

Dear Sol,

1/28/90

This is a letter of which I'll keep a copy because I want some of it in file for scholars in the future. It is prompted by the lead book review in today's Washington Post Book World, Jon R. Walz's review of Samuel Walker's history of the ACLU, "In Defense of American Liberties." While it is not possible to determine full content from a review, I'll be surprised if Walker goes into that part of the ACLU's history which would justify adding "part-time" to the title. It not only has not always acted in defense of American liberties - it has been among those restricting those very liberties and frustrating some.

Unlike Walz, who notes that like Bush he does not carry an ACLU card, I do, despite some of my experiences with it that I'll summarize in part (the file is a fat one), for without question it has done some very fine and important things, much more good along with the not good that sometimes was bad.

From the review Walker makes a big thing of the ACLU's defense of Communists. Not always and it had its own purges, before McCarthy, before Dies, too, and it fled from the Truman misnamed "Loyalty" program. It was at the very least timid when asked to try to implement the Freedom of Information Act and wound up in my experience with cowardice and sycophancy.

I suppose you met Abe Isserman when we were working for the Senate Civil Liberties Committee. I think he was on the ACLU board, whether or not his law partner, Sol Kapelsohn was. Their office was in Newark or Jersey City. When last I heard of Abe, about a year ago from a nephew who is a college professor to whom I provided some information for a book, he was a virtual vegetable as the result of a stroke a few years ago. Abe is one of the principled lawyers who was also disbarred in the red-hunt era, but I think he later got his license back. He and Sol were two fine human beings, their practice was largely labor law, and despite the difference in our ages, we got to be friends. There came a time when Abe asked me to spend a weekend with them while he prepared his defense against what the ACLU was doing to him, as I now recall preparing to ~~kick~~ kick him off its board. I have no recollections of the details of that but I do of spending that weekend with him and Sol at a place they had in most frigid Jersey mountains. (When I came back from Africa in World War II I was assigned to an MP post in upper Jersey and that winter was never able to be really warm and comfortable at night even when I slept in Long Johns, under three blankets and a comfort^{er} and next to the pot-bellied stove, one of the three in that barracks. It does get cold there!) I suppose it was an old farmhouse they'd bought. I think they put the water in, probably to replace a hand pump, and they got the water from steeply uphill and it ran all the time to keep it from freezing in cold weather. If the house had central heat they did not use it and they had me sleep next to the fireplace, on a studio couch. I don't recall now whether Abe was the only victim of that kind of ACLU devotion to American liberties or not but I think not but my recollections of the others are not clear. I don't know whether or not Abe was a Communist but supposedly the ACLU's position, from the Walz review of the Walker book, is that Communists have the same rights as the rest of us. (Walker is a current ACLU director.) Even years later the ACLU was refusing to defend non-Communists accused of being Communists. It was, in fact, a major part of the red-hunt abuse of American liberties, and that over a major part of its history.

Among the things that one would now suppose it would have done and didn't was to provide a defense for such victims as those known as "the Scottsboro boys," blacks falsely accused and sentenced to death for rape. It did not. The International Labor Defense, as you may remember, did, and it got a lawyer who if I remember correctly was Samuel Liebowitz and was later a federal judge.

I do not recall any significant ACLU interest in the work of our Senate Civil Liberties Committee, none organizationally, and aside from Isserman the only other person active in the ACLU who was interested was Gardner "Pat" Jackson, then a lobbyist for the United Mine Workers' Labor's Non-Partisan League and formerly information officer of the

Sacco-Vanzetti defense committee. Part was very strongly anti-Communist. As the committee's editor I'd have known if I sent any copies of our hearings and reports to the ACLU and if they'd asked for galley proofs, of which I had to get extra copies to provide them. I recall no such organizations' ACLU interest in our work. Yet most of our work dealt with the rights of labor and we did investigate a number of the bloodiest abuses of American liberties, some of which were really massacres.

(I digress to note that aside from library copies that may or may not still exist, and I did try to distribute as effectively as I could, I gave the UMW a complete bound set of all the hearings and I kept ~~for~~ myself and still have the 15+ volumes I edited. I think some of those would make worthwhile and interesting stories today, things like what it was like in "Bloody Marlan," more than just the murders, the "legal" means of robbing the miners and of bleeding them of their meager earnings. Remember our hearings on the flogging of the liberal college professor, Joe Gelders in Alabama? In them we exposed the man who later was so influential in dramatizing the denial of American liberties to blacks, Bull Connor. He is the one who, 50 years later, turned the dogs and firehoses on the Birmingham blacks. There may well be other matters that would make good articles today in those hearings.)

