

"And ye shall know the truth, and the truth shall make you free." - John 8:32

WEBCommentary Contributor

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It Ain't Easy Now Being ACORN Corruption Exposer Hannah Giles

Ironically, subsequent legal costs may be huge, since some of the states in which the investigation was conducted criminalize surreptitious recording without the consent of all parties and impose civil liability for doing so.

Wikipedia describes ACORN corruption exposer Hannah Giles as "a key player in the ACORN 2009 undercover videos controversy," "a 20 year old journalism student who became interested in what she describes as 'exposing social injustice and abuse of power' when she attended a conference in Washington, D.C. in 2007," a journalism student at Florida International University, a former intern at the National Journalism Center in Washington, D.C. and "a columnist for BigGovernment.com and for Townhall.com."

It describes Ms. Giles' role in "the ACORN 2009 undercover videos controversy" as having "collaborated with James O'Keefe in a series of undercover videotapes that found several ACORN employees willing to foster illegal or immoral activities" and the result as Ms. Giles having been "lauded by conservative commentators for what they characterized as a series of investigative encounters with staff at the 'prominent' community organization."

It states that "Giles conceived of, and with her partner O'Keefe, implemented an investigation that revealed unethical behavior at ACORN offices in five locations: Baltimore, Washington, DC, Brooklyn, San Bernardino and San Diego."

Last September, Ms. Giles publicly claimed credit for the idea of conducting a prostitution-based sting against ACORN, carefully explaining to both Sean Hannity and Glenn Beck on their television programs on Fox News that it came to her during a jog.

Listen to the tape of Ms. Giles being interview by the Beckster on September 10, 2009 at www.youtube.com/user/GlennBeckDailyClips#p/u/174/2fJo-cQjtWg and read the transcript of her being interviewed by Hannity at www.foxnews.com/story/0,2933,549962,00.html.

Time will tell whether Ms. Giles will regret telling Hannity during his television show, "I came up with the idea and then I did some research on the housing to see if it would be even be possible for us to get away with this."

Beck's mottos include "speak with fear," "hold to the truth" and "question with boldness," but he did not question Ms. Giles with boldness or dig for the whole truth (although he did refer to O'Keefe as Ms. Giles' "partner in crime" before changing that to "partner in exposing crime"). In fact, Beck acknowledged on air that he had encouraged Ms. Giles "not to expose" herself further and thus apparently interviewed her on his television program as an accommodation to her.

Watch the much more carefree interview of Ms. Giles on Fox News's "Red Eye," posted at www.defendhannah.com, a project of Liberty Legal Lobby.

Instead of heeding Beck's advice, Ms. Giles did Fox News's "Red Eye" and said that she did NOT expect to obtain evidence of ACORN wrongdoing. "I did not expect this to happen at all," she declared. So it will be hard for her to plead that emergency or exigent circumstances and a genuine expectation of obtaining proof of serious wrongdoing somehow should excuse or mitigate what otherwise would be a felony.

Beck himself elicited statements from Ms. Giles that she had financed her part of the investigation and O'Keefe had financed himself, but he did not clarify who, if anyone helped them with the investigation during the period from April through August 2009. (Funding is not the only way to aid an investigation.)

Likewise, Hannity's interview of Ms. Giles and O'Keefe was essentially an opportunity for them to tell their story in a friendly forum, not an effort to verify it.

HANNITY: ...Tell us how you came up with this idea and how it all got started.

O'KEEFE: Well, my friend Hannah, messaged me on Facebook and suggested — we're both activist, we've both done a lot of activism in the past and she suggest[ed] just — she was walking by [a]n ACORN [office] one day and she said, "What if I went in dressed as a prostitute?"

And she messaged me this and I said, "Well, I could be a pimp." And we took it from there. We created a situation as ridiculous as we possibly could. We came up with underage girls. And...

HANNITY: Yes and this — Hannah let me start with you — so it was really your idea to bring this to light. Why don't you walk us through — you walked by these offices, you come up with the idea. Was it hard to play a prostitute? But tell us how it all

came together.

GILES: Well, Sean, it's amazing what girls think about when they are jogging. And that was just something that popped into my head. I had never seen an ACORN office, I really didn't even know that they existed and I jogged into the wrong part of town, saw some homeless people and street ladies and I put two and two together when I turned around to get back into a safe neighborhood.

And it's like — what if these people went into ACORN — a prostitute and what would come from that? No bills, no nothing — would they get a house? Could they start a business? So we put it to the test!

Test it, they did, in at least four states and the District of Columbia and five cities!

The investigation costs were a bargain, especially considering that the investigation was conducted in at least four states (Maryland, New York, Pennsylvania and California) and the District of Columbia and lasted from April until August.

