

FREE SPEECH FOR ALL

Aryeh Neier recalls a controversial First Amendment case – still a landmark in the history of free expression after more than 30 years

In 1977 and 1978, when the court cases involving the right of a small group of neo-Nazis to march in Skokie, Illinois were underway, the issue was quite controversial in the United States. Much of the controversy focused on the fact that the town of Skokie – it was called a village, but its population was about 70,000 and so I refer to it as a town – had become the home of a large number of Holocaust survivors. Many Americans thought the neo-Nazis had been deliberately provocative in choosing Skokie as the place to march. No doubt, they enjoyed the extra attention they got because of the demography of Skokie. Actually, however, it would be more accurate to say that the elected officials of Skokie chose to make their town the site of a legal confrontation with the neo-Nazis.

This is how it happened. The neo-Nazis had been holding demonstrations in a section of Chicago where a small park separated a neighbourhood largely populated by east European immigrants from another neighbourhood that was predominantly African-American. The neo-Nazi demonstrations in that part of Chicago were intended to exploit racial tensions in the area. When a court order blocked those demonstrations, the neo-Nazis sent letters

to officials of more than a dozen Chicago suburbs saying they would hold demonstrations there instead. All but one of the suburbs that received those letters ignored them. The exception was Skokie, which hurriedly adopted a series of ordinances forbidding the neo-Nazis to march and wrote back telling them not to dare to go to Skokie. Inevitably, of course, that made the publicity-hungry neo-Nazis focus on Skokie. Most likely, they had not known in advance that many Holocaust survivors resided there.

At this time, I was the national executive director of the American Civil Liberties Union. The ACLU's state branch in Illinois had provided legal representation to the Nazis in their effort to march in the park in Chicago and also agreed to defend their right to march in Skokie. I was not consulted on either matter by the Illinois ACLU. These cases were thought to be too routine to require my attention. The ACLU had been defending freedom of speech, press and assembly for all manner of extremists since its founding in 1920. We had frequently handled such matters for little groups of self-proclaimed Nazis. Why was this different?

It was different, the press decided, and the country as a whole decided, because of the Holocaust survivors in Skokie. Soon, we were besieged by complaints about the case. Astonishingly, many of those who were upset by it were members of the ACLU. A large number of members resigned and, for a brief period, we suffered financial difficulty because of the case.

Though I had not been consulted about whether to take on the defence of free speech for the Nazis in Skokie, for the next 15 months I was preoccupied by the matter. I spoke on the issues raised by the cases all over the United States, doing my best to accept the many invitations I received from synagogues to take part in debates on the issue. One of those debates took place in Skokie. I testified on the dispute at a hearing of the Illinois legislature and discussed it in countless radio and television interviews and with newspaper and magazine journalists from all over the world. An unpleasant element involved various threats against me by a radical group known to engage in violence, the Jewish Defense League – which followed me from my office to discover where I lived – led by Rabbi Meir Kahane, who was himself subsequently assassinated. Because I was so prominently associated with the Skokie case, I still occasionally meet someone who recognises my name only because I was involved in it three decades ago.

For a period, my colleagues and I at the ACLU were puzzled by the reaction of some of our own members but, after a while, we began to understand why the case had caused such a reaction. A few years earlier, the ACLU had experienced a large surge in the size of its membership when it



Police confront neo-Nazis in Chicago, 1977

Credit: Chicago Tribune

led the struggle against the civil liberties abuses of the administration of President Richard Nixon (1969–74), and particularly during the period that it campaigned for the impeachment of Nixon (1973–74), because of those abuses. Many persons who joined the ACLU during that period probably knew little of the organisation's readiness to defend free speech for all, even Nazis, and the Skokie case came as a shock to them. Also, by 1977, when Skokie started, Jimmy Carter had taken office as president of the United States earlier in the year and the threat to civil liberties no longer seemed dire. It was no longer so important to many who had joined the organisation just a few years earlier to continue to support the ACLU. It is an organisation that has always thrived on adversity, as demonstrated by what has taken place in the seven years since George W Bush has been president. Its membership today is about 550,000, approximately double what it was when Bush was inaugurated. Financial support for the ACLU has grown even more rapidly during the Bush years.

Though the ACLU membership and finances suffered for a period because of Skokie, they soon rebounded. Two factors seem to be responsible. First, Carter was succeeded as president in 1981 by Ronald Reagan and, once again, a lot of Americans became concerned about threats to civil liberties. In practice, there was no repetition under Reagan of the abuses – pervasive political surveillance, direct attacks on freedom of speech, mass arrests of peaceful demonstrators, misuse of the intelligence agencies for personal political purposes, political prosecutions and many more – that had characterised the Nixon era. But Reagan made many of those who were potential supporters of the ACLU very nervous, and they opened their chequebooks to support the organisation.

