

LETTER TO DAVID GOLDBERGER

Pilgrim Church, Duluth

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Royal F. Shepard, Jr.

Permit me to take a non-biblical text. This departure from custom smacks of heresy. Yet it may seem less dangerous if we bear in mind that the author was a sort of Congregationalist who is famous for telling Bible stories: John Milton.

These excerpts from his Areopagitica are famous. Yet they never came through to me until I found them on the cover of an old church bulletin, torn off and left to me among my father's papers. My father had marked the concluding sentence with his pencil.

Truth is strong, next to the Almighty. She needs no policies, no stratagems, to make her victorious. These are the shifts and defences that error uses against her power. So truth be in the field, we do injuriously, by suppressing and prohibiting, to misdoubt her strength.

Let truth and falsehood grapple; whoever knew truth put to the worse in a free and open encounter: suffer not prohibitions to stand at every place of opportunity, forbidding and disturbing them that continue seeking.

Give me the liberty to know, to utter, and to argue freely, according to conscience, above all liberties.

That is a hard truth to live by. A few years before Milton wrote those words, the Pilgrims were harried from their homeland because they were considered dangerous heretics. A few years after Milton wrote those words, the Pilgrims passed a law fining anyone twenty shillings who brought into their colony "any Quaker, rantor, or other notorious heretiques." Up north in Boston some Puritans who also suffered for their version of the truth back home, hung four Quakers on the common.

Well, but they were a troublesome, lunatic fringe as any sober Quaker of our time will agree. There was a young Quaker woman described by one historian as "comely" who walked into the Sabbath service at Newbury completely unattired. She told the congregation she did it "to show the nakedness of their rulers." But Congregationalists are a flinty lot. It may be said that they took a dim view of the whole view.

We think our ancestors were hard on heretics. But granted their premises their cracking down was quite reasonable. Granted the immortality of the soul and the threat of eternal damnation, a person who could lead you astray was far more dangerous than a murderer. Even today, some of us who have decided not to worry about hell, might agree with that conclusion.

"We do injuriously, by suppressing and prohibiting." Yes. But what about those who if they had their way would suppress and prohibit everybody else? What if a group of people who take their inspiration from the most monstrous movement in history want to hold a rally to advertise their ideas? What if American Nazis - there is an odd coupling of words - what if American Nazis want to march through a town that has in it seven thousand survivors of the original Nazi concentration camps? Should this not constitute an exception to the freedom of expression?

The village council in Skokie, Illinois felt that it should.

A few weeks ago I received a letter from a David Goldberger about that. It was not a personal letter, but a form letter sent out, I am sure, to several thousand people.

Mr. Goldberger said that he was the lawyer representing the American Civil Liberties Union who defended the freedom of speech in Skokie, Illinois of some people calling themselves "Nazis". These "Nazis" wanted to hold a rally there. Mr. Goldberger said that he understood how many people in Skokie felt about such a rally. The executive director of the ACLU, Aryeh Neier, was himself a refugee from Nazi Germany. But Mr. Goldberger insisted that the Nazis were not the real issue.

He observed that the Skokie laws gave village officials the power to deny anyone a parade permit or to make public speeches if in their opinion such speeches portrayed "a lack of virtue" in others or "incite hostility". They also required a prohibitive insurance bond which few if any insurance companies would be likely to grant. Under the Skokie laws a permit to march even was denied the Jewish war veterans.

Wrote Mr. Goldberger; "It is crucial that these kinds of laws and requirements be struck down, because there is no way to limit them. If they are not struck down, then towns everywhere will have the legal power to pass identical laws, and to use them to prohibit whatever they believe is offensive." He said that at that very moment he was representing the Martin Luther King Coalition which was banned by a very similar law from holding a meeting in a Chicago Park.

However, Mr. Goldberger acknowledged that not everybody saw matters the way he did. Indeed, he has become the subject of personal threats and several thousand people have resigned from the American Civil Liberties Union over the Skokie case. That is true, notwithstanding the fact that he won the case before the Illinois Supreme Court.

Consequently, the ACLU is in serious financial trouble and looking to a "saving remnant" to keep it from going under.

Finding myself counted among so select a group, I felt moved to write Mr. Goldberger a letter. Not that he needed any more letters. But I, approaching Easter and wondering what if anything might follow, needed a sermon. So I sent him this letter, which I now read to you.

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Dear Mr. Goldberger:

I write as one of the multitude who received your plea for support in the midst of mass defections from the American Civil Liberties Union. So as not to keep you in suspense, let me say that I have mailed my contribution. It will not do much to bail out the budget, but at least it will serve as a vote of confidence. I want to say in any way I can that I think you and the ACLU did the right thing in defending the right of the American Nazi Party to hold a rally in Skokie, Illinois. I am taking the liberty of expressing that conviction at some length because I plan to share this letter with my Sunday morning congregation. You don't need to read it, but I hope that they will listen.