Doug Giles (Ms. Giles' dad): "The truth of the matter, from a timeline standpoint, is that they hatched their plan in May of '09, fine-tuned it from May 20th – July 23rd, and then launched July 24th, fully accomplishing their mission by the end of August. And that's a fact to all those for whom facts still matter."

Wikipedia: "Giles and O'Keefespent \$1300 on the investigation."

Ironically, subsequent legal costs may be huge, since some of the states in which the investigation was conducted criminalize surreptitious recording without the consent of all parties and impose civil liability for doing so.

Radicals fear, hate and revile Ms. Giles and O'Keefe for exposing ACORN corruption so spectacularly.

For example, excerpt from "ACORN, James O'Keefe and Hannah Giles for Dummies" (<http://rackjite.com/archives/3961-ACORN,-James-OKeefe-and-Hannah-Giles-for-Dummies.html>):

"Enter the Pimp James O'Keefe. A mostly unemployed conservative activist who presently distributes Right-wing literature to college campuses. He made a name for himself at Rutgers University with a silly Lucky Charms lawsuit pretending that what the Irish suffer is no different that what African Americans suffer. A reach so far into such insane crap it absolutely is racism. It is what the guy is mostly about, kicking Negroes down..."

"Enter the Whore Hannah Giles a right-wing Florida preacher's daughter who spent the Summer training at the National Journalism Center which was also the training ground for Ann Coulter.

"Enter conservative columnist Andrew Breitbart an especially angry Right-winger who writes for the conservative newspaper the Washington Times. Breitbart was about to kick off his new website blasting Hollywood Liberals - Big Hollywood - and O'Keefe appeared at his doorstep with these tapes, and here we are.

"Other bit players in this the beyond the pale looneybin The Cato Institute, the almost as crazy Leadership Institute, Fox News, Fox News Sunday, Clash Church, Washington Times, Townhall.com and of course the standard gang of talk radio players Rush Limbaugh, Sean Hannity, Michael Savage and Glenn Beck."

But Ms. Giles and Mr. O'Keefe also are enthusiastically championed, for example, by Richard W. Rahn, a senior fellow at the Cato Institute and chairman of the Institute for Global Economic Growth, in "The sensational Giles and O'Keefe" (<http://washingtontimes.com/news/2009/sep/16/the-sensational-giles-and-okeefe/>).

Rahn: "Who exposed this latest bit of corruption at ACORN? -- The FBI? The local police? A congressional investigating committee? The mainstream media? No, no, no, no. It was a 20-year-old-girl named Hannah Giles and a 25-year-old law student and investigative journalist named James O'Keefe."

That the release of their videos did that is clear.

Rahn explained his connection to Ms. Giles: "I first met Ms. Giles almost a year ago in her home town of Miami. Through mutual friends, she contacted me to see if I could help her get an internship with a policy group in Washington. She ultimately interned this summer at the National Journalism Center and the Center for Freedom and Prosperity. Having heard about the various charges of voter and housing fraud that ACORN had been previously charged with, she decided to learn more."

How much Ms. Giles knew about ACORN and when she first knew it are not clear.

Rahn added: "Given ACORN's sleazy record, Ms. Giles began to wonder if ACORN would also give help to those who were trying to start illegal businesses."

But Ms. Giles told Hannity, "I had never seen an ACORN office, I really didn't even know that they existed and I jogged into the wrong part of town, saw some homeless people and street ladies and I put two and two together when I turned around to get back into a safe neighborhood."

Note: Hannity and Beck are based in New York, not the District of Columbia, and thus should not be presumed to be familiar with the neighborhood in which ACORN's D.C. office is located.

Hannity did not ask Ms. Giles to elaborate and now it's too late (given the legal jeopardy in which Ms. Giles finds herself--a civil suit by ACORN, perhaps just the first, and possible prosecution for at least four separate felonies in three states that criminalize surreptitious recording without the consent of all parties--Maryland, Pennsylvania and California).

No good deed goes unpunished and footnote 19 to the majority opinion in *Bartnicki v. Volper*, 532 U.S. 514 (2001) states: "It would be frivolous to assert-and no one does in these cases-that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news." *Branzburg v. Hayes*, 408 U. S. 665, 691 (1972)."

The best of intentions defense does not always work.

Rahn reported: "[Ms. Giles] contacted James O'Keefe, whom she had never met. Mr. O'Keefe, despite his youth, had already established a reputation as a highly competent and enterprising investigative journalist. Mr. O'Keefe, like President Obama, had studied Saul Alinsky's 'Rules for Radicals,' but his goal was to turn the tables and use the 'rules' against the radical left."

