

The Competing Free Speech Philosophies of Franklyn Haiman
and John Dunham Peters Through the Lens of Skokie, Illinois 1978

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Introduction

At the center of the free speech community within the Communication discipline resides Franklyn Haiman. Haiman's contribution to the study of free speech is immeasurable. His book, *Speech and Law in a Free Society*¹, is "the first major theoretical analysis of the freedom of speech environment by a communication scholar...It is a unique and major contribution to communication ecology that vast schools of fish will swim by."² A search of the "Free Speech Yearbook" netted a broader view of the disciplinary treatment of free speech. But, again, all signs pointed back to Haiman. In fact, one issue of the "Free Speech Yearbook" focuses special attention on Haiman as the driving force behind free speech scholarship in the Communication discipline. As such, I have chosen to start my treatment of free speech with Franklyn Haiman. In recent years, very few communication scholars have challenged Haiman or reevaluated the discipline's understanding of free speech. That is until John Peters came along. His recent text, *Courting the Abyss*, appears ready to turn the disciplinary treatment of free speech on its head.³ Because of the recency of Peters' text and the challenge it offers to the discipline, I have chosen to bring it into the discussion.

In order to draw comparisons between Haiman and Peters I have chosen to analyze their positions through the example of the Nazi Party's request to march on Skokie Illinois 1978. The example serves this project well for a number of reasons. First, Haiman, as an important figure in the Illinois chapter of the ACLU, was a direct actor in the event. Second, the ACLU's justification for defending the rights of the Nazis mirrors the philosophy articulated by Haiman in his most renowned text, *Speech and Law in a Free Society*. Third, Peters often references the incident in Skokie and the role of the ACLU in said incident as the paramount example of his concerns regarding the current state of free speech theory.

In comparing the free speech theory of Haiman and Peters I hope to add to the disciplinary understanding of free speech. I believe that such a comparison will yield a broader understanding of free speech; its purpose, its goals, and its importance. I also believe that Peters' challenge to the free speech story forces the discipline to reevaluate its theoretical ground in light of a modern context. It is not my goal to state that one approach to free speech theory, Haiman's

or Peters', is necessarily better than the other, although there are moments where I take a side. Instead, I hope to add to the disciplinary debate surrounding free speech as an interested scholar and free speech advocate.

The following is a paper in four parts. In part one, I provide a brief understanding of what happened in Skokie, Illinois in the late seventies. In part two, I explicate the free speech philosophy of Haiman. In the third section of the paper, I address the foundational argument of Peters' 2005 text, *Courting the Abyss*. Finally, I revisit Skokie as a means of bringing together the competing philosophies of Haiman and Peters.

Skokie, 1978⁴

At the center of the 1978 Skokie incident resides Frank Collin, a self-described Nazi and leader of the National Socialist Party of America (NSP). Located in Chicago, Illinois, the NSP and Collin were already well known by area police officers and politicians. His office was situated in the Marquette Park neighborhood, a predominantly white community whose park often drew local black residents intent on spending time away from the crowded ghettos. As you could well imagine, the words "Nigger Go Home" painted in large letters on the side of Collin's office drew the ire of a number of area residents. At the same time, in the racially tense neighborhood Collin also drew a number of NSP members. Collin forays into Marquette Park to stir up trouble with his rallies made him infamous enough that, in time, Chicago officials made it nearly impossible for him to stage his marches and rallies within city limits.⁵

Recognizing the impossibility of staging marches and rallies in Chicago, Collin looked to other communities. He sent a number of requests to Illinois communities asking for permission to stage a Nazi march and rally. Most communities completely ignored Collin's request; Skokie made the mistake of responding. According to Neier, 'outside of New York, Skokie is one of the largest [Holocaust] survivor communities in the United States.'⁶ Quoting from court documents, he goes on to state further,

It [Skokie] is an Illinois municipal corporation containing a population of 70,000 persons. Included among the population of Skokie are approximately 40,500 persons of Jewish religion or Jewish ancestry. Included among the Jewish population are hundreds of persons who are (a) survivors of Nazi concentration camps and (b) many thousands of persons whose families and close relatives were murdered by the Nazis. Oddly enough, the Skokie Park District granted Collin permission to hold a rally on the steps of City Hall pursuant on his posting a \$350,000 insurance bond, a requirement created by the Park District upon receipt of Collin's request. With that, the legal circus began.

