

RIGHTS: A BALANCING ACT

An organist was fired by a Christian church because he is homosexual ... Federal and state agencies issued regulations that employers must try to accomodate to the needs of observant Jews ... A State Supreme Court ruled that a local District Attorney must hire a specific number of minority attorneys.

All these cases broke last week. All of them will be further contested. And they all demonstrate the constant difficulty the law has in *balancing* the rights that are guaranteed citizens under the law.

If the homosexual organist had been hired by a commercial theatre, there would be no complication. The local law says that no one may suffer discrimination in employment because of race, religion, national background or sexual orientation.

However, there is another law which says that no one can be required by the state to violate private religious conscience. Now, suppose a person's religion clearly states that a homosexual is sinful and should be shunned. If the person holding that religious belief is a theatre owner, he still *cannot* discriminate against a homosexual organist. If he did, he would be imposing his religious will on another person in a public arena.

But, suppose the person holding that anti-homosexual religious belief were associated with others in a church which is solely dedicated to their religious beliefs. They certainly have a right to eject anyone they consider a sinner from their religious association. They may even have a right to decide that their organist should be someone of their religious belief -- a privilege which a commercial establishment does not have. On balance, the courts may decide that a hired church organist falls into the "commercial" category, but some consideration of the "balancing of rights" will have to take place.

In the second case, the law now says that an employer must make "reasonable accomodation" to religious needs -- such as the need of an observant Jew to abstain from work on the Sabbath or religious holidays. An employer, on the other hand, has the basic right not to have his business wrecked by the religious needs of his employees. A department store with 500 clerks can presumably arrange their schedules to accomodate Sabbatarians. But a corner store with two clerks, and which does much of its business on Saturday, can presumably refrain from hiring a Sabbatarian. Between these two extreme examples are many problematic cases which require a delicate "balancing of rights."

As for the District Attorney case, that is a common balancing act in the courts these days. The law says that blacks, for example, are entitled to some "affirmative action" because this society deliberately oppressed them for so many generations that many individual blacks are today at a competitive disadvantage. Affirmative action means special efforts and accomodations towards equal employment. (The program by Jewish agencies to get more Jews employed at higher corporate levels is also a kind of affirmative action.)

In this case, the State Supreme Court ruled that if the District Attorney's office has discriminated in the past, it will have to hire one minority attorney for every three attorneys hired, until there is the same proportion of blacks on the staff as there is in the population. (In any case, it would make more sense for the remedy to call for a temporary quota until the blacks on the staff represent the proportion of black *attorneys* in the population.) The trial court is now supposed to determine whether *in fact* there was such documentable discrimination in that office in the past. The Jewish agencies have supported previous court decisions which have scrupulously used such a criterion.

However, whenever a specific black worker is given employment preference over a specific white worker because of color, the latter's individual rights are violated. One way to look at it: there are so many individual rights guaranteed under law, there will always be the need to balance them at times -- but better to imperfectly balance all of them, than to perfectly ignore any of them.

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