

Earl Raab

January 31, 1978

CRISIS IN TUCSON

There was a crisis in Tucson last week. A floor fight was raging between two "sides" on a Nazi question.

Both sides hated the Nazis just as much. Both sides were just as determined to fight the Nazis. They differed only, at a certain point, about the most effective way to fight the Nazis. That difference, however, caused hot debate, as it has at times in San Francisco.

In this case, the debate was on a national scale. Tucson was the site of the annual public policy forum of organized American Jewry. It was the annual culmination of a process which brings together representatives of about four million American Jews who belong to about eight thousand Jewish organizations and congregations, to debate and act on Jewish public policy matters in over a hundred Jewish communities. The process is known inelegantly as the National Jewish Community Relations Advisory Council (NJCRAC). It climaxed in Tucson last week when three hundred and fifty delegates from these local community processes gathered in Tucson. The agenda covered action strategy in Israel, Soviet Jewry, and many matters of domestic American-Jewish concern, such as the Nazis.

At one obvious stage of the debate on law and anti-Nazi techniques, one "side" wanted to stick with the formulation: "We reaffirm our strong support for the right to free speech under the First Amendment to the Constitution." They felt that the most potent weapon against Nazism was the Bill of Rights, and they did not want to weaken that anti-Nazi weapon.

But the other "side," which included delegates from Skokie, thought there would be a modification of the free-speech concept. They proposed that "speech must give way to the right of the person to be free against assaults deliberately made in order to cause psychological and emotional harm."

Many delegates felt that such a formulation would destroy, rather than modify the free-speech concept. If Jews march in the streets wearing Mogen David, cannot that be judged to cause "psychological and emotional harm" to some devout Christians? If Jews picket the Soviet consulate cannot that be judged to cause "psychological and emotional harm" to Soviet-lovers? We should not be too quick, some argued, to strip ourselves of our best protection.

The gap between the two "sides" seemed unbridgeable. Then like the cavalry, the San Francisco delegation came riding to the rescue. The Urban Affairs Commission of the San Francisco JCRC, chaired by Harvey Gould, debated this very point. It had felt that it was important to stand on the commitment to free speech, but that it was time to go beyond that commitment, in exploring legal means to deter Nazi-like groups from certain provocative actions. After reaffirming support for free speech, they added this:

"Jewish communities have the right and responsibility to pursue constitutional and lawful remedies to specific situations which threaten their rights as citizens of the United States and community peace and order."

The national Jewish community -- both the Skokie residents and the most rigid civil libertarians -- accepted this version of the statement by the San Francisco Urban Affairs Commission. On the one hand, this guideline does not call on us to rupture the First Amendment by reliance on the concept of "psychological harm" - which anyone can lay on anyone else with whom there is disagreement. As a matter of fact, the day after the Tucson convention closed, the Illinois Supreme Court ruled that such a notion of psychological harm, as a basis for stopping the Nazis from marching, was simply unconstitutional.

On the other hand, there may be other bases for stopping the Nazis from marching in specific situations. If a Nazi group wants to hold a "Save Hess" demonstration in a small park adjoining a synagogue, the police and the park authorities may have the right and responsibility to refuse the necessary permits, on grounds of community peace and order.

In short, all possible remedies in all possible situations have not been ruled out by the decision of the Illinois Supreme Court. And the national Jewish community, under the leadership of San Francisco, has taken the new position that we should pursue all such possible remedies whenever the occasion arises.