With Skokie in his sights, Collin gave up on his attempts to garner responses from other communities. In response to the demand for an insurance bond, Collin fired back a letter stating that he would be coming to Skokie to publicly protest the abridgement on his right to free speech. Not wanting to get involved in a legal battle nor wanting to give Collin and the NSPA any more publicity than necessary, government leaders for the city of Skokie decided to drop the demand and allow Collin to hold his rally; an option that did not sit well with Skokie's Jewish population. In response to the overwhelming backlash, the city of Skokie quickly adopted three new ordinances: 1) a permit requirement (including the \$350,000 bond), 2) a prohibition on the wearing of 'military uniforms' during assembly, and, 3) a prohibition on the dissemination of hate literature.

Through his continued battles with the city of Chicago, Collin had formed an unlikely alliance with the Illinois chapter of the ACLU. At the time of Skokie, the ACLU was fighting for the NSPA's right to assemble in Marquette Park. Upon receipt of the news from Skokie, Collin once again contacted the ACLU and asked for their support; the ACLU was ready and willing to join the fight. To say that the ACLU's support of the NSPA was controversial is an understatement. It cost them a large chunk of their membership, hundreds of thousands of dollars in donations, and garnered them enough bad press to last a lifetime.

It is no accident that the justification given by the ACLU closely mirrors the free speech principles articulated by Franklyn Haiman; at the time Haiman was the organization's National Secretary. In the following section, I discuss the free speech philosophy of Franklyn Haiman as presented in *Speech and Law in a Free Society*; the same philosophy articulated by the ACLU in its defense of the NSPA. Following that, I turn to Peters to analyze what has gone wrong with the Haiman philosophy with a particular eye toward Skokie, Illinois.

Haiman

Haiman's primary free speech text is, as already mentioned, *Speech and Law in a Free Society*. The main purpose of Haiman's text is to answer the question, "where should the boundaries of free speech be drawn?" His answer, developed through great detail and analysis of particular acts of speech, is to create as wide a berth for speech as is possible. In the following section, I analyze the foundational positions put forward in *Speech and Law in a Free Society*. The pragmatic boundaries of this project preclude me from analyzing all of the various communication events Haiman addresses. As such, I focus my attention of the philosophical

foundation of Haiman's work with an eye toward his thoughts on prejudiced/hate speech and the relationship between speech and audience reaction. I believe that this area encompasses the majority of Haiman's philosophy and interacts well with the philosophy of Peters.

Haiman's core concern is the various constraints put on communication by the courts, government, and societal norms. He states,

The real question that has engaged and challenged the thinking of judges, scholars, and activists has not been *whether* there should be *any* legal restraints on communication but rather where the line should be drawn. To that question we have had a plethora of proposed answers from a variety of advocates and a multitude of decisions from the U.S. Supreme Court. To say that those decisions have left something to be desired in terms of consistency, predictability, and logical adequacy would be an understatement.⁷

With that in mind, Haiman sets out to build a comprehensive set of 'rules,' and I use that term loosely, through which we could build a cohesive and broad understanding of free speech and the First Amendment.

