

Free Speech for the Klan Is a Fraud, Not a Right

EDITOR'S NOTE: The Progressive's editors have an absolute commitment to freedom of speech—especially for those whose views we find obnoxious or threatening. As we have learned on more than one occasion, that commitment is not shared by all readers of this magazine. One vigorous dissenter is Rod Davis, an occasional contributor, and several months ago we invited him to state his position. At the same time, we asked Nat Hentoff, our regular writer on First Amendment issues, to respond to Davis. His reply is on Page 24, and a brief counterrebuttal by Davis appears on Page 26. Hentoff volunteered to let Davis have the last word. We welcome reactions from readers.

BY ROD DAVIS

What should be done to prevent the resurgence of the Ku Klux Klan in the United States? Everything possible, by broad-based, organized, enthusiastic popular opposition. Whether or not the Government certifies such action through various facades of "legality" is irrelevant, just as official approval of mass action has been irrelevant from Mahatma Gandhi's India to Martin Luther King's America.

The issue before the Left is clear, but our line of vision must not wander. We must not be concerned with protecting the Klan from the abstract encroachments of governmental censorship, but with protecting the people—including all nonwhites and non-Protestants in this instance—from the real, documentable, historical violence of the Klan and its allies.

For more than 120 years, the Klan has murdered and organized, first in the South and later in the volatile racist North and East. Now it is organizing in the West as well: Marin County, California, has an active Klan which harasses the few black residents, and in Oregon the Klan has found a hate-wedge by recruiting against hippies and Orientals.

In the 1970s, the Klan (whose nationwide membership in 1924 was estimated at four million but later declined sharply) began to regroup and present itself more openly. Klan strategist David Duke drew on the liberal infatuation with the intellectual sanctity of All Learned Concepts to advance Klan doctrine a few paces beyond *The Protocols of*

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the Elders of Zion and into the realm of seeming rationality. Klan chapters found a new aura of respectability in some quarters, and though estimates of current membership vary—the number is probably around 20,000, based on projections from a 1981 *New York Times* report—it is fair to guess that the Klan renaissance is significant.

The revival encompasses violent attacks, paramilitary camps, bookstores, frequent public and media appearances, and renewed perception of Klan strength at the community level. In my state, Texas, the Klan has run a media blitz this year with city council-approved rallies in three major cities, and in rural east Texas there is a virtual epidemic of Klan support. In Alabama, Georgia, the Carolinas, Michigan, Maryland, the Klan is a reality—an active malignant presence with an impact that reaches far beyond the fire-light circle of white-robed racists and black-uniformed storm troopers. In some cases—for example, in Greensboro, North Carolina—the Klan has infested the law enforcement and judicial systems that are supposed to control it.

Is there any reason for society, and especially for the Left, not to oppose the Klan and the racism of which it is merely the ugly symbol with a ferocity equal to that mustered against the Vietnam war, segregation, the draft, child abuse, and sexism? Incredibly, there is a proffered reason. It is suggested that instead of *opposing* the Klan and racism, we ought to *defend* the Klan and the larger issue of "free speech."

This is absurd, it is insulting, and, insofar as it places the rituals of an arbitrary government above the real need for protection of the non-WASP citizenry, it is racist. "Free speech." What rhetorical catchphrase is in greater need of deconstruction? "Free speech," unlike racial terror, is an abstraction, and abstractions are maintained by governments to fetishize concepts routinely abrogated in practice.

If free speech means anything, it can only refer to the expression of a hazy range of interpretations within the ideological parameters of an enforcing power. The "free speech" of the dominant class will never be the free speech of the oppressed and exploited, and saying so in the face of historical experience is dissembling. The point is to get the proper power installed, and expect nothing from improper ones, including those in whose obeisance Justice Hugo Black so often bleated.

Even if "free speech" is limited for the moment to its embodiment in that great il-

lusion, the First Amendment, it is readily seen to be so violated as to be nonexistent. An abstraction that has not been put into practice certainly can have no meaning.

