

Weathering Controversy As Usual

—The ACLU in Pennsylvania

By Eve Glicksman

*"Eternal vigilance is the price of liberty."
—motto of the American Civil Liberties Union*

"Hurt by the recent publicity?" Barry Steinhardt, executive director of the American Civil Liberties Union of Pennsylvania, smiles broadly at the suggestion.

After George Bush attacked Michael Dukakis as a card-carrying member of the ACLU last fall, the ACLU couldn't print membership cards fast enough. Thirty-five to 40 membership requests arrived daily in Philadelphia alone.

The maverick organization has been accused of supporting pornographers, Nazis and the devil himself over the decades. But if any publicity is good publicity, the ACLU has had a banner year. The group boasted a hefty 54 percent recognition rate among the public in 1988.

By now, weathering controversy is old stuff to the ACLU, founded in 1920 by conscientious objectors. As far back as 1925, the ACLU was battling an angry public for defending John T. Scopes, the Tennessee teacher who was fired for teaching evolution. A steady stream of underdog clients, from union organizers to immigrants to prison inmates, has followed. To date, the ACLU has landed more litigation in the Supreme Court than all but the U.S. Justice Department.

"The ACLU has always been called radical in its time, but look how many of our past positions are now accepted to be right," says Steinhardt. "Ronald Reagan has just admitted that the internment of Japanese Americans in the 1940s was a national disgrace. The ACLU took that position 40 years ago. It seems that what we're often criticized for is being right too soon."

Early Days of the ACLU in Pennsylvania

Spencer Coxe became the first director of the Greater Philadelphia ACLU in 1952; a smaller contingent also existed in Pittsburgh. At the time, only a dozen or so other states had chapters. By 1956, more ACLU offices had sprung up

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statewide, and the ACLU of Pennsylvania was formed with Coxe as executive director.

Embodying the philosophy of the national parent organization, the ACLU of Pennsylvania was established to protect civil liberties as defined in the Bill of Rights. What is often misunderstood is that the nonpartisan group defends principles, not people — freedom of expression rather than the ideas themselves. That's why the ACLU has represented Ku Klux Klansmen as well as Black Panthers. "We protect minorities against the excesses of the majority," says Steinhardt.

Coxe, state executive director until 1978



Barry Steinhardt: Media exposure doesn't hurt when Steinhardt succeeded him, remembers the early years as a fertile time for civil libertarians. Enforcing constitutional rights for minorities, women, children, political dissidents, the poor, or any nonconformist for that matter, was virtually unthinkable then. With a few intrepid ACLU attorneys, Pennsylvania was a hotbed for some of the most daring and influential cases in the country.

At the outset, raging public hostilities toward communism provided much of the fodder for litigation. "McCarthy was the biggest recruiter we ever had!" chuckles long-time ACLU board member Henry Sawyer III. Sawyer helped defend 30 school teachers called before the infamous House Committee for Un-American Activities in the 1950s.

For Coxe, the most memorable and

rewarding accomplishment was getting Pennsylvania's Defective Delinquent Act repealed. In the late 1950s, Coxe received a letter from a 26-year-old man imprisoned since age 15 for stealing two bicycles. He had been given an IQ test when arrested that showed him to be slightly retarded. With no due process, he was committed under the Defective Delinquent Act. The act allowed youths to be locked up indefinitely in maximum security prisons for any indication of criminal tendency or mental deviance. "It didn't seem possible," Coxe said. He asked then-ACLU volunteer attorney Lisa Richette to look into it. (Richette is now a Philadelphia common pleas judge.)

The young man in question was found to be of normal intelligence when tested again. The ACLU's subsequent success in repealing the Delinquent Act ultimately led to the largest "jail break" in American history, according to Coxe. Eight hundred youths from all over the state were released from prisons in the early 1960s against fearsome protests from law and order officials, including then-Philadelphia District Attorney Arlen Specter.

The most famous ACLU litigation in Pennsylvania, though, concerned church and state separation. *The New York Times* referred to the ACLU's 1962 *Schempp v. Abington* case as the most controversial Supreme Court decision of the 20th century after *Roe v. Wade*. This was the first case in which prayer and the ceremonial reading of the Bible in public schools were deemed unconstitutional.

Without a doubt, says Sawyer, he and his family received more anonymous threats and hate calls over that case than any other. Since then, he adds, *Schempp v. Abington* has been cited 800 times. Such achievements have since earned the Drinker, Biddle & Reath attorney the title of "Dean of the Civil Liberties Bar" in ACLU circles.

In another landmark church and state clash, Sawyer helped block parochial schools from receiving state aid for teaching secular subjects. In *Lemon v. Kurtzman* in 1971, his Supreme Court win resulted in the adoption of a three-prong test for funding eligibility compatible with the religious separation clause.

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