Haiman addresses free speech from a number of different angles. Specifically, he brings into light various communications acts (i.e. defamation, stirring to group prejudice and hatred, etc) and argues for what he considers the proper way to both view and adjudicate those acts. As mentioned above, his primary focus is on providing the most ground for communication as could be deemed reasonable. Haiman lists six guiding principles early in the text. In summary, those six principles are: 1) social order is the means of maximizing individual liberty, it is not an ends in itself; 2) symbolic behavior is the most fundamental way in which humans express themselves its exercise, therefore, "lies at the core of a free society"; 3) humans are capable of free choice and for the behavior which they choose; 4) individuals are the best judge of their own interests; 5) "exposure to the widest possible range of communication may well be the most effective growth producing experience"; and 6) a free marketplace of ideas is our best hope for achieving approximate truths and avoiding errors.⁸

Before we can come to understand the interaction between those principles we need to recognize what exactly it is that Haiman considers 'speech.' Put simply, Haiman believes that "all behavior communicates."⁹ He distinguishes between three types of communication: those that are entirely symbolic, those that are done for their own sake, and an amorphous middle ground consisting of those communicative acts that appear to be done for their own sake but are actually symbolic in the eyes of the speaker or a particular audience.

Symbolic speech is speech that “functions *only* to create meaning (ideas and feelings) inside people.”¹⁰ According to Haiman,

Behavior that is entirely symbolic is ordinarily easy to identify because of the traditional symbols it usually employs—words, gestures, pictures, sculptures effigies, flags, emblems. All of those are inherently and only symbolic; that is they *represent* or *stand for* something else. They are not *it*; they are *about it*.¹¹

The second communicative act consists of those done solely for their own sake. Such acts are done “to carry out some human need or impulse irrespective of any possible effect upon an audience or witness.”¹² The final category is where things get a bit sticky. Some acts of speech may appear on face to be simply done for their own sake but in reality are intended to send a message to an audience. Take for example the simple act of spitting. One could spit because one needs to eliminate a substance from one’s body. Such a decision is an act done for its own sake; it is not intended to communicate to another individual. But, what if I were to spit in the direction of another individual or on a flag or whenever I hear mention of the president? Suddenly the simple act of spitting takes on deeper symbolic meaning.

For Haiman, this distinction is important. Obviously, purely symbolic acts merit protection and those acts done solely for their own sake require little protection. Haiman is most troubled by those acts that fall in-between the two obvious categories, those acts that require interpretation by an audience equipped with the critical skills necessary to discern the meaning. Even today we see debates such as that involving flag-burning that mirror this conundrum. Some see it as an act done for itself and see no problem with outlawing it, while others see it as a symbolic political statement that merits First Amendment protection. Flag burning also serves as a fine example for Haiman’s next premise.

Haiman is of the belief that humans are responsible for their own ‘behavior.’ In other words, speech does not ‘act’ on us; we ‘act’ as a result of speech. Haiman argues that people are free to “accept or reject the alternatives which are offered,” therefore our reaction to speech is *our* reaction, not something *caused* by speech.¹³ Some people, Haiman argues, believe that we are powerless when confronted with speech and that speech can be injurious. Not true says Haiman. Speech itself does not have the power to cause harm, it is the recipient of said speech who chooses to feel or act a particular way in the face of speech. Citing a popular childhood maxim, Haiman reminds us the “sticks and stones may break my bones, but words will never hurt me.”¹⁴

Again, turn to flag burning. The vitriolic response some might have to the sight of a burning flag is not caused by the act of burning the flag; the person who *chooses* to react that way causes it. Obviously, numerous other people can sit by watching the same flag getting burned and have the opposite or even no reaction. As Haiman states, “They [individuals] are not objects which can be triggered into action by symbolic stimuli but human beings who decide how they will respond to the communication they see and hear.”¹⁵ That we cannot blame speech for the reaction it causes is central to Haiman’s philosophy and of importance when we analyze Skokie.