Government caprice regarding free speech is notorious. Were Japanese-Americans accorded free speech in their internment camps? Did the Smith Act, the Dred Scott decision, the recent CIA regulations provide unfettered dialogue for their respective targets? Are we supposed to wait for the Government to grant or withdraw permission to discuss social change? Did the Southern civil rights movement wait on the mighty shield of the First Amendment or just sit in those buses and at those lunch counters, and die in bullet-riddled cars?

What is this phantom? Just as some white-dominated city councils were giving the Klan "free speech" permits to rally last spring, another governmental body, the State Department, denied an entry visa to Salvador Allende's widow because her scheduled speech to church groups in California was deemed "prejudicial to U.S. interests." That is, the Government tagged her as a communist.

Constitutional "free speech," in the daily, concrete world, consists of what the Government decides it to be. It is a fantasy to insist that in protecting our enemies we protect ourselves. We are already under attack. FBI guidelines implemented in March go so far as to equate political activism (including union membership) with organized crime as a proper focus for Federal scrutiny.

Play us no Nero violins of "free speech" while the Left is being systematically burned. Defending the Klan's "right" to appear publicly defends nothing more than the Klan, in the same way that pursuing peace with honor meant nothing more than pursuing war. As for "free speech" outside relations to the Government—who would claim there is free speech on the shop floor, in church, at school, or in the media?

Stop the Klan, for it is not the grotesqueries of the Klan mentality which are being opposed but the acceptability of the Klan within its white host. If you feel that the defeat of racism is a greater priority to society than is continued worship of the legal fiction of "free speech," then you see the issue clearly. And you will not subscribe to the secondary liberal position that demonstrating against the Klan means "stooping to the Klan's level." One does not stoop to the level of an enemy by opposing it; the millions who

fought and died in the war against Hitler so testify.