O'Keefe had attracted Ms. Giles' attention for his Planned Parenthood sting. At age 19, Ms. Giles joined her dad as a Townhall columnist and lauded O'Keefe in the second of her two 2008 articles, "The Truth is Too Scandalous for YouTube" (September 23, 2008).

Rahn: "Ms. Giles suggested to Mr. O'Keefe that she pretend to be a prostitute and that he play the part of her pimp to see if ACORN would help them set up a house of prostitution. Mr. O'Keefe liked the idea and agreed to work with Ms. Giles."

Rahn: "Using a hidden mike and camera, they first went to the ACORN office in Baltimore, and were quite stunned that the ACORN officials offered to help them -- even though they made it very clear that they wanted to set up an illegal house of prostitution and bring in underage girls from Central America to work in the house. (The video tapes of their meetings in ACORN offices can be found on www.biggovernment.com.)"

But Baltimore is in Maryland and Maryland has long criminalized willful surreptitious recording without the consent of all parties to what is reasonably believed to be a private conversation.

Ignorance of the law IS an excuse when actual intent to violate law is an element of a crime, but in that September 23, 2008 article Ms. Giles wrote: "In the summer of 2007 O'Keefe made phone calls to several Planned Parenthood clinics across the country. He only made these phone calls in states where it is legal to audio record without the other party's consent (i.e. Ohio, New Mexico, Idaho, Oklahoma)."

That will make a lack of willfulness defense hard.

Rahn: "Emboldened by their first success and wanting to make sure the Baltimore ACORN office was not a fluke, they then went to ACORN's office here in the District, then to Brooklyn, San Bernadino, Ca., and other cities around the country. They were given detailed legal instructions on how to avoid problems with the police and tax authorities while running an illegal operation in each location, and even made other offers of help. They funded all of their travel and other expenses out of their own pockets without any organizational support."

WHAT???

"THEY WERE GIVEN DETAILED LEGAL INSTRUCTIONS ON HOW TO AVOID PROBLEMS WITH THE POLICE AND TAX AUTHORITIES WHILE RUNNING AN ILLEGAL OPERATION IN EACH LOCATION,AND EVEN MADE OTHER OFFERS OF HELP."

Beither Beck nor Hannity elicited that information.

By whom?

Were Ms. Giles and O'Keefe warned that the surreptitious recording would be legal in some but not all states?

O'Keefe told Beck on television that he was willing to go to jail for what he and Ms. Giles had accomplished, but did he think it was a possibility before he videotaped at ACORN offices?

Did O'Keefe and/or Ms. Giles deliberately decide to conduct the sting in states where it may have been illegal (Maryland, California and Pennsylvania) as well as jurisdictions in which it was legal (the District of Columbia and New York)?

Or where they misadvised?

Rahn:

"Lawyers, who have reviewed the tapes, believe the ACORN officials may have violated dozens of laws and regulations, and perhaps even the Racketeer Influenced and Corrupt Organizations (RICO) statutes against racketeering and organized crime. After Glenn Beck and Fox News showed the Baltimore tape last Thursday, ACORN officials, clearly not knowing the extent of the O'Keefe-Giles investigation, claimed that the Baltimore officials were rogue employees and fired them."

GREAT! But what did those lawyers say about surreptitiously recording in Maryland, California and Pennsylvania?

Rahn: "The next day, when the D.C. tapes were released, ACORN fired two more employees, and the Census Bureau said it

would no longer contract with ACORN. Mr. O'Keefe has been working with the noted journalist Andrew Breitbart to expose what he and Ms. Giles uncovered. Mr. Beck, Sean Hannity, and others at Fox News and elsewhere have taken up the story and have had Mr. O'Keefe and Ms. Giles on their shows."

FANTASTIC! But who knew what when? And if the intrepid investigators were stunned by the results of their investigation in Maryland, how will their convince prosecutors, or a judge, or a jury that they should not be convicted of violating a constitutional, content-neutral state law enacted to protect privacy by the state's duly authorized representatives?

Rahn: "ACORN officials have already made false charges against Ms. Giles and Mr. O'Keefe, and the media organizations that have been exposing ACORN's activities. The Senate voted 83 to 7 on Monday to partially defund ACORN. As more tapes from more locations are released and ACORN's claims of not being thoroughly corrupt are shattered, it will be interesting to see the reaction of those in Congress, the administration and the media who have continued to be supportive of ACORN despite all of its past corruption.

"Will they protect the taxpayers or the criminals?"

Will they protect the taxpayers and pursue criminal charges against both the stung and the stingers to vindicate all criminal laws that may have been violated?