Also of central importance to Haiman’s philosophy is a ‘marketplace of ideas’ understanding of the role of communication. According to Haiman,

So long as there is a marketplace of ideas, where the widest possible range of information and alternatives is available, individuals will be the best judges of their own interests. The law is properly used to enrich and expand that communication marketplace and to insure that it remains an open system.¹⁶

Haiman argues from the understanding that we live in “a society whose members have learned to listen critically and with suspended judgment to personal attacks.”¹⁷ As such, we need to allow all voices into the public dialogue, even the “ethnic diatribes of bigots, epithets of personal antagonists, or the tastelessness of exploiters of the media.”¹⁸ Why? Because, as stated above, “exposure to the widest possible range of communication may well be the most effective growth producing experience,” and “a free marketplace of ideas is our best hope for achieving approximate truths and avoiding errors.”¹⁹

Some might argue the legitimacy of what one might call ‘hate speech.’ Prejudiced speech, they might say involves “a falsification of reality that makes no contribution to the enlightened formation of public policy.”²⁰ As such, it serves no purpose in the public dialogue. Falsity or verifiability, Haiman argues, is the wrong standard to use when evaluating the worth of prejudicial speech; such speech is opinion and to label opinion ‘true’ or ‘false’ is problematic. How exactly do we ascertain the ‘truth’ of a Klansman carrying a sign that reads “white power?” When somebody speaks of the “Jewish control of the media” is that a warped statement of fact or mere opinion? In either case, how do we prove it true or false? We can not. Therefore an attempt to keep such speech out of the public dialogue on grounds of its verifiability or falsity is a failed program.

Others argue that prejudiced speech, whether fact or opinion, is ‘worthless’ and therefore merits exclusion. Such a claim is, according to Haiman, a move into dangerous territory. If we use ‘worth’ as a standard, who gets to decide what is worthwhile or worthless? Is not the purpose of the First Amendment to protect our speech from the application of arbitrary standards such as ‘worthwhile’ and ‘worthless?’ And, as Haiman would have us believe, “all allegedly defamatory comments about groups of people are necessarily also expressions of the communicator’s political views.”²¹ We may not like how some people voice their political opinions, but to silence them would be to do violence to ‘the First Amendment rights of those who are not sophisticated or skilled enough to conceal their prejudices in more palatable or more constructive modes of expression.’²²

The third argument against the inclusion of prejudiced speech concerns the anguish experienced by some of those individuals exposed to it. Lets be honest, a group of Nazis marching through a neighborhood of Holocaust survivors is going to elicit severe negative psychological and emotional responses from the intended audience. First, let us not forget that Haiman believes that it is not the speech that is responsible for the reaction; it is the individual choosing to react. Second, Haiman believes that “the anguish experienced by those exposed to such scenes is the price that must be paid for freedom of speech.”²³ By Haiman’s logic, we cannot separate out one type of speech because it elicits a particular type of response; many other types of speech elicit negative responses and we are in no position to pick and choose which speech to support or deny.²⁴

It is probably unfair to Haiman to try and encapsulate his free speech philosophy in such a small number of pages. He offers a detailed and strongly supported justification for his position. It was my hope to at least address the basic premises that drive Haiman’s philosophy. What you get is a philosophy grounded in a healthy respect for as much communication as possible. Haiman believes that we cannot blame communication for the response it garners, that responsibility belongs to the respondent. In the end, Haiman believes that maintenance of a marketplace of ideas will better society and lead us down the path to truth attainment. By no means are Haiman’s commitments out of the ordinary. But, as we will see Peters does question the current state of the marketplace.

Peters

Peters is concerned. His concern does not revolve around speech, per se, but instead around a particular attitude toward speech. The attitude takes several different names: hard-heartedness, stoicism, abyss-redemption, and homeopathic machismo, to name a few. At the core of this attitude is what Peters refers to as the ‘free speech story.’ The free speech story is based on the following premises:

Censorship is wicked; the truth will out; the public is best left to its own devices; even (or especially) vile people and doctrines deserve to be heard; the free market and the free press go hand in hand; and defenders of liberty can justifiably fraternize with extremists.²⁵

On face, the free speech story appears harmless enough. And, to a certain extent, Peters accepts its premises. Unfortunately, a group of free speech activists (i.e. ‘liberals’) have taken over the free speech story and tweaked in ways that are of little or no benefit. In fact, they have used the free speech story in such a way as to cause real, tangible harm.