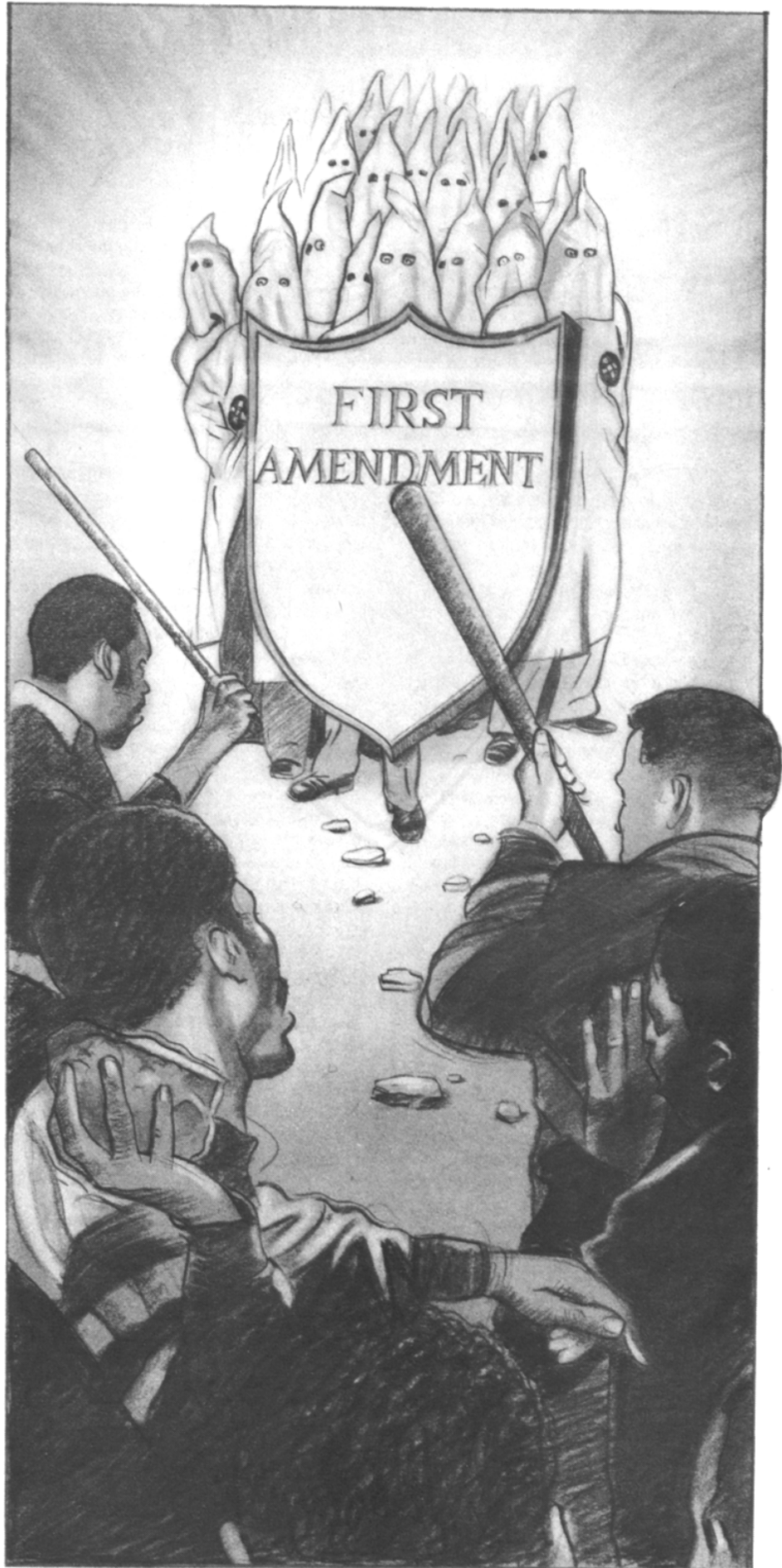
Last November, a coalition of activists routed the Klan in Washington, D.C. The white establishment media interpreted it as a riot, focusing on store lootings instead of on the issue celebrated in the black press: that the Klan had been clobbered by black Americans. Is there any reason for the Left, too, not to celebrate that it was the Klan's mystique, not a few municipal ordinances, broken on that day?

Is there any reason not to celebrate the turnout of several thousand persons in Austin, Texas, last February to heckle and pelt with stones a march by the Texas Klan at the state capitol? Surely it is progress, not "stooping," when public stones are no longer cast at civil rights marchers but at Klansmen. Yet the media in Austin lamented the "violence," and the police and a local grand jury wound up persecuting the *anti*-Klan demonstrators—especially the brown-skinned ones—instead of the Klan.

A society creates itself—its tools, its language, its ideas. It is the responsibility of society to produce that which will reflect its values. A society that hates racism would not permit it to flourish and would, in particular, not allow a vanguard racist group to operate with official sanction and police protection. That our society does afford sanction is but a statement that we will employ anything, even the phantom fetish of the First Amendment, to let racism persist. The need actively to oppose the Klan, denying it any vestige of protection, is paramount. If you waver behind the mirage of "free speech," you must consider the possibility of complicity.

If, on the other hand, you believe that "freedom" and "speech" are products of social interaction, not black-robed writ, and that a society which produces racist and fascist sects cannot possibly mean anything when it boasts "free speech," then you will have no more compunction about shutting out the Klan than a doctor would about injecting against smallpox.

Action against the Klan is a statement, long overdue, about the depth of our perception about race—a perception which must not be diluted by rational-sounding, legalistic discourse. This statement should not be left to fringe crazies; no tiny group should co-opt the obligation of society to resolve what is our greatest historical social disease. Even Woody Allen, nobody's casual thug, observed that the only way to deal with the Nazis and the Klan is with baseball bats. Especially the early, wooden ones. ■



JULIAN ALLEN

If the Klan Can Be Gagged, None of Us Is Safe

BY NAT HENTOFF

Reading Rod Davis's lyrical tribute to Thomas Hobbes's "state of nature," I had the sense of having heard similar cadences of righteousness, similar bold, brave solutions to national evils. And then I remembered the passage:

"We had the moral right, we had the duty to our people, to kill this people that wanted to kill us. . . . By and large we can say that we have performed this task in love of our people. And we have suffered no damage from it in our inner self, in our soul, in our character."

