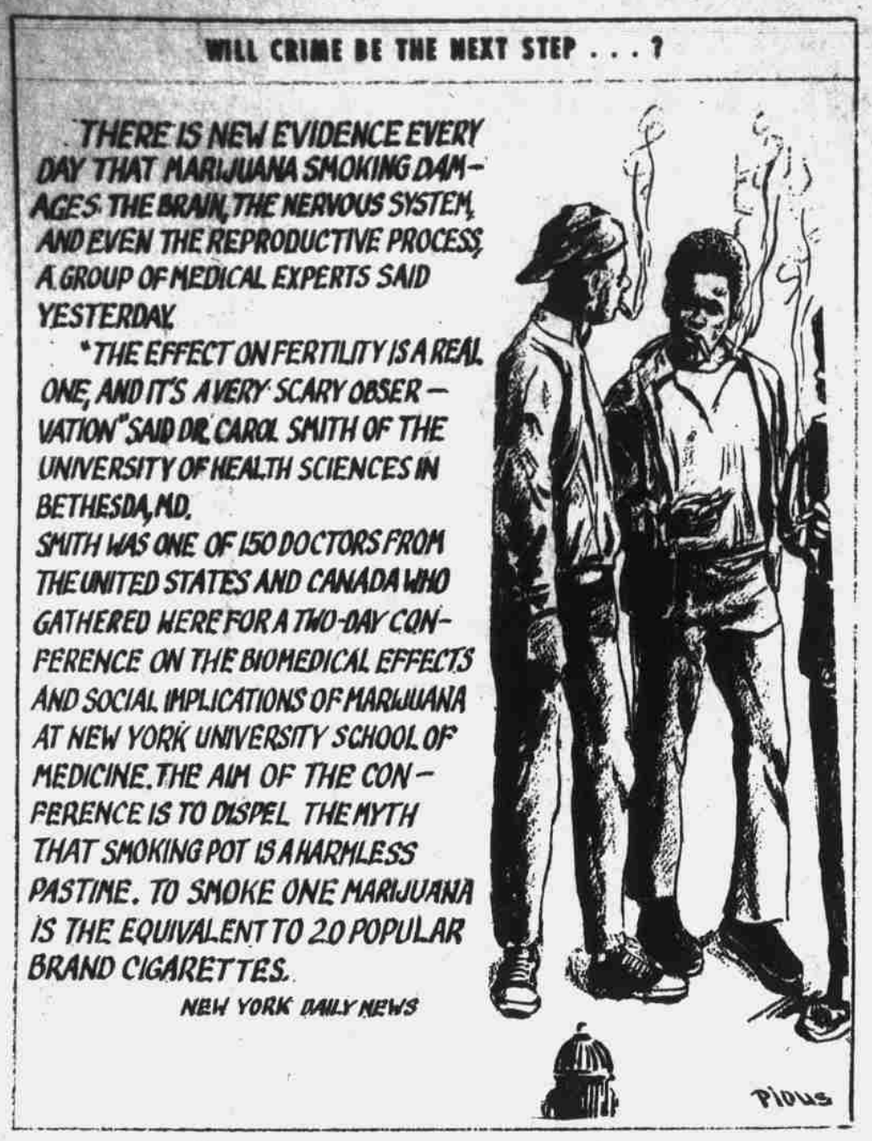

TO BE EQUAL

AFFIRMATIVE ACTION GETS BOOST FROM COURT

By Vernon Jordan
EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE

The Supreme Court's decision in the *Weber* case removes a major question mark hanging over affirmative action programs in employment.

The Court gave voluntary affirmative action programs its stamp of legal approval, and filled in some legal banks in defining permissible steps to overcome the effects of racial discrimination.

Last year's *Bakke* ruling was vague, but did affirm the Court's long-standing commitment to affirmative action that redresses past discrimination. *Weber* is important because it extends the affirmative action remedy to societal discrimination without regard to whether the specific employer has a history of past discrimination or not.

Weber and his supporters argued that in the absence of a finding of past discriminatory practices at Kaiser Aluminum Company's Gramercy plant, the company and the union had no right to institute a program granting preference to blacks.

In fact, there was a mass of evidence showing that blacks indeed were discriminated against. Less than two per cent of the skilled jobs at the plant were held by blacks, although the area's workforce was forty per cent black.

But that evidence never came up in the lower courts that ruled against the affirmative action plan. Since blacks who had suffered discrimination in the past could sue companies that refused to hire them, it was in the interest of the company and its union to refuse to admit to such discrimination.

Weber also claimed that the Civil Rights Law of 1964 that outlaws racial discrimination in employment also bans racial consideratins that favor minorities.

That claim turns the law on its head, as the Court's decision makes clear. The Court ruled that Congress clearly intended to encourage the private sector to voluntarily remove the last vestiges of racial discrimination through race-conscious affirmative action plans.

Weber had plenty of support from people who argue affirmative action is really a form of reverse discrimination against whites. That's an incredible claim in a society in which blacks continue to be relegated to the worst jobs and to restrict opportunities.

In fact, the *Weber* case itself is proof that affirmative action doesn't harm whites. The company used to hire craft workers from outside the plant. Because they wanted to conform to the legal and moral requirements of the law, the company and the union worked out a plan to train craft workers from the plant's existing workforce. Half of the trainees would be minorities and women, the other half, white men.