At the center of the modern free speech story exists three distinct parties: abyss-seekers, abyss-redeemers, and abyss-avoiders. To understand Peters’ critique one must first become familiar with these three parties. Peters describes abyss-seekers, also known as abyss-artists, accordingly,

Their sins are catalysts. They operate by inversion, that is, by irony. “Evil be thou my good” perhaps Satan’s most famous line (*Paradise Lost* 4.110) can stand as their motto. The key gesture of inferno-artistry is perversity: to prize what “normally” is rejected. Transgression is creative, degradation is divine...They learn to luxuriate in hell’s warm sulfurousness, enjoy their own naughtiness, and take pleasure in the musky stench of sin...They enjoy prodding the repressed with a sly knowingness of the shock it will bring to innocent bystanders.²⁶

Abyss-artists are all around us, be they American Nazis, misogynist rap musicians, or anti-homosexual activists protesting at military funerals. The fact that they exist, with or without our support, is important to recognize. Sin, Peters reminds us, always has and always will exist regardless of our willingness to give it a leg up.

Still, there are people who feel it necessary to facilitate and defend abyss-artistry; those people are called abyss-redeemers (i.e. liberals or stoics). The relationship between abyss-redeemers and abyss-artists is symbiotic. “In the language of pop psychology, redeemers are ‘enablers,’ people who provide material or emotional support for other people’s vices, yet often keep themselves aloof from such behaviors.”²⁷ Abyss-redeemers are those who would never join in a Nazi rally but will fight tooth and nail to assure that the Nazis have their day in the sun. And,

when it is all over, they will construct a complicated litany of reasons why it is we must allow for particular acts of abyss-artistry. In the case of free speech we need only return to the ‘free speech story’ (or the writings of Haiman) to see the reasoning offered for various acts of abyss-seeking.

The ‘marketplace of ideas’ philosophy that serves as the foundation of the free speech story is reliant on allowing all voices, no matter how vile some may be, into the civic discussion. As Peters describes it,

The tolerated presence and perhaps even secret collusion with the culturally forbidden stands as a monument to civic righteousness. Liberals are confident that any doctrine, good, bad, or ugly, should be allowed its innings in open air. Sometimes this implies a nose-holding tolerance, and sometimes it edges into exultation at the challenges of facing down toxic doctrine.²⁸

Such a mentality is read as broadmindedness in the free speech community and those who adhere to it are seen to be enlightened and caring citizens. They are seen as strong proponents of truth and democracy. Remember, according to the free speech story, the truth will prevail and censorship is sin. Abyss-redeemers claim a moral high ground via their defense of abyss-artistry.

Of course, not everybody agrees with the high-minded approach that serves as abyss-redemption’s foundation. Remember, bad stuff happens regardless of the support it receives. Nazis exist. Hateful speech exists. Sin is not going anywhere anytime soon. Enter our third group, abyss-avoiders.

Know-nothings and survivalists agree that it is better to bypass the swamp. So does a host of decent people in the modern world of science, pluralism, and conflict. The great majority of human beings, now or ever alive, does not enjoy the luxury of disease or doubting everything. Some people have no inclination to expose themselves to the dark or have reasons why they might want to outfit their souls otherwise. They find tarrying with the negative too expensive.²⁹

Citing Paul the Apostle, Peters reminds us that we are not alone in our actions. When we facilitate abyss-artistry we are exposing whole hosts of people to it. Some people do not want Nazis marching through their community. They do not need to be exposed to hate and prejudice. They do not need to traumatize various community factions. They do not read such actions ironically, as some abyss-redeemers do. They are not wedded to the letter of the free speech story. Again, evil exists despite our prodding, some people do not want to throw fuel on that fire.

In a funny little twist, the people who are the ‘enemy’ in this drama are those who wish to avoid the abyss.