That reflective chord was sounded by Heinrich Himmler. It fits right into Davis's piece because Davis's thinking in this matter is totalitarian. The Klan is dangerous, and worse. Therefore, the Klan must be smashed. By whom? Well, you can't trust the Government to do it. That part of Government that has not been infiltrated by the Klan is hung up on the artificial, ritualistic, racist, classist, utterly bourgeois First Amendment.

So who will smash the Klan? Those with the will and the power and the requisite scorn for such irrelevant niceties as the law, let alone the Bill of Rights. As Huey Long said, if fascism comes to America, it will be in the guise of antifascism.

Let us begin where Davis does. If, as he says, legality is "irrelevant," then I assume that Davis himself, sustaining the integrity of his beliefs, will never come to the ACLU or any other civil-liberties organization for aid if *his* rights to speak and demonstrate are staved in with a pole or an axe. If he survives, he'll just pick up a bigger pole or axe or dynamite charge. That's what I meant about Davis summoning us back to a "state of nature." The survival of the best armed. (And I'm willing to bet Davis is in favor of a nuclear freeze.)

The purpose, by the way, of most mass action—Davis, not incidentally, omits the word "nonviolent" in characterizing the mass action of Gandhi and Martin Luther King—has been to *change* the legal system. Or to make it do what it says. Neither Gandhi nor King nor even the Wobblies found the legal system irrelevant. Legal systems gave these mass actions specific focus. The Wobblies, for instance, conducted their grand free-speech fights (nonviolent) in the streets of

Nat Hentoff's books include "The First Freedom: The Tumultuous History of Free Speech in America."

cities in the West because they considered the First Amendment so palpable they used it as a weapon.

As for the bloody, vicious history of the Klan, and its current resurgence, even a rotting police force can be—and has been—forced to bust Klan members for criminal activity, forced by civil-liberties and civil-rights lawyers who have a good deal more courage and stamina in these matters than folks who get their jollies (and their rush of virtue) by throwing stones at Klan marchers.

Such lawyers oppose the Klan with "ferocity," to use Davis's term, but they are far too concerned with *everyone's* liberties to deny the Klan the right to such noncriminal activities as speaking, writing, and assembling. When they defend the Klan on those grounds, they are defending us all, and that's why they do it.

This notion, Davis tells us, is absurd, insulting, racist, abstract. Well, again, let's look at the alternative in the nonabstract society. If any group can be denied the most fundamental of liberties—because if you can't speak and write, you can't change a damned thing—then no group is safe. If Davis's countervigilantes get enough numbers and weapons to suppress the Klan in a particular city, then his truth squad can go on to shut down other dangers to the motherland. Native Nazis, for one. And how about members of Phyllis Schlafly's Eagle Forum? How about anybody organized on the basis of sexism, anti-affirmative action, or whatever else is dangerous to the people's welfare? How about, ultimately, critics of Rod Davis?

If the law is irrelevant, if the First Amendment is abstract, what is to stop the Davis truth squad and, on the other hand, those who will surely rise to do battle with it? Since Davis and his allies are all true populists who simply want to purge the nation of inferior people, maybe the answer is for us just to have faith that he will do only good, and smite the doers of evil. Are any of you willing to take that leap into faith? Those of you who balk must face the possibility that you're hopelessly, and irrelevantly, bourgeois.

I rather think it's too late, but before he orders the denim uniforms, Davis might look at some First Amendment history in view of his notion that only the "dominant class" gets to exercise free speech. Maybe he doesn't think kids count, but the Supreme Court's decision in *Tinker v. Des Moines Independent School District* (1969) has given students all over the country personal knowledge of the First Amendment through free-

press battles they've won. And those kids are hardly all from the "dominant class."

