DOROTHY AHLE ILLUSTRATION

citywide race, as Jim Rappaport, not to mention Silber, can attest.

This isn't to say the Democratic field is currently a collection of proven heavyweights. But to be fair, Mark Roosevelt and Mike Barrett haven't had the chance yet to display their strengths; potential candidate Jim Braude has the intellect and stature to overcome his identification with taxes and run an intriguing populist campaign; and George Bachrach could put together a liberal-suburban coalition. Others may join them.

But Flynn? Despite his obvious strengths his candidacy would be a disaster for both his party and himself. No matter how much his supporters may love him, he can't win. Discretion is the better part of valor; Ray Flynn ought to exercise some and stay out of this race.

Steven Stark's column appears regularly in the Globe.

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islative approval and that South Bay is e, the economic development goals of mi- remain constant. Regrettably, the oppor- directly develop a minority community – he location of the facility and the accom- infrastructure changes – is lost. Howev- portunity exists for full minority partici- all other aspects of this large develop- ject. This opportunity must not be lost.

e numbers of minorities across the state sistently supported political officials in rts to make communities safer and bet- s to live. We have supported reform of a ineffective welfare system and we have l policies that get tough with criminals, constructive initiatives are needed – and

ity communities need jobs and business ent. A three-strikes-and-you're-out poli-

Court's double standard

HARVEY SILVERGLATE

What a difference a dozen years – and a change in litigating parties and political climate – make in the Supreme Court's willingness to affirm fundamental constitutional rights. One must take stock when the highest court in the land decides two similar cases, separated by 12 years, in diametrically opposite fashion – and does so unanimously each time.

The court ruled last week that the National Organization for Women may use RICO, the federal anti-racketeering law, against Operation Rescue and other antiabortion demonstrators even though such organizations' motives derive from conscience rather than economics.

The opinion was written by Chief Justice William Rehnquist and joined by the eight other justices, three of whom (Sandra Day O'Connor, John Paul Stevens, and Harry Blackmun, in addition to Rehnquist) were sitting on the court in 1982 when another celebrated social protest case was decided (NAACP v. Claiborne Hardware Co.).

In the earlier case, the justices ruled that the First Amendment's freedom of speech and association clauses precluded the courts of Mississippi from using that state's conspiracy statutes to penalize – and effectively destroy by bankrupting – the National Association for the Advancement of Colored People and its members for economic damage inflicted upon the white merchants of Clairborne County.

The court ruled that "while states have broad power to regulate economic activity, we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott in this case." The court emphasized that certain harsh tactics – such as stationing "black hats" outside white-owned stores to write down names of black customers – may have caused "apprehension," but that did not make them unlawful.

Fast-forward to Jan. 24, 1994. The court noted that the aim of Operation Rescue and its members and other antiabortion protesters was to shut down the clinics and persuade women not to have abortions. This was characterized by NOW as a nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity.

Racketeering activity is defined as a group effort involving two or more illegal acts, including extortion, which can be a mere threat of physical violence to any person or property in furtherance of a plan or purpose, even if actual violence did not result.

The lower federal courts dismissed the RICO complaints by NOW, ruling that since the protesters did not have economic motives, the statute was not aimed at them. Occasional violent acts would have to be dealt with by resort to traditional criminal laws forbidding trespass, assault and the like. The RICO law, after all, was passed by Congress in 1970 in order to destroy the economic ability of organized crime to take over legitimate business enterprises. The Supreme Court ruled that RICO reaches ideological activity as well.

Only two justices – Souter and Kennedy, neither of whom was on the court when the NAACP case was

The promise of equal protection is being compromised.

decided – cited that case; they did so in a separate concurring opinion joined by none of the other seven justices.

While Souter and Kennedy agreed that RICO could be applied to noneconomic activity, they warned that care must be exercised not to tread upon First Amendment rights of ideological organizations. RICO's powerful remedial provisions, they noted, could destroy an organization.

For civil libertarians, it was ominous that the seven other justices did not join the warning penned by Souter and Kennedy. The court appears to be applying to Operation Rescue in 1994 a different set of rules than it applied to the NAACP in 1982. The Constitution's promise of equal protection of the law is being compromised by a double standard.

NOW is riding a wave of popularity and success, while Operation Rescue is widely scorned, but the precedent NOW creates in the law today may turn around and haunt it tomorrow should it become the target of a blunderbuss RICO or other suit seeking to silence it.

Harvey Silverglate is a criminal defense and civil liberties lawyer.