Disdain for the experience of people who do not obey its rules of rationality is one of liberalism’s worst sins...Those who cannot tell sticks and stones from names are stuck, in

this view, in a previous era. People who think that correct words and ideas matter mortally need to get a grip...Those who choose to avoid the produce of the deep are regularly tarred as pusillanimous by righteous transgressors of all stripes.³⁰ To the abyss-redeemer, the avoider lacks the intellect necessary to interact with acts of transgression. One must be able to read such acts ironically and to see how they aid in the development of culture and the attainment of truth; avoidance. To the abyss-redeemer, avoidance is both ignorant and selfish.

What abyss-redeemers fail to concern themselves with are the real, tangible harms that can often come from exposure to abyss-artistry and an unwavering faith in a self-correcting marketplace. We must not forget, first and foremost, that, despite Haiman's misgivings, acts of communication do have immediate effects on those who interact with them. A final discussion about Skokie will illuminate that point, but I did want to first acknowledge it here. Of equal importance is the impact that the abyss-redeeming, stoic mentality has on human relations. To adhere to such a mentality requires adherence to a philosophy ethical suspension; tolerance requires we avoid judgment. But, in maintaining and/or fostering a mentality of anything goes we run the risk of losing that human connection necessary to co-exist.

Defenders of absolute openness might ponder the price we pay for the scope of our minds. How hard must our hearts become? Liberals have no time for tenderness, no regard for faith or folly...Sometimes simple outrage is a more humane response than rational consideration.³¹

We have, it seems, become so enamored with defending the right to offend that we are rapidly losing touch with one another. Peters puts it best when he states, "stoicism usefully teaches an attitude of courage and self-transcendence, but it can be so abstract that crude common sense, the gut-level feeling of solidarity with one's fellows, vanishes."³² And, in the end,

Such men [abyss-redeemers] survey the vast fields of corpses they have survived, created, or dissected, fighting the enemy without and fear within, not convinced of the righteousness of their cause, but blindly carrying through because, well, because it is the thing to do. Anything, even death can become normal after a while.³³

And, the question remains, what have we gotten in return for the maintenance of the free speech story? Is it worth the hardening of our hearts? Should we make enemies of those with the will to argue against Nazi marches or pornography because the benefits outweigh those hurt feelings? According to Peters, for all of its bluster abyss-redemption and the steadfast defense of the free speech story has garnered us meager returns. "What do we have to show for nearly a century of sustained legal theorizing and decisions about free expression? We have the protection of Nazis,

of flag-burning, of “obscenity,” and, more recently, corporate rights among other things.³⁴ An example of these gains is best highlighted by returning to Skokie.

Skokie Revisited

I chose to analyze the incident in Skokie because I believe it serves as a perfect example of the free speech philosophies of Haiman and Peters coming into conflict. In fact, both scholars cite Skokie throughout their text as an exemplar of their philosophy in action. As you can well imagine, both see the incident from very different perspectives. Haiman recognizes the position he has put himself in by supporting the NSPA and argues,

It is difficult not to seem callous in arguing the anguish experienced by those exposed to such scenes is a price that must be paid for freedom of speech, but I must take the risk and so argue. Emotional distress can be caused for people by many kinds of communication in addition to group defamation... Suffice it to say here that I see no basis for distinguishing scurrilous communication about racial, religious, and ethnic groups from other kinds of utterances that will sting emotionally.³⁵

Haiman’s point is well taken, but was Skokie really about ‘emotional distress’ and/or ‘utterances that will sting emotionally?’