But look at the conscientious objectors during the Vietnam war, and what the First Amendment did to broaden the grounds for exemption. And indeed, look at the First Amendment battles, a good many of them won, by Martin Luther King and other civil-rights marchers and demonstrators in the civil-rights campaigns. The court victories achieved by them applied to everybody because—and this point eludes Davis—the First Amendment is indivisible.

An example: Last October, in Texas City, Texas, the cops arrested four Klan members and charged them with the crime of "unlawful handbilling." Nobody can distribute leaflets in Texas City without first getting a permit. And the city commission has absolute discretion to decide who can march and speak and who can't.

The Klansmen went right to the Greater Houston ACLU. Stefan Presser, the ACLU staff counsel, despises the Klan at least as much as Rod Davis does. But unlike Davis, he knows how the First Amendment actually works. Presser reminded Texas City officials that the Supreme Court ruled in 1969 that no government has the right to stop anyone from leafleting and speaking on the ground that he hasn't obtained official permission to do so. That 1969 case, Presser told his Klan clients, had been brought against the city of Birmingham, Alabama, by the Reverend Fred Shuttlesworth, an ally of Martin Luther King and one of the bravest of all the civil-rights activists in the South. Texas City is now going to scrap its licensing requirement, and now everybody is going to be able to speak in the streets there without interference. Everybody. Including Rod Davis and his gang. That's what I mean by the First Amendment being indivisible.

What would Davis prefer? That the Klan still not be allowed to parade in Texas City and that the city commission still be able to stifle whomever it wants? He can't have it both ways. If there is to be no licensing, everyone must be able to speak. Including the Klan. Or would it be more to Davis's taste that each occasion for marching be settled with clubs and baseball bats?

Davis talks in his piece about getting "the proper power installed." That'll take care of everything. Rod Davis, being properly qualified, will decide whether you can speak or not. Enough of this abstraction—free speech—that has never been put into prac-

tice anyway. So Davis says. What about the free-speech cases the ACLU wins every year around the country? Pay them no mind. They're all an illusion. Keep your eye on what's important: throwing stones at the Klan.

Davis lists the times the Bill of Rights, including the First Amendment, has failed. I could have compiled a much longer list. And a much longer list too of triumphs that had a hell of a lot to do with actual "social change." Again, any good First Amendment primer, including mine, will provide him remedial reading.

He also declares, with his customary broad sweep—the better to throw stones with—that "constitutional 'free speech,' in the daily, concrete world, consists of what the Government decides it to be."