As soon as the Freedom of Information Act was passed and before it became effective I tried to interest the ACLU in representing me in efforts to bring to light as much as possible of the suppressed information relating to the JFK assassination investigations. I think it would be wrong to single out some individuals in this so + won't. I can't remember the names of all. However, I believe that for those with interest in more detail there is sufficient in the files, on the ACLU and on some of the individuals, particularly the first of its lawyers to whom I spoke. He was with a prestigious firm, Dean Acheson's Covington, Burling. He did take time to go to the archives with me twice and what I showed him, especially the Zapruder film, terrified him. However, he would not represent me. He asked me to write an ACLU lawyer who was a Georgetown law professor, and I did, without getting even an acknowledgement, and he did send me to a firm of criminal lawyers because he believed that at some point the FBI would try to do something to me. (I'll jump ahead to remind you that you are aware of one of their much later efforts when the ACLU refused to confront them and charge them with the crimes they perpetrated to hurt me, as I later did as my own lawyer, without getting even a pro forma denial, the proof was that overwhelming and irrefutable.) One of the partners in this criminal law firm and the one who spoke to me and gave me his card to carry in the event the FBI did pick me up was named Rockefeller and as I now recall their office was in the Associations Building, on NY 19 or 20 above K St. He was very nice and did share the concern of the man who'd sent me to him. I did proceed to use the Act, as did others, and we did succeed in giving it some meaning and significance, although had the ACLU not been so timid in the earliest days more favorable precedents could have been established. But even after we gave it what might be referred to as some respectability the ACLU often turned down requests for FOIA help that I made. In Washington this included at least one of the people in charge of that office who was a friend, and at least ~~who~~ in that position to whom Bud Fensterwald introduced me, on at least one occasion at a lunch for which he picked up the check. I also made a trip to New York and spoke to one of its staff counsel, John Shattuck (who did not do as well or as imaginatively as he could have for Alger Hiss) for some time. He asked me to write him a memo, I did, and they refused to do anything. Not long after that they filed and won a totally pointless suit for Mark Lane and got themselves some good publicity for that stupidity. They filed suit for a record that had already been disclosed, a Hoover to Rowley, FBI director to Secret Service director, written the day after the assassination.

When the ACLU finally did represent me it was not to represent me and not at my request and it was so ineffectual, so afraid it was virtually a sell-out. It came about

because through a series of dishonesties and lies the FBI created a conflict of interest between my lawyer, Jim Cesar, and me, and having as finky a fink judge as it could ever hope to get, it stretched this into making my lawyer responsible for my refusing to take his advice, along with a punitive provision, making him also responsible for the money judgement it got against me. He went to the Mader law people, who have not liked me since 1974, when my analysis of their deal they thought they had with Jerry Ford was as 100% correct as was my prediction of what the Congress would then do. None of the people I then spoke with on a couple of occasions only is still there but lawyers don't like laymen being right when they are wrong and it gave me a bad name that endured, especially among those who never spoke to or laid eyes on me. I never spoke to any of them after that 1974 meeting, never wrote them, either. Because of the danger to all lawyers in that rotten, dirty trick that Smith tolerated and went along with - he did hold Jim responsible for duplicate damages, which is to say that without any hearing at all he just doubled them, in addition to making lawyers responsible for clients who refused to take their advice - Jim asked the Mader law group to represent him. They said they could not also represent me and sent him to Mark Lynch, of the ACLU's Washington office. The ACLU agreed to represent "me" for purposes of the appeal only, and he "represented" me so completely that he never even spoke to me until after he had his entirely inadequate brief completed, when he sent me a copy. What he did was limited to frustrating that evil precedent against, potentially, all lawyers. If I do not have a complete set of duplicates in my ACLU file I am certain that a copy of all I have that is relevant is in the file on that lawsuit. I do not recall the appeals number but at the district court it was 78-0322/0420, combined. You have some of what I filed as my own lawyer and I think you'll agree that it will not be easy to get a more formidable case of mendacity extending into fraud and perjury against the FBI. Lynch would not touch that. He did, however, in this same period of time, defend traditional American liberties and the rights of the people to know what their government does, the Freedom of Information Act, by negotiating and lobbying through an FOIA amendment that had the practical effect of immunizing the CIA from FOIA litigation. Of course he was making financial sacrifices when as a lawyer he worked for an ACLU salary and in the good things he did he certainly had paid his dues. I think this in, in fairness, a necessary preface to my telling you that they next I heard about him he had joined the still more prestigious and enormously larger firm of Covington, Burling. (You may recall what I wrote you about that firm and traditional American liberties in regard to my and Pat Jackson's experience with it and the Dies committee.)

This is off the top of the head, as soon as I read the review, and I'll file a copy as a partial summary in my ACLU file files. May it always do as much good as it has done, the reason I contribute and card a card, and may it find it possible to bless a party to what is not good.

I'm reminded that one of the NLRB lawyers who worked with our committee from time to time A.L. (Al) Wirin, became an ACLU lawyer in Los Angeles. I think he was briefly Sirhan Sirhan's lawyer. Sirhan never had good representation, one of the reasons that awful crime is steeped in so much controversy today. It may surprise you to know that the cops got away with the physical destructions of some of the most basic evidence, some of which I reported in Post Mortem, some of which, if elliptically, I also forecast in it. This is in the form of a stenographic transcript of in-chambers conferences from which Sirhan's counsel were excluded that I got hold of and used in excerpts. The ACLU was, to the best of my knowledge, completely silent about that.

I've not had a high opinion of Wlatz, by the way, since reading his hasty commercialization and safe one of the JFK assassination titled, I think, The Trial of Jack Ruby. For such a book fact about the crime were irrelevant to him and a possible co-author, I now don't recall. I think he had one, though.

Now I recall a few other things I won't take time for. At least one more does not reflect a dedication to the preservation of American liberties. Fortunately, though, its record is one that justifies the part of which Walker boasts and we can forget the rest.

Pat Harp