

## Reflections and Recollections of Franklyn Haiman as Mentor, Colleague and Civil Libertarian

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My first visit with Frank Haiman occurred in the early summer of 1958. Happily, it would presage a half-century of periodic exchanges and occasional collaboration, shared appreciation of civil liberties, and profound admiration for one of the genuine heroes of the quest for freedom and liberty. It was a quite fortuitous, though almost accidental, contact. As a recent Harvard College graduate, soon to enroll at Harvard's law school, I sought Northwestern's School of Speech (as it then was) in part because it offered opportunities for graduate study clearly unavailable in Cambridge (where speech courses were and remain anathema).

Though I enrolled in several summer courses, and on the side taught a section of high school debate in the renowned "Cherub" program for ambitious and promising debaters, I especially valued the chance to study with Frank Haiman, whose course offerings on Group Dynamics and Discussion had enticed me. I was not the least disappointed. Barely had I made his acquaintance than he introduced me to Al Goldberg, who was then completing his doctoral dissertation, and would soon embark on his own academic career.

During a long and highly engaging evening, the two of them led me through a close clinical analysis of the perceived impact of sharply differentiated personae. Goldberg's hypothesis (novel though intriguing to me) was that A's affinity for B would depend dramatically on B's introduction of C and other barely known or unknown persons. I was deeply impressed by the care with which Frank guided the discussion, placed in the larger context of his already imposing array of publications writings and studies.

Two sharply disparate lessons emerged from my earliest visits with Frank Haiman at Northwestern. On one hand, he seemed a gentle, soft-spoken, reflective and contemplative teacher – and a superb teacher he soon turned out to be. Indeed, the welcome guidance he gave me in 1958 in appreciating group dynamics and small group interaction, only reinforced my sense of a moderate and balanced scholar. Yet paradoxically, as I soon learned, he was also the most spirited, fearless and devoted champion of free speech and press with whom I would work closely. Where the rest of us First Amendment scholars, teachers and litigators often qualified our commitment to basic civil liberties, often temporized, or qualified, or balanced, that was simply not his style. With a determination and consistency that only Justice Louis Brandeis would anticipate, and only Justice Hugo Black would share during his unprecedented term on the Court, Frank realized as did these eminent jurists the essentiality of rigorous protection.

During the ensuing decade, Frank and collaborated regularly (with other like-minded colleagues including Tom Tedford) in producing the *Free Speech Yearbook*, a collection of timely essays about First Amendment developments). The pace of litigation, and the emergence of major Supreme Court doctrine during his decade, is

dazzling. Of the major free speech and press cases that I taught to my con law students at that time, barely fifteen percent predated the dramatic jurisprudential change. The remaining eighty-plus share of such precedents all emerged after the constitutional watershed of the early 1960's. The earlier, and largely disdained if not flatly overruled, decisions were soon forgotten, even as the Court's majority later became substantially more conservative.

Such basic precepts as confining liability for advocacy to incitement of imminent lawless action, protecting commercial speech at a time when advertising was wholly unprotected, shielding the defamatory speech of public officials and public figures, and protection of the speech of public workers on issues of public concern – these and myriad other developments – awaited a later era and the pervasive jurisprudence of Justice William Brennan and his colleagues.

Throughout this remarkable process, Frank Haiman not only inspired and enlightened decades of his students. Even more remarkably, he has continued for over a half century to engage shamelessly in the unlicensed practice of law. His understanding of and familiarity with the major First Amendment rulings of the 1960's and well beyond were more than merely impressive. For one who genuinely acquired through means other than three years in a law school class, his self-education and acquisition of legal skill and insight should not only have given him entrée to the bar but established him as perhaps the only genuinely self-taught legal scholar of renown and esteem.

The final element that I would emphasize among happy memories of Frank Haiman his role as teacher and colleague was, of course, his seminal leadership of the American Civil Liberties Union. Since my father-in-law, Alex Elson, worked closely with Frank and other paragons of the Illinois ACLU – Alex was vice chair of the Legal Committee and a ranking member of the board at the time of the Skokie challenge – I have deeply personal recollections of the many stresses and exactions of the late '60's and '70's. I also recall quite vividly how uncertain was the prospect for a watchdog civil liberties group ready to take on the American Nazi Party as a client at the time when any such affiliation was still suspicious if not downright dangerous. In the end, of course, Skokie secured the ACLU's future and enhanced its legacy. But at the time, it seemed quite possible that so bold a commitment could as easily destroy the organization.

Frank Haiman's role in this chapter of the quest for free speech was crucial, if not quite as obvious as those of some of his collaborators. There were other highly visible leaders, like my mentor and constant guide Norman Dorsen, with whom I worked closely in the founding of the Thomas Jefferson Center for the Protection of Free Expression, and who commissioned an ACLU handbook on the rights of public employees which he invited me to write for the series he edited in the early '90s. A long and distinguished line of ACLU presidents and senior board members have received proper deference. Somehow it has always seemed to me that Frank Haiman has been slightly under-rated and under-valued – perhaps, indeed because his appreciate free expression quite as fully and as deeply as any law school graduate. For Frank, more than for any among his eminent First Amendment colleagues, his insight

was intuitive and didn't need a formal course on constitutional law. That is, quite simply, a legacy that no one else can surpass.