

THE ACLU: EVANGELISTS, NAZIS AND BAKKE

The American Civil Liberties Union is one of these organizations that would have to be created if it didn't already exist. Its single-minded purpose is to protect those First Amendment rights which distinguish a democratic society from a Nazi or Soviet society. In pursuit of that purpose, the ACLU gets into many issues - and doesn't necessarily end up on the right side of every tangle.

The Northern California Chapter of the ACLU has been most recently of great assistance to the Jewish community on the issue of Christian evangelism in the high schools. Last year the evangelizers began to swarm onto high school grounds. The Jewish community objected; and the ACLU followed with a strong legal letter to every school administrator in this area. The ACLU has also supported the Jewish community on related legislative issues in Sacramento.

But nationally, the ACLU is in the middle of one of its most controversial cases: it is defending the right of the Nazis to meet in Skokie, Illinois. This is a standard position for the ACLU: "If everyone doesn't have the right to speak, no one will have that right." Aryeh Neier, a refugee from Nazi Germany and national executive director of the ACLU, puts it this way:

"One comment that often appears in letters I receive is that, if the Nazis come to power, the ACLU and its leaders would not be allowed to survive. Of course that is true. Civil liberties is the antithesis of Nazism. Perhaps that explains best why we defend free speech for Nazis. We don't share their values."

But when a San Francisco TV station recently allowed a Nazi to spout the "blood libel" against the Jews, the local ACLU official protested to the TV station. Freedom of speech in one thing, he said, but in this case it was abused, and editorial judgement should have been used. He supported the Jewish community's protest.

There may be a similar element in the Skokie case. In the ruling which is now being appealed by the ACLU, Illinois court upheld the ban on the Nazi march - but it did not say that the Nazis never had the right to speak or march. It said, in effect, that when the Nazis march with their swastika in a dense Jewish neighborhood, they are deliberately uttering provocative "fighting words." And the courts have long ruled that in certain circumstances, such "fighting words" are not protected by the First Amendment.

Consequently, a lawyers committee of this Jewish community is now exploring possible legislation or legal action which could limit Nazi activity in a number of specific situations, without destroying the constitutional principle which protects us all. Perhaps the ACLU should also be engaged in such creative activity, instead of just having what some call a knee-jerk reaction, as in Skokie.

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Some say that it is ACLU's job, as a watch-dog, to be pure and rigid advocates for constitutional rights. Maybe so, but that line would be more convincing if the ACLU were more consistent in its rigidity. The ACLU now seems to be taking a position supporting the quota system, in the Bakke case. Many strong supporters of affirmative action, however, take this more creative position:

University admission committees should take into account more than the scholastic record or test scores of applicants. Special attention, on a case by case basis, should be paid to applicants from groups which have been deliberately ground down by this society. There is enough real potential in all human groups to make this affirmative action plan work. But if instead of affirmative action, a blanket group quota plan is imposed, the effect will be to diminish the constitutional principle of equal protection.

In other words, the ACLU is not taking the same "pure and rigid" Constitutional position in the Bakke case as it had in the Skokie case. Or it might be said that the ACLU has taken rigid (rather than creative) positions in both cases - but this rigidity has been for pure Constitutionalism in Skokie, against pure Constitutionalism in Bakke. Why? Has it just been the chic choice in each case? Has sterility set in?

It may be the time for an increased number of thoughtful people to become active in the ACLU. The organization is too important to allow it to become chic and sterile.