful public presence may have been Sherman's way of not backing down, Grossman explained.

A prime display of Sherman's incongruity occurred in 2008 on MSNBC's political show "Countdown with Keith Olbermann," where Olbermann announced daily winners of his Worst Person in the World Award.

*"We need to protect speech and beliefs we don't like, not just views we support."*

Initially, Olbermann lobbied for Sherman as an aggrieved victim of the Worst Person — Rep. Monique Davis — when Davis angrily criticized Sherman for opposing a state grant to restore a Baptist church.

Just a week later, Sherman himself received the Worst Per-

son Award from Olbermann for responding to Davis with racially charged language on his website.

### Protecting basic freedoms not a popularity contest

In a 2009 blog, Sherman predicted, "I won't be around forever, but when I do go away, there will be plenty of others to pick up the ball and carry it forward."

Grossman manages to keep up the fight for basic freedoms, despite a busy commercial litigation practice across three states. Not all cases succeed and earning fees is difficult, but Grossman is convinced that "you need to make government respect personal liberties every time" or lose them "inch by inch."

Thus, Grossman takes important constitutional cases regardless of popularity. "We need to protect speech and beliefs we don't like, not just views we support," he said, as he puts up with angry letters, negative editorials and occasionally irate tribunals.

His significant efforts include the following:

- Consulting with radical musician Frank Zappa, who testified before a congressional committee against the control of music lyrics with ratings on rock recordings.

- 7th Circuit affirmance of "class of one" protection under the equal protection clause; client was selectively prosecuted by police in an ongoing neighbor dispute.

- Provision of Hunter Interference Prohibition Act struck by Illinois Supreme Court as "an illegal legislative censure of opinion"; client photographed and disturbed hunter in pursuit of a deer.

- Unsuccessful challenge to school's mandatory uniform policy as violation of clients' religious beliefs; court ruled policy did not interfere with free exercise of religion.

- Denied injunction against city memorial ceremony commemorating the Sept. 11 attacks with prayer; court found ceremony had a “secular purpose.”

- Failed challenge to Boy Scouts for denying membership to boy who refused to affirm belief in God; 7th Circuit ruled Title II of the Civil Rights Act of 1964 did not apply to Scout meetings.

- 7th Circuit affirmance of students’ right to wear T-shirts opposing homosexuality that read “Be Happy, Not Gay”; statement was protected under First Amendment and not sufficiently disruptive to justify exclusion.

**Foreseeability of suicide**

Grossman’s most disappoint-

ing case veers from liberties to wrongful death, and the Illinois Supreme Court’s recent decision that a suicide was not foreseeable.

In *Turcios v. DeBruler Co.*, 2015 IL 117962 (2015), a non-English speaking family came apart following an outrageous set of assaultive eviction tactics by a property owner’s agent.

Just 10 days after the family paid the security deposit and first month’s rent and moved in, the agent wrongfully served a notice of eviction, followed by letters and harassing phone calls. A month later, the owner started to demolish the building with the family still inside. The next day,

the husband, at wit’s end, committed suicide in the apartment, leaving behind his wife and children.

Although Grossman’s wrongful death claim was consistent with authority from five other states and a federal court interpreting Illinois law, the Illinois Supreme Court disagreed.

“[I]t is the rare case in which the decedent’s suicide would not break the chain of causation and bar a cause of action for wrongful death, even where the plaintiff alleges the defendant inflicted severe emotional distress,” the court said. “The case before us is not one of those rare cases.”

Given the gravity of the agent’s conduct, disastrous harm to an innocent family, along with the solid case law from other jurisdictions, Grossman admits this case has been hard to shake.

In sum, though social activists lost a strong advocate with Rob Sherman’s passing, Richard Grossman is still on the job, popular or not.

On your next trip to federal court, if you see a lawyer with a shock of white hair at the lectern, asking an irritated judge to ban Angel Food cake from the school cafeteria menu under the establishment clause, you’ll know Grossman is at it again.