Rahn: "Ms. Giles and Mr. O'Keefe are true American patriots -- they did not wait around for the authorities or Congress to do something. They spotted a problem and they took action on their own at considerable personal expense and risk (though they are now being protected) to expose wrongdoing. The American Founding Fathers would be proud of Ms. Giles and Mr. O'Keefe because they understood that more often than not, government is the problem not the solution -- and the Founders knew that the American Experiment would fail if citizens did not repetitively act to protect both their liberties and pocketbooks."

Is the "risk" to which Rahn referred the legal risk of both civil and criminal liability for surreptitious recording under circumstances in which it is felonious?

The \$1,300 is trivial compared to the cost Ms. Giles and O'Keefe may pay for doing what lawyers and professional journalists dared not do themselves?

Rahn: "We can hope that Ms. Giles and Mr. O'Keefe will serve as role models for millions of other young Americans who see that the present generation in Washington is stealing their financial future and liberty. All too many in the mainstream media have climbed in bed with government rather than doing their duty to expose governmental wrongdoing. By using the new technologies, smart amateurs with courage and good judgment are becoming effective investigative journalists."

ACORN corruption and the negligence, or willful blindness, or the complicity of the mainstream media may have prompted the stingers to do more than the law allows.

To repeat: "Footnote 19 to the majority opinion in *Bartnicki v. Volper*, 532 U.S. 514 (2001) states: "'It would be frivolous to assert-and no one does in these cases-that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news.' *Branzburg v. Hayes*, 408 U. S. 665, 691 (1972)."

"[S]mart amateurs with courage and good judgment" as well as "new technologies" are no more entitled that law enforcement officials and professional journalists" to violate criminal law, but they are readily forgivable.

As Beck regularly tells his viewers, "speak without fear," "hold to the truth" and "question with boldness," but, in addition, as Beck told Ms. Giles, don't "expose" yourself.

Michael J. Gaynor

[Send email feedback to Michael J. Gaynor](#)

Biography - Michael J. Gaynor

Michael J. Gaynor, born in New York in 1949, has been practicing law in New York for more than thirty years. A member of the Association of the Bar of the City of New York, he is now a solo practitioner and admitted to practice in the New York State courts, the United States District Court for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit.

In 1969 Gaynor graduated *magna cum laude*, with Honors in Social Science, from Hofstra University's innovative New College, then a three-year program supported by the Ford Foundation.

In 1972 Gaynor received his doctorate of jurisprudence degree from St. John's University School of Law. There he was in the top 10% of his class. He won the American Jurisprudence Award in Evidence and served as an editor of the *Law Review* and the St. Thomas More Institute for Legal Research. He wrote an article on the Pentagon Papers case for the *Law Review* and two articles on obscenity law for *The Catholic Lawyer*, in addition to overseeing the *Law Review's* commentary on significant developments in New York law, then called "The Quarterly Survey of New York Practice."

The day after graduating from St. John's Law School, Gaynor joined Fulton, Walter & Duncombe, a Manhattan law firm with offices at Rockefeller Center. Gaynor worked with that firm, first as an associate and then as a partner, through 1996. He engaged in general practice, involving corporate law, federal and state litigation, mergers and acquisitions, trusts and estates law, tax law, and other areas of law, on behalf of the firm's clients, including International Flavors & Fragrances Inc., Carvel Corporation, Tenneco Inc., UniWorld Group, Inc., and Palisades Geophysical Institute, Inc., as well as substantial charitable organizations, other corporations and individuals.

In 1997 Gaynor and Emily Bass formed the law firm of Gaynor & Bass. For more than five years, Gaynor & Bass conducted a general legal practice, emphasizing litigation, and represented corporations, individuals and a New York City labor union. Notably, Gaynor & Bass prevailed upon appeal to the United States Court of Appeals for the Second Circuit in a seminal copyright infringement case, *Tasini v. New York Times*, against newspaper and magazine publishers and Lexis-Nexis. The United States Supreme Court affirmed, 7 to 2, holding that the copyrights of freelance writers had been infringed when their work was put online without permission or compensation. Bass, as a solo practitioner, had filed the case on behalf of a group of freelance writers, and the United States District Court had granted the defendants' motion for summary judgment on liability.

He is a regular columnist at www.MichNews.com, www.renewamerica.us, www.webcommentary.com and www.postchronicle.com and has contributed to www.catholiconline.com, www.capitolhillcoffeehouse.com, www.yourcatholicvoice.com, www.intellectualconservative.com, www.starrjournal.com, www.therant.us, www.peoplepolitical.com and www.salon.com.

In 2005, Gaynor appeared as a guest on "Your World With Cavuto" (FOX Cable) to promote the eBay boycott that he initiated (see www.boycottebay.org/reports.html) and "The World Over With Raymond Arroyo" (EWTN) to discuss the legal implications of the tragic Terri Schiavo case. He can be reached at GaynorMike@aol.com

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