

Earl Raab

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GETTING SOFT ON NAZISM?

Nazis have been meeting in San Francisco public buildings. Nazis are scheduled to march in Skokie. Dedicated anti-Nazis are again arguing with each other about what to do.

About 600 San Francisco Jews, who mirror the total Jewish population in their pattern of religious observance, occupation and so forth, have been asked: "Should the First Amendment to the Constitution be altered to prohibit the existence of the Nazi Party?" About 44 per cent say "yes," about 56 per cent say "No." That's a pretty even split.

Some American Jews may be slipping back into the weak defensive stance which preceded the destruction of European Jewry. The Centralverein, the German Jewish defense agency founded just before the turn of the century, stated their mission by saying that the Germans "will not deny their sympathy to a serious and respectably conducted defense, and those who today do not know us, who are unable to get to know us because our entire life is strange to them, will testify for us: 'these Jews of Germany are not less loyal citizens than we, just as self-sacrificing patriots, just as noble human beings.'"

In other words, the defense philosophy was: "If we can get people to like us Jews, and keep them from disliking us, then we are safe." That was the weak and craven stance once held by many American Jews as well. It didn't work.

We were jarred by history into becoming more militant and tough-minded. We began to demand our rights, as equal citizens, whether other people liked us or not.

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That is where the First Amendment comes in. It is not just that the First Amendment protects our right to be religiously different, as an aspect of free speech. The whole principle of free speech is the cornerstone of a larger right which we demand. As the Israeli Supreme Court has said: "The principle of free expression is a principle closely connected with the processes of democratic government." And the Israeli Supreme Court quoted Justice Louis Brandeis in an American Supreme Court case: "Those who won our independence believed that freedom to think as you will, and to speak as you think, are means indispensable to the discovery and spread of political truth."

In short, free speech is the instrument which enables us to demand our larger rights. It is no accident that the First Amendment is First. But the larger right which free speech protects is the right to be different - even if people don't like you or your differences. That is the paramount right which we need and demand as Jews. The First Amendment is the instrumental cornerstone of that right.

That does not mean that freedom of speech is an absolute right - under all circumstances and conditions. Judge Learned Hand pointed out that the First Amendment is too important a principle to be treated like a fixed and rigid statute; it is a strong statement on direction, to which exceptions can be made as long as they do not threaten the basic principle.

Thus, the Supreme Court has suggested that no one has the "free speech right" to walk up to you, so that you can't avoid him, and insult you deliberately in a way that he

knows will bring an angry reaction. That's the "fighting words" exception, which the Supreme Court felt did not violate the principle and purpose of free speech. (If you had to walk a mile to deliberately hear someone insult you, that would be a different matter).

The Skokie affair, of course, has to do with the "fighting words" exception. Most Jewish agencies now feel that the Nazis should be prohibited, on "fighting words" grounds, from marching into a predominantly Jewish community like Skokie, with its thousands of "survivors." But each situation requires its own evaluation of the facts.

And, on other grounds, the organized Jewish community in San Francisco is protesting the use of public buildings by the Nazis for their meetings. Twenty-one to twenty-five Nazis, Nazi sympathizers and Nazi-watchers have been regularly holding their meetings in buildings administered by the Park and Recreation Department. The spirit of a dozen state and local laws say that racially exclusive groups should not be given public backing even if only symbolic. Why, then, is it legitimate for racially exclusive and racist groups like the Nazis to be given the prestige of meeting in public halls? Some courts have made a distinction between the public sidewalks, for which there is no substitutes. If there is no specific law which prohibits racially exclusive groups from meeting in public buildings, then such a law should be pursued. It would not seem to destroy the principle of free speech.

In any case, there are certainly exceptions possible which will not violate the principle of free speech. However, in pursuing those exceptions, it is important not to get careless about the principle from which the exceptions are being made. A surgical knife is

called for, rather than a meat cleaver.

For it would be tragically ironic if, in the name of "militant" anti-Nazism, we should slip back into the weak and craven stance of an earlier Jewish community. If, in the cause of sense and sensibility, and in a manner not destructive of the First Amendment, we want to curb the more offensive activities of those German-type Nazi bands, that is one thing, and hurray. But if our main purpose is to stop the Nazis from lying about us so that people won't dislike us, then we will be back on the road to that weak and craven stance which prefaced Holocaust.

It is not that we should ignore the Nazi lies. For every public impact the Nazis make, we now make a thousand. But that's not the point. The point is that our main protection lies not in being weakly defensive (in however "militant" a style) about Nazi expression. Our main protection lies in militantly demanding our rights - as equal citizens; as Jews, with differences - whether people like us or not. If we lose that, we lose the main battle to the Nazis.

It is silly to say that the First Amendment prevents us from trying to curb the more offensive activities of the Nazis. But anti-Nazi militancy requires us to zealously protect the principle of the First Amendment. This is no time to go soft on Nazism, and repeat tragic mistakes.