One member of the NSPA, in addressing the proposed rally’s effect on the community stated,

I hope they’re terrified...I hope they’re shocked. Because we are coming to get them again. I don’t care if somebody’s mother or father or brother died in the gas chambers. The unfortunate thing is not that there were six million Jews who died. The unfortunate thing is that there were so many Jewish survivors.³⁶

Even the court that overturned the Skokie ordinances acknowledged, “the proposed demonstration would seriously disturb, emotionally and mentally, at least some and probably many of the Village’s residents.”³⁷ In a letter to the court, Dr. William Niederland, a clinical professor emeritus of psychiatry at the State University of New York’s Downtown Medical Center argued that exposure to the symbols of Nazism would result not only in “nightmares, anxiety dreams, increased tension states, fear of renewed persecution, and other emotional disturbances but also in physical conditions of a potentially serious nature (hypertension, tachycardia, gastrointestinal disorders, etc).³⁸ Not to gang up on Haiman, but one has to question if ‘terror,’ ‘emotional disturbance,’ and ‘nightmares’ are merely varieties of ‘emotional distress’ or a result of an emotional stinging.

Having recognized the potential damage that the Nazi march on Skokie could have had on the community, Peters takes those who fought for the NSPA to task. According to Peters,

“The ACLU put every political-ethical disgust on hold when it decided to fight for the rights of the National Socialist Party of America, a group whose ideology rests on murder.”³⁹ The legal care given the NSPA was, according to Peters, “so scrupulous it verged on parody.”⁴⁰ Why would the ACLU put so much time and energy into defending a group intent on marching into a community to accost and traumatize its population? The answer to that question returns us to the foundational premise of Peters’ argument.

The ACLU, Peters argues, was intent on making a point. That point being that the organization could “defend even its mortal murderous enemy” to prove itself the “stoic defender of the outcast.”⁴¹ Theirs was an attempt to violate accepted morality in order to highlight the meaning of true liberty. The problem was/is that not everybody is gifted in the art of seeing through the act to get to the intended message. According to Peters,

These complicated gestures depend on the collaboration of an audience skilled in the art of ironic interpretation... Those who snorkel in sulfurous waters and swim with the sharks bank on both the safe segregation of formal and substantive rationality and the public’s ability to discern the reason for their daring. But not everybody will get, or want to get, the secret message cloaked in irony.⁴²

In other words, we are not necessarily the “society whose members have learned to listen critically and with suspended judgment to personal attacks” that Haiman believes we are.⁴³

Clearly the citizens of Skokie were not versed enough in the art of ironic interpretation to support at NSPA rally in their community. And clearly, the large number of ACLU members who cut ties with the organization were not willing to harm an entire community in the name of some higher cause.

The point here is this, I think it is obvious that there are benefits to maintaining an open marketplace of ideas. And, I believe that, to a certain extent, Peters would agree. But, we must question the legitimacy, as Peters does, of forcing certain harmful acts and ideas upon ourselves. There will always be abyss-artists, but for them to function with full capacity in the marketplace they come to depend on abyss-redeemers. When such support leads to potential serious harm to community members we need to step off and reevaluate our priorities. I am sure that Haiman would disagree on a number of levels; that is fairly obvious. But, I believe that Skokie serves as an example of the real world implications of forcing free speech on a community that is best served by being left to their own devices. It should be noted that, in the end, the NSPA won its right to march on Skokie but chose not to. I guess you could call it a win for both sides.

Conclusion

We have in Haiman and Peters two obviously different understandings of the effect of speech, the role of free speech, and our responsibility as free speech advocates and scholars. It has been my experience in researching free speech that our discipline has, for the most part, adopted a shared understanding of the importance of free speech and then taken that understanding and applied it to various contexts. Peters goes a step further. He brings to the discipline a fresh perspective on free speech. He creates free speech theory as opposed to utilizing already accepted disciplinary doctrine. That is not to say that Peters' new orientation to free speech is without flaw, still it is refreshing to see the creation of new theoretical ground regarding the free speech story. Haiman's work was and still is of vast importance to the discipline but Peters brings us to a new place and time and asks us to challenge those beliefs that we hold as self-evidently true.

