

## **Talk to ACLU-SC Annual Board Retreat (1/9/05 & 1/8/06)**

I'm here to provide a little historical background to today's conversations, and to suggest a few reasons why I am proud, and I think we should all be proud, to serve as active members of this organization. I'll speak too of the need to be ever-vigilant about the status of civil liberties in our country, and from time to time, about the conduct of the American Civil Liberties Union itself.

When the ACLU was founded in 1920, our country had just come through a period of tremendous fear-inspired political repression, under the World War I Espionage Act, and the post-war Palmer raids. Women were just on the verge of obtaining the right to vote, after decades of struggle. People were still being lynched because of the color of their skin in many states (including California); and occasional outbursts of vigilante justice could be expected almost anywhere. Annual Ku Klux Klan parades were being led by respected citizens in places as far from the Old South as Indiana, Kansas, upstate New York and Santa Cruz.

Working people didn't yet have the legal right to go out on strike. Left wing politics of every stripe were widely understood to be un-American. The Harrison Act of 1914 and the Volstead Act of 1919 had laid the groundwork for the prohibition and criminalization of substance abuse. Gay & lesbian people lived deep in the closet, seen by most others as both marginal to society and mentally deranged. Property-owning White Protestant men ran virtually every institution, public or private, in the country. They viewed themselves as entitled by birth and upbringing to that status; and for the most part they looked upon both Jews and Catholics, as well as all foreigners, with deep suspicion. The majority's

religion was imposed without hesitation on children in the public schools, as well as on prisoners and members of the military. The Supreme Court, for its part, had never in the history of the Republic struck down a law on First Amendment grounds. The Bill of Rights was universally admired on paper; but nobody in this country had found a way to enforce it.

Ours is of course a very different country today in most of those respects, despite the two most recent decades of serious backsliding. And the ACLU, working alongside other organizations concerned with defining, expanding & defending our civil liberties, has had a whole lot to do with bringing about those changes.

The ACLU exists to protect the Constitutional Rights of United States citizens as outlined in the Constitution itself and in the 27 Amendments. Of particular concern to us are the first ten amendments, or Bill of Rights, which protect our most basic freedoms: of expression, conscience, and association; due process of law; and equality under the law.

Wherever those freedoms are threatened, the ACLU likes to think that it has stood ready to intervene. And for the most part that has been true. But there are two notable (and really shameful, as well as instructive) exceptions to that distinguished record, both of which were responses to a national atmosphere, fanned by political rhetoric, of fear for the nation's security. The first was the national organization's acceptance in 1942 of the arbitrary confinement of West Coast Japanese Americans to concentration camps. That decision was bitterly opposed by the Northern California affiliate, as we are always proud to remind people, but the national organization found nothing to object to.

The second such failure to hold the line in the face of a tide of fear-driven public opinion, was the organization's abrupt turn towards anti-Communism after the Hitler-Stalin Pact of 1940, a move this time in which the Northern California affiliate acquiesced wholeheartedly.

That fateful decision denied membership in the organization to Communists. It denied the protection of the ACLU to victims of the Smith & McCarran Acts, and to people fired from government jobs for refusing to sign loyalty oaths. Some would say that the ACLU's stance in the 1940s actually contributed in its own small way to paving the way to McCarthyism. Those were dark days indeed for civil liberties, and dark days for the ACLU -- though it must be said that even during the McCarthy years, when the organization (like most trade unions of the day) was especially anxious to avoid being associated in public perception with the Communist cause, the organization was quick to defend those whom it saw as unfairly charged with Communist affiliation -- even while it was turning its back on actual Communists. In 1967, the National Board was finally persuaded by pressure from some affiliates to repudiate its anti-Communist Resolution of 1940, and return to the defense of the First Amendment without exception.

But here are just a few of the many successful freedom defenses that were accomplished by the ACLU on other fronts during the years before 1967: the right of Jehovah's Witnesses to enjoy the freedom of the press denied them by a Georgia statute requiring a permit to distribute literature of any kind, and years later the right of Jehovah's Witness children not to be forced to salute the American flag in schools. The right of John Scopes to teach evolution in the Tennessee schools after the notorious "monkey trial" of 1925 & its subsequent reversal. The lifting of

bans on the sale of James Joyce's *Ulysses*, and on the showing in New York of an Italian film viewed by censors as sacrilegious. The defense of Henry Ford's right to distribute anti-union propaganda during the great UAW organizing drive of the 1930s. Overturning the refusal by Jersey City Boss William Hague to allow any trade union organizing in what he viewed as "his" town, even after the passage of the Wagner Act in 1935. Striking down in 1941 the "anti-Okie" law in California that had prohibited the immigration of indigent people to the state. The elimination of racially discriminatory "white primary" elections in Texas, and maybe most important of all, of the restrictive homeowner's covenants that for years prevented the sale of houses to Jews & Blacks around the country.

ACLU's marvelous record of accomplishments during the years of the Civil Rights Movement and since is perhaps more familiar to most of the activists here. Since the 1970's we've had the work of the Women's Project, the Reproductive Rights Project, the Gay & Lesbian Rights Project and so many others to be proud of. More recently, we can celebrate the work of the national Drug Policy Reform Project, whose offices & staff were recently relocated from New Haven to Santa Cruz.

Just out of curiosity, while preparing myself last year to give this little talk, I checked out "Decades of Shame," a Christian Right website devoted to the history of the ACLU. They view us as something like a Satanic conspiracy, hell-bent in opposition to Christian values. Our principle crimes, in their eyes, have been the advocacy of reproductive rights and the rights of gays and lesbians, the defense of pornography on freedom of expression grounds, the defense of medical privacy for prostitutes and HIV patients, and our opposition to the Flag Burning Amendment, to

federally-funded school vouchers and to the requirement of parental approval for participation in sex education classes.

What especially sticks in their craw is the success of our organization in increasing its membership and funding, especially since the 1960s, when we began to achieve regular victories in the Supreme Court. Equally objectionable is the fact that in 2001, our national Board President Nadine Strossen charged Attorney General John Ashcroft with “fundamental disdain for the Constitution” simply because, as the website puts it, he is “pro-life, pro-family, favors common-sense restrictions on Internet child pornography, and questions the notion of the ‘so-called separation of church & state’.”

The folks who run that website are perhaps closer to the push-buttons of power just now than any of us are; and that may be as good a reason as any to be proud of the ACLU for all of its warts, to redouble our commitments to the ACLU, and to support it in every way we can.