Earl Raab July 2, 1979

THE WEBER DECISION

Comparing the *Weber* decision to the earlier *Bakke* decision, one commentator said: "The Supreme Court is spinning like a top."

But the Bakke decision and the Weber decision are not themselves contradictory. In Bakke, the Supreme Court said that public professional schools may not use race as the sole criterion for admission. In Weber, the Supreme Court said that private management and labor may *voluntarily* agree to set up certain apprenticeship programs wherein there would be a fixed proportion of Blacks.

If you endlessly spin out implications for each case, you will eventually come up with apparent contradictions. But such a spinning-out would be a mistake, as the decisions themselves warn. The Supreme Court has been cutting off very narrow slices of this overall question.

Maybe if enough thin slices fall into a pattern, like the chicken entrails spilled by a soothsayer, some "big picture" will emerge. But it's not soon likely; it is even possible that some of the narrow slices may change as the character of the Supreme Court changes.

All this suggests that both the courts and the legislatures are struggling with a sticky subject with which the organized Jewish community has been struggling for some 15 years: *making the distinction between affirmative action and quotas.*

The San Francisco Jewish Community Relations Council expressed support of affirmative action in 1964. Soon after, the San Francisco JCRC expressed opposition to quotas, and was instrumental in opening a national Jewish debate on the subject. Sooner or later, every national Jewish agency adopted a similar position: for affirmative action, against quotas. Aside from everything else, both positions were taken as a matter of Jewish self-interest.

Affirmative action meant special race-conscious efforts to seek out qualified Black workers; to train qualifiable Black workers; who previously had no reason to train for jobs from which they knew they were excluded; and to push employers towards these goals.

First of all, the principle of equal opportunity was not worth the civil rights paper it was written on without such remedial action. Between 1950 and 1965, the period of civil rights law, Black family income constantly remained about 55 per cent that of white family income. Between 1965 and 1970, when there was an affirmative action push along the lines indicated above, Black family income rose to about 64 per cent of white family income.

Also, Jews had a self-interest in such progress because of their experience with Nazism. Political anti-semitism comes with political extremism, which comes with industrial societies bitterly ripped by unresolved conflict and frustrations. Perhaps you remember what it was like in the mid 1960s.

There is no need to belabor the reasons that Jews are opposed to the quota concept, which violates equal opportunity as a matter of principle. But the line between the two is often very thin indeed. The Weber case was partly affirmative action: a *training* program for a skilled trade from which Blacks had been traditionally excluded. Less than 2 per cent of the skilled workers in that particular plant were Black; although 15 per cent of the overall workers in that plant, and about 40 per cent of the working force in that geographical area were Black.

But there was also a quota aspect: half of the places in the training program were reserved for Blacks, until the time when there would be the same proportion of Blacks in skilled jobs as in the working population.

This issue cries out for a Solomon. Short of that, we just have to avoid over-interpreting these narrow Supreme Court slices, and keep doggedly pushing in the approximately right direction.

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