Peters' work, when brought into alignment with Haiman's, forces us to reconsider the relationship between free speech advocates and hateful speech. Specifically, we must consider where, or even if, we should draw the line between advocating for free speech and serving as the catalyst for said speech. In other words, does protecting free speech require us to literally fight to bring hateful speech into the public arena? Even if Haiman is correct and speech itself does little harm are we, as free speech advocates, required to ignore the pleas of threatened communities in order to aid the very people voicing the threat? It is not as simple a question as it may seem. There is a very fine line between protecting and advocating; Peters explodes that distinction and forces us to rethink what it means to be a free speech 'advocate.'

I understand that this essay might read as a one-sided, pro-Peters approach to free speech theory. I wish to close by clarifying that that is not really the case. I believe that Peters brings free speech theory up to date; a necessary project, to say the least. At the same time I read Peters' work as enhancing not tearing down extant free speech theory. Peters does not negate Haiman's work, he challenges it. Neither scholar, in my mind, wins any sort of debate here. Free speech is complex and how our discipline should continue to address it could not be determined, I believe, by pointing to one particular scholar or another. Peters' contribution to the disciplinary treatment of free speech forces us to revisit the works of Haiman and his contemporaries from a new perspective. The interaction between these perspectives serves to broaden and deepen our

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understanding of the role and effect of free speech and, hopefully, provide us a jumping off point for the development of even more new free speech theory in the field of communication studies.

Notes

- 1 F.S. Haiman, "Speech and Law in a Free Society," (Chicago: University of Chicago Press, 1981).
- 2 W.E. Bailey, "Haiman and the Ecology of Freedom of Speech," in *Free Speech Yearbook*, ed. Raymond S. Rodgers (Carbondale: Southern Illinois University Press, 1989) 115-123 at 115.
- 3 J.D. Peters, "Courting the Abyss," (Chicago: University of Chicago Press, 2005).
- 4 Though not specifically cited, a number of book were instrumental in developing my understanding of the incidents in Skokie. See D.A. Downs, "Nazis in Skokie," (Notre Dame: University of Notre Dame Press, 1985), D. Hamlin, "The Nazi/Skokie Conflict," (Boston: Beacon Press, 1980), and P. Strum, "When the Nazis Came to Skokie: Freedom for Speech we Hate, (Lawrence: University Press of Kansas, 1999).
- 5 It should be noted that the inability to gather in Chicago area parks and streets was not limited to Collins and the NSPA. It was quite obvious that the city of Chicago was averse to pretty much any demonstrations and was willing to do what it took to avoid them.
- 6 A. Neier, "Defending My Enemy," (New York: E.P. Dutton, 1979) at 27.
- 7 Haiman *supra* 1 at 4.
- 8 *Id.* at 6-8.
- 9 *Id.* at 31.
- 10 *Ibid.*
- 11 *Ibid.*
- 12 *Id.* at 32.
- 13 *Id.* at 7.
- 14 *Id.* at 21.
- 15 *Id.* at 426.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 *Ibid.*
- 19 *Id.* at 6-8.
- 20 *Id.* at 95.
- 21 *Id.* at 96.
- 22 *Ibid.*
- 23 *Id.* at 97.
- 24 This argument is developed in much greater detail in Haiman's text, "Speech Acts and the First Amendment," (Carbondale: Southern Illinois University Press, 1993).
- 25 Peters *supra* 3 at 19.
- 26 *Id.* at 84.

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27 *Id.* at 86.

28 *Id.* at 7.

29 *Id.* at 95.

30 *Ibid.*

31 *Id.* at 291.

32 *Ibid.*

33 *Id.* at 289

34 *Id.* at 285.

35 Haiman *supra* 1 at 97.

36 Quoted in Downs *supra* 3 at 28-29.

37 *Collin v. Smith*, 578 F.2d (7th Cir.), cert. Denied, 439 U.S. 916 (1978).

38 Quoted in Haiman *supra* 1 at 153.

39 Peters *supra* 3 at 291.

40 *Id.* at 285.

41 *Id.* at 160.

42 *Id.* at 163.

43 Haiman *supra* 1 at 426.