

Remarks by Morton Mintz on Allies / The ACLU and the Tobacco Industry, press conference, National Press Club, July 29, 1993

May I begin by expressing thanks—to all of you for coming, to the organizations that sponsored and published the report, and to those persons dedicated to the public interest who worked hard to make this event happen, particularly, Dr. Sidney Wolfe of Public Citizen, Michael Pertschuk and Cliff Douglas of the Advocacy Institute, Scott Ballin and Joe Marx of the American Heart Association, and Ralph Nader.

The report reveals that the American Civil Liberties Union has a serious conflict of interest. For seven years now, the ACLU has been going to Capitol Hill to advocate a tobacco-industry cause: the defeat of proposed legislation to prohibit or restrict the advertising and promotion of tobacco products. Meanwhile, it has been soliciting and taking money from that same industry, netting, most importantly, \$500,000 from Philip Morris, 1987 through 1992.

Disclosure is the sunlight that would disinfect the combination of advocacy and money. But the ACLU has never disclosed to its approximately 300,000 members that it takes money from the tobacco industry while allying itself with the industry on Capitol Hill. Its president, Professor Nadine Strossen, its Executive Director, Ira Glasser, and the former head of its Washington office, Morton Halperin, vigorously defend this secrecy. Yet Professor Burt Neuborne, the ACLU's legal director 1982-1986, concedes that

acceptance of tobacco money is something the organization should disclose.

There is an irony here. The ACLU is a zealous advocate of openness in government. The industry, in the informed assessment of a distinguished federal judge, H. Lee Sarokin, quote, may be the king of concealment and disinformation, unquote.

For undisclosed reasons of its own, Philip Morris has also been secretive, hiding its ACLU contributions while spending millions of dollars annually to publicize its sponsorship of numerous sports, cultural, and minority enterprises.

Financial impropriety is not what the report is about. The report emphasizes this. By all accounts, the ACLU rigorously segregates its fund-raising from its efforts in behalf of civil liberties. Tobacco money constitutes a tiny proportion of its revenues. Tobacco money accounts, by the way, for a six-times-larger share of the revenues of the Washington Legal Foundation.

Instead, the core issues are two: the ACLU's absolutist approach to the First Amendment, and its self-serving doctrine—voiced by Neuborne—that, quote, it's self-destructive to turn away money for constructive projects, unquote.

ACLU absolutism underlies and helps to illuminate many things about its relationship with the tobacco industry. FICT 0005444

One example is the ACLU's decision to dedicate any of its resources to a fight in Congress already being waged by a Goliath that has at its side the newspaper, magazine, and advertising industries, that invests millions of dollars annually in politicians at the

federal, state, and local levels, and that spends \$4 billion a year—\$11 million a day—on advertising and promotion.

Another manifestation of absolutism is the factually wrong and misleading view of environmental tobacco smoke (ETS) expressed in Congress by former ACLU legislative counsel Barry Lynn, who had no scientific qualifications to discuss the subject. Even if unintentionally, he implemented a central strategy deployed by the industry to undermine the numerous scientific studies that incriminate ETS in lung cancer and multiple other dread diseases. The strategy is to create doubts about the health hazards of ETS and, of course, of tobacco across the board.

ACLU spokesmen—Morton Halperin, in particular—have also bought into the industry line that tobacco advertising and promotion do not induce people—not even easily manipulated, easily addicted under-18 youngsters ^{and children}—to start smoking. The report is rich in facts to the contrary, some of them little publicized in the United States.

Another symptom of ACLU absolutism is absurd claims such as this one, made twice to House subcommittees by Barry Lynn: quote, The First Amendment simply does not countenance government content control of advertising of lawful products, unquote. Really? Take a look at any and every ad for prescription drugs.

Another symptom is the unsubstantiated claim that cracking down on cigarette advertising will put the nation on a "slippery slope" leading to ad bans on products such as cars and butter. As you will see, these claims are ridiculed by Melvin Wulf, who was the ACLU's legal director for 15 years, preceding Burt Neuborne, and Aryeh Neier, who was its executive director for eight years TICT 0005445

Yet another, and basic, symptom of absolutism is the ACLU's trivialization of the First Amendment—its equating of the protection of corporate speech with the protection of a human person's speech. This equation rests on an utterly unsubstantiated unspoken notion: The Framers of the 14th Amendment, in saying that the equal protection of the laws shall be denied to no "person," intended to define the paper entity called a corporation as a person. Not a word in the legislative history of the 14th Amendment upholds the notion. Astonishingly, however, the Supreme Court in 1886 proclaimed it the law of the land. You don't hear it from the ACLU, but this was a classic judicial usurpation of legislative power. And, as the report reminds us, the ACLU's equation of corporate and personal speech has been scorned by Melvin Wulf in articles and congressional testimony.

The doctrine that it's self-destructive to turn away money for a constructive cause underlay Executive Director Ira Glasser's solicitation of Philip Morris and his astounding public invitation to Mafioso John Gotti to become an ACLU contributor. If John Gotti, why not Saddam Hussein? Pol Pot? Pablo Escobar?

Under a corollary of the same doctrine, it's ok to send out urgent fund-raising appeals and issue quarterly newsletters that do not discuss the protection of speech which has the primary purpose of earning profits for corporations; that do not reveal that the protection of corporate speech has become an ACLU cause, and that do not solicit members for money to help protect the speech of multinational tobacco companies.

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In closing, may I say that I undertook and executed this report independently of the sponsoring groups and of the Advocacy Institute. All involved, I believe, however, view the ACLU in a spirit imbued more with sorrow than anger. Is it not regrettable, is it not sad, that under its current leadership, the organization founded in 1920 to be the guardian of the Constitution and the Bill of Rights advocates the cause of the leading killer industry, has solicited it for money, has gotten more than a half-million dollars as a result, and hasn't informed its membership of either activity?

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