



Gratz Insider, December 2011 - Story Continuation

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Is the Supreme Court a Friend of the Jews?

Eminently qualified to discuss this topic, Professor Finkelman is an expert in constitutional law and American legal history. He is the President William McKinley Distinguished Professor of Law and Public Policy at Albany Law School, as well as senior fellow in the school's Government Law Center. His scholarship has been published extensively and cited in many court decisions and appellate briefs. Professor Finkelman was a fellow in Law and the Humanities at Harvard Law School and received his Ph.D. and M.A. from the University of Chicago.

To some, the question of whether the Supreme Court has been a friend to the Jews may seem rhetorical. After all, there has been a long line of Jewish justices on the Court. Also, during the Civil Rights Movement, the Court broke down legal barriers of discrimination - with the NAACP and the JDL often teaming up together on these issues. However, by tracing the history of the Supreme Court's treatment of religious minorities in general, and Jews in particular, Professor Finkelman demonstrated that the Court, in fact, has not been a great protector of the Jews.

In support of this conclusion, the professor cited, among other cases, two Sunday Closing Law cases from the early 1960's, where the Court ruled against Orthodox Jewish litigants, who faced financial disaster by being forced to close their businesses on Sundays, already closing for religious reasons on Shabbat. Ironically, Justice Frankfurter, a Zionist and the longest-serving Jew in Supreme Court history, voted to uphold the Sunday Closing Laws, and came down against the side of religious minorities in other cases as well. Later, in a case from the mid-eighties, the Supreme Court held that the wearing of a yarmulke by an Orthodox Jewish officer and Air Force psychologist was not protected by the Constitution - an outcome that has since been changed by an act of Congress.

According to Professor Finkelman, Jews in America have been more successful in protecting their interests through the political process than through the Supreme Court.

"Jews have been the litmus test of liberty," concluded Professor Finkelman. "How a society treats its Jews is a measure of that society." Based on this measure, the Supreme Court's track record may not reflect favorably on American society.

Written by Jodi Benjamin

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