

# Mikva's wrong on Nazi march

Personal view / Franklyn S. Haiman

**THE RECENT STATEMENT** by Rep. Abner J. Mikva on the proposed Nazi march in Skokie has put me in a position of deeply divided loyalties. As a constituent, adviser and friend, I am a devoted supporter of the congressman, and I intend to work again for his re-election in November.

As a First Amendment scholar, however, and a national officer of the American Civil Liberties Union, I am in sharp disagreement with the views he has expressed on the Nazi issue.



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I share Ab Mikva's revulsion for everything represented by these self-styled Nazis who seek to march in Skokie, and I share his sympathy for those Skokie residents to whom the sight of a Nazi uniform recalls the nightmare of Hitler's Germany. I believe he is wrong, however, in thinking that such a march can be constitutionally prohibited, and in holding out hope that our courts may properly find a way to stop a demonstration by these people.

Understandably revolted by the prospect of a Nazi presence in Skokie, the congressman has joined with many other respected opinion leaders across the country who seek to find loopholes in the First Amendment to justify preventing the march. These leaders all start out from the indisputable premise that freedom of speech is not absolute—that one may not falsely cry "fire" in a crowded theater or solicit others to engage in immediate lawless action. They proceed to suggest a variety of other real or imagined exceptions to the First Amendment that might apply to this march—that it may be stopped because the government is entitled to impose time and place regulations on speech, and the Nazis can go some place other than Skokie; that the government may ban Nazi uniforms (or Ku Klux Klan sheets), because these symbols strike terror into viewers or inflict emotional distress upon them; that the government may prohibit the march because the purpose and effect of the Nazis would not be to express a point of view but to incite a riot.

The First Amendment would be unrecognizable if these

arguments were accepted. Time and place regulations on communication are only for such content-neutral purposes as keeping the streets clear for traffic during rush hours or holding the volume of public address systems to a reasonable level. Wherever their effect has been to ban totally the expression of a particular point of view from an entire community they have been, and should be, struck down as unconstitutional.

The notion that offensive speech or symbols may be censored because of their psychological impact on an audience that is not forced to be present would, if accepted, cut the very heart from the First Amendment. There is no limit to communication that could be prohibited because some who are exposed to it feel emotionally outraged or terrorized. Books, movies, speeches, television documentaries might all fall afoul of such a boundless doctrine. The authors of our Constitution had the wisdom not to open that door. We must not destroy what they created, and what our courts have reaffirmed, because a handful of sociopaths in monstrous costumes want to parade for 30 minutes in front of the Skokie Village Hall.

Whether these Nazis want to get themselves bloodied in

Skokie, whether they seek to exploit the situation for all the publicity they can get, or whether they wish to try to prove that their adversaries are as much devoted to violence and as little to freedom as themselves, I do not pretend to know. These same questions were raised about Martin Luther King's marches into all-white neighborhoods of the Chicago area. I do know that the First Amendment does not allow speakers or writers to be suppressed because of speculation by others about their motives and because a prospective audience threatens violence against them. If it were otherwise, Dr. King would never have marched in Mississippi or Alabama.

Justice Louis Brandeis spoke to this issue as eloquently as anyone ever has when he said: "If there be time to expose through discussion the falsehoods and the fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence . . . Such, in my opinion, is the command of the Constitution."

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