The other factor was that the controversy ignited by Skokie abated. It is not that the case was forgotten. It was not. Rather, public opinion shifted. More and more Americans decided that they agreed with the ACLU. Even many who did not go as far as supporting the right for neo-Nazis to demonstrate expressed at least grudging admiration for the organisation's stand. It had held firm on a matter of principle: free speech for all, even in circumstances in which the organisation itself clearly loathed the views of those whose rights it defended and even when it suffered well-publicised financial setbacks for sticking to its principles.

Over time, support for the ACLU's stand in the Skokie cases has continued to grow. Though not especially significant from a legal standpoint, as no precedents were set in any of the court cases arising out of Skokie, the ACLU's position on the matter has acquired iconic status. Skokie is frequently invoked these days to suggest the breadth of free speech protection in the United States.

An unstated factor in the widespread acceptance today of the free speech rationale for allowing the Nazis to march in Skokie is that they gained nothing for their movement by prevailing in court. When the day came for the march to take place, the Nazis did not even show up. I am not sure why, but I assume it was because the handful of men dressed up as stormtroopers who were supposed to march would have looked ridiculous walking back and forth between long rows of police deployed to keep them apart from the crowds that travelled to Skokie to jeer them. Or, perhaps, they simply feared that the police would be unable to protect them. Shortly thereafter, the little group of Nazis in Chicago disintegrated and were not heard from again. Other small groups of neo-Nazis have formed from time to time in the United States. The ACLU has continued to defend their rights. One of the Nazis, David Duke, who also identified himself as a member of the Ku Klux Klan,

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became a small-time celebrity for a period, but he has not been heard from in a long time.

One of America's foremost commentators on freedom of speech is Anthony Lewis, a columnist for the *New York Times*. Like many advocates of civil liberties, Lewis is a strong critic of the Bush administration's depredations on rights: prolonged indefinite detention of those rounded up in various parts of the world in the so-called 'war on terror'; denial of access to counsel; torture; denial of *habeas corpus*; and the use of military commissions that rely on hearsay evidence and evidence that is concealed from defendants to render judgments that could lead to the death penalty. Yet in a book published earlier this year, Lewis writes: 'I am convinced that the fundamental American commitment to free speech, disturbing speech, is no longer in doubt.' He makes clear that the reason that the American dedication to free speech is so strong is because so many battles have been fought in its defence. Many of the losses in those battles have been as significant as the victories in developing a national commitment to free speech. That is especially true of some of the cases in the United States Supreme Court nearly a century ago – because the eloquent dissents of Justices Oliver Wendell Holmes and Louis Brandeis, during the 1920s, are still imprinted on the American consciousness through the excerpts that appear in school and college textbooks. Skokie has also become part of American history and, in that way, has become part of the fundamental American commitment to freedom of speech.

Though the Bush administration has done great harm to civil liberties in other areas, it cannot be accused of violating freedom of speech. Accordingly, the critics of the administration's many other abuses during the past seven years face no impediment in expressing their views. With freedom of speech intact, and likely to remain intact, there is always the opportunity to try to persuade Americans that other essential liberties should also be protected. That is an important factor in making me and other proponents of civil liberties in the United States believe that, over time, we will be able to restore many of the liberties that have been taken away since the terrorist attacks of 11 September 2001.

Over the years, I have been asked many times whether the principles represented by Skokie are applicable outside the United States. Hardly any other country in the world gives such great protection to hate speech as the United States. Elsewhere, many partisans of freedom of speech in other circumstances draw the line at speech that is intended to incite hatred on racial or religious grounds.

My answer to the question is that protection of hate speech as free speech cannot be isolated from the general circumstances for free expression in any country. Where other restrictions on speech are commonplace, hate speech is far more dangerous than in the United States. The fact that it is permitted by the authorities in situations where other forms of expression are restricted gives it a weight that it lacks in places where the protection of every form of speech is robust. In the United States, where everything may be said, and everything is said, listeners are far more apt to pay attention to the widespread ridicule that is the customary response to hate speech than to the hate speech itself. Freedom of speech itself serves as the best antidote to the poisonous doctrines of those who try to promote hate.

Elsewhere, there may be restrictions on speech that suggest that, when hate speech is permitted, it enjoys a measure of official support. That was the case in ex-Yugoslavia in 1992 when the official broadcast network in Serbia was demonising Bosnian Muslims, and in Rwanda in 1994 when hate radio was promoting, and even organising, the genocide. I would certainly not extend free speech protection to those holding positions of public power in those countries that used their privileged access to the media to communicate messages of hate. In my view, the Office of the Prosecutor of the International Criminal Tribunal for Rwanda acted properly in seeking criminal sanctions against those who were in charge of the hate radio and in securing their conviction and sentences to long prison terms.

On the other hand, where other forms of speech enjoy a high degree of protection, and where it is widely recognised and accepted that the best response to bad speech is more speech, I favour adoption of the American approach to hate speech that is symbolised by Skokie. Ensuring that all may speak freely, no matter how repugnant their views, prevents the authorities from using the pretext that they are blocking hate speech as a means to censor expression that actually disturbs them for other reasons. Also, it assures that when hate speech does take place, it will be countered in the most effective form possible by the widespread expression of opposing views. □

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