My own relationship to the ACLU is very nominal. I pay the minimum annual dues, glance at the newspaper and occasionally react in annoyance when some ACLU lawyer responds to a request to stop a religious activity at a public

facility. Yet I feel that my personal heritage is very much bound up with ACLU traditions. I grew up under the inspiration of John Haynes Holmes, one of the founders of the ACLU. As a youth I went with my parents to a dinner honoring Roger Baldwin at the time of his retirement as Executive Director. I first met the next director, Patrick Murphy Malin when he was my wife's professor at Swarthmore College. I grew up believing that the ACLU was the one organization on which we always could rely to come to the defense of Americans when their rights and liberties were in jeopardy. Sometimes the ACLU has taken positions with which I did not wholly agree. Yet I have never doubted its faithfulness to the Bill of Rights and to the larger cause of personal liberty.

Indeed, it has been precisely when the ACLU came to the assistance of persons and groups whose point of view was most at variance with that prevailing among its own membership that your organization commanded most powerfully my admiration. I recall, for example, the day when Dr. Malin addressed a group of students at Union Theological Seminary. He explained why it was that he had offered assistance to J.B. Matthews, who lost his job with a congressional committee, I believe, after making some rather absurd charges regarding Communist influence in the churches. I was one of those students. I thought Matthews was a menace. But I never admired the ACLU more than I did that day.

The ACLU is at its best when it defends freedom of expression for those who would deny that freedom to others. That is the proof of the civil libertarian pudding just as the defense of an unattractive client is the proof of the pudding in the legal profession. Though I am not a lawyer I was raised by my lawyer father on the principle that even as no person should stand above prosecution by virtue of his position, so no person stands beneath the right to a defense because of his ignominy. There are many matters on which I have departed from the faith of my fathers, but on that one I continue to stand. Surely no disrepute should fall upon you because you have persuaded the courts that the American Nazis are not exempt from the First Amendment. That you should have done so despite your personal antipathy to such a client is testimony to your integrity as a lawyer.

My own deepest heritage persuades me that you have done the right thing both as a representative of the ACLU and as an attorney. I cannot claim the heritage of a Jew. However, my Christian scriptures inform me that it was Gamaliel who persuaded the Council in Jerusalem to allow Peter and his colleagues to go on teaching. I have often wished that the spiritual heirs of Peter showed the same respect for free expression with respect to Jews. It is understandable that survivors of Nazi concentration camps should find themselves unable emotionally to accept a Nazi parade in their community. Yet surely those of us, whether Jew or Christian, who were not immediately involved in that horror, can perceive the terrible irony that would result in our denying basic civil liberties out of opposition to fascism. How better to serve the Nazi cause than to pass such a sweeping ordinance as that enacted by the Skokie city council? As you point out, had that ordinance been upheld, "towns everywhere would have the legal power to pass identical laws, and to use them to prohibit whatever they believe is offensive." The thought of Nazis marching in Skokie is abhorrent. Yet if Nazis cannot march in Skokie today it may turn out that tomorrow Quakers cannot march in Philadelphia. Indeed, I once marched with Quakers in Philadelphia and the sentiments expressed by some of the crowd indicated that such a prohibition was not so far-fetched as it may sound.

People are right to fear such groups as the American Nazis. We would like to think that German Nazism was a momentary aberration never to reoccur in human history. Yet right now in many parts of the world, oppressive regimes violate

human rights with impunity and people are imprisoned, tortured and exiled for expressing their convictions. The attention given recently to Amnesty International reminds us that this is so. No people, however rich their tradition of personal liberty, is immune to the danger of such oppression. Several members of the ACLU were once arrested for reading from the United States Constitution in Mt. Vernon, New York. Very frequently these days well intentioned groups try to pass laws aimed at preventing the spread of evil ideas without realizing that they are undermining the structure of freedom without which no ideas remain safe. Every time we make an exception to First Amendment guarantees to freedom of expression, we erode the dikes that stand between us and those raging seas of power-lust, fear and fanaticism that beat the shores of every continent today.

You say that thousands of members have resigned from the ACLU over the Skokie case. I can empathize with the feelings of some of these people. Sharing their abhorrence of the Nazis as I do, I cannot feel angry at them. Nor do I relish any feeling of moral superiority. I suspect that if I shared the experiences of some of these people I would react in the same way. In any case, we all have our special interests or our special antipathies which tend to blur our vision of civil rights. I am sure that I have mine. Yet I cannot help believing that those who forsake your organization are forsaking their own best moral instincts. Not only are they walking out on the opportunity to support many good causes far less controversial, but they are walking out on themselves. They are betraying themselves as Americans, as people who share the Judeo-Christian heritage, as men and women who believe in basic human rights and liberties. I pray that in time some of them will return.

These are hard times for believing in human nature, much less in God. I am not sure that I can believe with Gamaliel that movements on the side of God always will prevail or with Milton that given an even chance truth always will win out. My jury is still out on those claims. But I do believe in freedom even so. And I think the time will come when heirs of that "saving remnant" in the ACLU will look back and say, "When David Goldberger challenged those Skokie laws and won - that was our finest hour."

Sincerely,

Royal F. Shepard, Jr.

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When I wrote this letter more than two weeks ago, I was not aware of the Holocaust series that is forthcoming on television. Some of you will look at it and after you have looked, it will be that much harder to believe in what I have written to David Goldberger. But I think I shall believe in it even so. Not to believe would be to take that first step which starts with righteous indignation and ends with gas chambers. So then:

Give me the liberty to know, to utter, and to argue freely,
according to conscience, above all liberties.