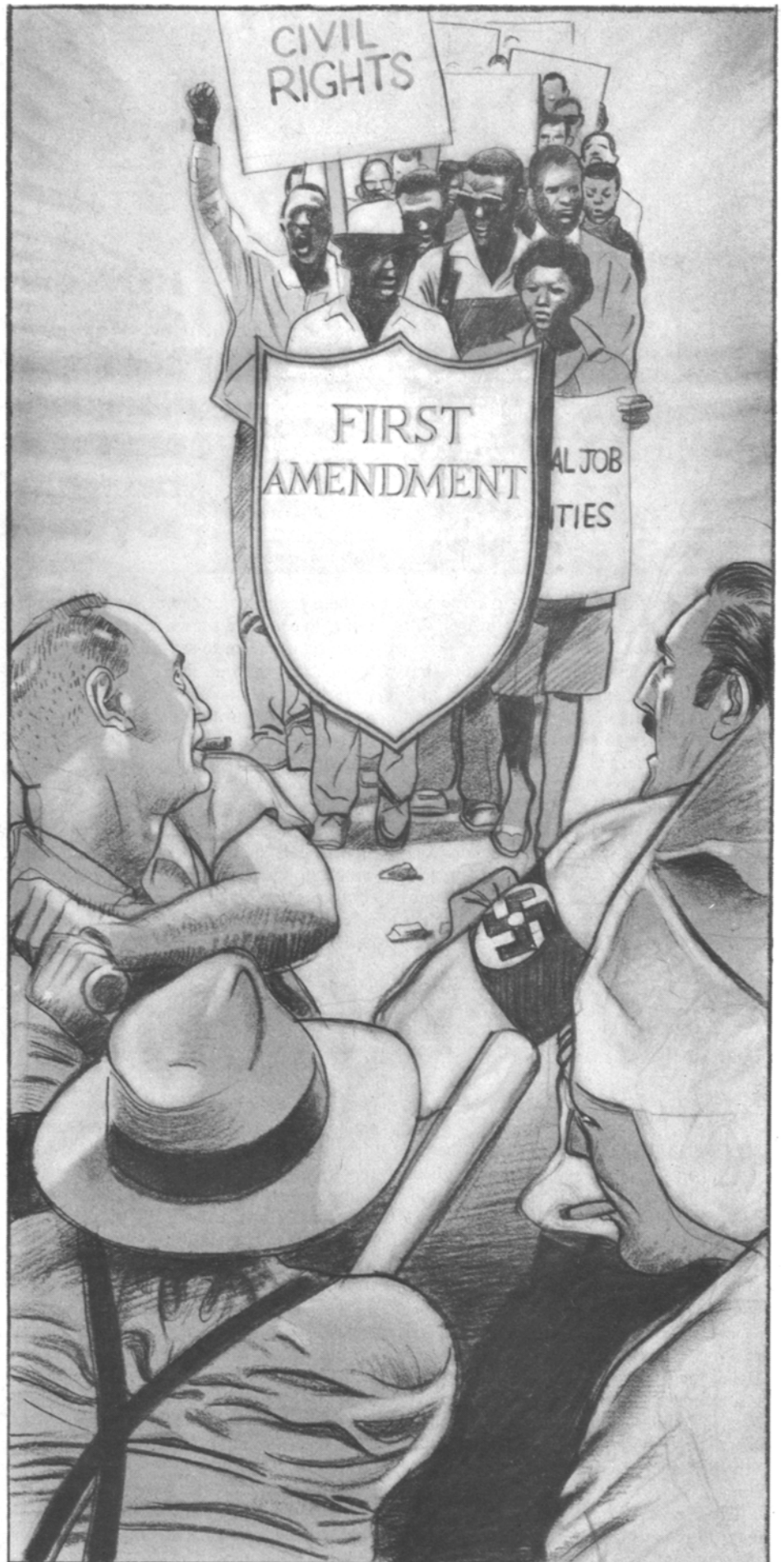
The hell it does. I've printed a lot of stuff that government, on all levels, told me I couldn't. This very magazine fought a historic and ultimately triumphant battle against a bristling array of Government officials, lawyers, and a hostile judge in order to be able to print Howard Morland's article on utterly disingenuous Government secrecy concerning nuclear matters. If you were to compile a box score, the Government loses more often, on free-speech matters, than it wins.

But what does reality have to do with Rod Davis's succulent fantasy of smashing Klan heads? He talks of "free speech on the shop floor." Does he know of the rising number of union contracts—notably in UAW locals—that now guarantee this? Does he know of the increasing involvement of the ACLU in economic rights, to most of which free speech is inextricably tied?

Then there is the matter, according to Davis, of those who will not demonstrate against the Klan because that would mean "stooping" to the Klan's level. Whoever these folks may be, they do not speak for me. I'll demonstrate against the Klan. But I don't carry stones.

Yes, indeed, as Rod Davis says, "A society creates itself. . . . It is the responsibility of society to produce that which will reflect its values."

And, to his credit, he doesn't hide behind euphemisms. He tells us the kind of values he wants *his* society to reflect. A society without "the phantom fetish of the First Amendment." If you contemplate the options, and if you are unwilling to deny the Klan "any vestige of protection," and if you "waver behind the mirage of 'free speech,'" why, be forewarned that "you must consider



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the possibility of complicity." And in the new Rod Davis society, accomplices in evil will not be overlooked.

I would be remiss in my devotion to that phantom fetish, the First Amendment, if I did not also point out another difficulty with Rod Davis's plan to silence the Klan forevermore. I mean the "heckler's veto." If a Klan demonstration is not protected by the First Amendment—that is, if the State is not prepared to extend physical protection to those who would express profoundly unpopular ideas—then the Davises who threaten or actually commit violence have successfully exercised the "heckler's veto." They have decided who shall not be heard—even

if there are those at the demonstration who would like to hear, for whatever reason, what those racists have to say.

A small matter, Rod Davis would say. Certain people should simply not be heard, no matter who *wants* to hear them. And if people who want to hear Klan speakers don't shut up, in the new society, the new FBI will start keeping tabs on them because they are obviously a danger to the purity of the State.

Back in 1961, a lot of people with ferocious ideals similar to those of Rod Davis wanted to prevent George Lincoln Rockwell, the American Nazi leader, from speaking in a New York City park. The ACLU took the case and a judge, overturning a lower-court

decision denying Rockwell the right to talk, said:

"The unpopularity of views, their shocking quality, their obnoxiousness, and even their alarming impact is not enough [to prohibit speech]. Otherwise, the preacher of any strange doctrine could be stopped; the anti-racist himself could be suppressed if he undertakes to speak in 'restricted' areas; and one who asks that public schools be open indiscriminately to all ethnic groups could be lawfully suppressed, if only he chose to speak where persuasion is needed most."

It's lucky for that judge he doesn't live in Texas. Some antifascist might bounce a rock off his skull. ■

A Rejoinder

FROM ROD DAVIS

The illusion of "freedom," whether in speech or action, has long been the hollow pillar of bourgeois liberalism. And liberals hate more than anything to have their fetish exposed—to have it revealed that the "freedom" of a certain group or class is always, necessarily, based on the *unfreedom* of a much larger but less powerful class (or race). Since liberals are always more concerned with sustaining their expropriated "freedom" than with extending it to others, they never confront the philosophical or political obligations that ultimately must come into conflict with their own privileged position and definition.

The liberal response, therefore, is unwittingly to make their *own* position totalitarian. Any challenge to liberal ideology is depicted as dangerous, malevolent, and silly.

Instead of offering a serious response to the philosophical vulnerability of the meaning of "free speech," Nat Hentoff reverts to a disappointing and predictable spate of name-calling. He resorts to the Cold War liberal slur that leftist, especially Marxist (not Hobbesian, incidentally), analysis of issues is ultimately identical to fascist or Nazi analysis.

Hentoff uses the old rhetorical saw of implying that my words match those of Himmler and his ilk. I was reminded of Nicholas Von Hoffman's clever linking of Lenin and Hitler in *Harper's* last year. Only in a country thoroughly deformed by McCarthyism could such ludicrous analysis be seriously presented.

Hentoff and I really have nothing to say to each other. The Left became bored with liberal illusions long ago, in the way Copernicus became impatient with Ptolemy. As for the alleged menace implied by my desire

to drown out the Klan (I do not, by the way, shun the tactic of nonviolence), my position is based on values derived from the analysis of real, not phony, freedom. In a society that is free for *everyone*, there would be no more need for a First Amendment than for a Klan, because neither racism nor freedom would be commodities dispensed by government, lawyers, or word-brokers.

The final proof of Hentoff's absurd and dissimulative concept of "free speech" is his notion that people who heckle Klan/Nazi goons are worse than the goons themselves. Logically, Hentoff can only sustain this position by reference to an abstraction—the very premise of which the nonliberal Left cannot accept—that all ideas are neutral and equal, existing outside of history. Dependence on that abstraction will forever leave Hentoff floundering and name-calling, high above the fray, worshipping freedom as a good idea but a dangerous practice. ■