If that affirmative action plan had not been put into effect, the company's white employees would never have a shot at higher paid craft jobs. Weber himself would never have a chance to better himself inside the plant.

In trying to expand the numbers of its skilled black crafts workers, the company created new opportunities for its white workers as well!

In upholding the Kaiser Plan, the Court also set some guidelines for voluntary affirmative action plans. They must mirror the purpose of the law by breaking down discriminatory patterns. They must not "unnecessarily trammel the interests of white employees." And there must be temporary measures to eliminate racial imbalance.

We must be mindful of the fact that *Weber* took place against the backdrop of a growing gap between blacks and whites. Blacks are experiencing Depression-level unemployment, and we are locked into low wage, marginal jobs. There is still massive resistance to black needs.

So the *Weber* decision may have an important impact on black employment opportunities. It offers hope that affirmative action will be an important tool to forge racial equality in America.

The Court's sanction of voluntary affirmation action plans suggests a positive obligation for private employers to press ahead with broad, comprehensive affirmative action.

They had a legal mandate to do so before *Weber*. Now they have no excuse to avoid their legal and moral duties.

AFFIRMATIVE ACTION

WHAT NOW, AFTER WEBER

Now that the euphoria of the victory in *Weber v. Kaiser Alumninum* has died down, it is time to consider soberly our credits and debits in the ongoing struggle for affirmative action.

Frist, the good news: Weber lost. A collective bargaining agreement between an employer and union calling for affirmative action was upheld by the Supreme Court. Hence, the message to black workers is clear: *have affirmative action negotiated directly into the contract.* Further, *the Supreme Court has upheld the use of quotas.* Though maligned by the press and pundits, the fact remains that quotas are constitutional, have been held to be so by the overwhelming majority of Federal Circuit Courts of Appeal, and have been validated by the Supreme court. In addition, the Supreme Court has interpreted Title VII of the Civil Rights Act in such a way that it can continue to benefit the original beneficiaries: blacks. Along with this, as Justice Blackmun's concurrence implicitly notes, societal discrimination as a basis for affirmative action—and not just discrimination perpetuated by an individual company—can be valid basis for affirmative action. These are all victories; they cannot be sniffed at; they were all won thanks to the tremendous organizing efforts of labor and civil rights' groups.

Now for news that is not so good: The constitutional basis for affirmative action is not mentioned. *Weber* was decided on the basis of interpretation of statute—Title VII. Thus, moves by the right wing in Congress to amend the statute can be expected. In addition, the Supreme Court has yet to state clearly that blacks have a constitutional right to affirmative action. An historical reading of both the Thirteenth and Fourteenth Amendments to the U.S. Constitution brings us to no other conclusion. A Supreme Court opinion stating this clearly would go a long way toward reversing the myth of "reverse discrimination."

Furthermore, Executive Order 11246, a further legal basis validating affirmative action is explicitly omitted from discussion. This is significant. In *Weber*, the Supreme Court interprets Title VII as *permitting* but not *requiring* affirmative action. Executive Order 11246, on the other hand, *requires* affirmative action; thus, in a sense, it is stronger. Note also that Uniroyal, the tire giant, is challenging the Executive Order right now in Court. The Executive Order requires that all companies having fifty or more employees that do more than $50,000 a year in Government business develop an affirmative action plan. That is 175,000 companies with 41 million workers. If Uniroyal wins, it can fairly be said that the loss will be greater than if Weber had won. Once again, we are reminded that freedom is a constant struggle, that we must be eternally vigilant, that like taking a bath, freedom has to be won time and time again.

The Uniroyal challenge is matched in significance by the case to be argued before the Supreme Court this fall, *Fullilove v. Kreps.* This is a challenge to the Public Works Act that called for ten per cent of government contracts to go to minority business. A loss in *Fullilove* will send the already tottering black economy spinning. *Weber* does not provide a definitive answer as to how *Fullilove* will be decided, though it should go along way toward providing insight. *Weber* does not speak, as well, to the validity of the recently proclaimed Equal Employment Opportunity Commission Guidelines as Affirmative Action. Do not be surprised if these are challgned in court soon.

In sum, the thrust of *Weber* is positive but not a moment should we deceive outselves into thinking that the war is over;simply, a battle has been won. If we are not to be pushed back further, we must continue the campaigning that produced a defeat for Brian Weber. In particular, we must press labor unions, for if one is to explain how we went from the disaster of *Bakke* to the hope provided by *Weber* in less than a year, the simple answer is the involvement of labor. Unions filed amicus briefs and mobilized with civil rights groups on *Weber*, while either supporting Allan Bakke or remaining silent. Blacks in unions should make sure their union is doing its j-o-b on affirmative action. In sum, though the *Weber* decision was generally positive, like Eduoard Mondlane, martyred leader of the liberation struggle in Mozambique, we are compelled to say once more: "The struggle continues..."

•Congressman Hawkins' Column

BLACK STUDENTS BARELY HOLDING COLLEGE GAINS

By Augustus F. Hawkins

Blacks have had to wage a major struggle to get an education in this country.

At no time has the struggle been easy, and in many instances it has been marked by extreme bitterness.

In most black families, there are tales on this issue, which highlight educational deprivation and discrimination; and great stories that tell of someone's mother, or father, or sister, or brother overcoming the barriers of racism and prejudice in the classroom.

For those who believe these hard times are behind us, there's a new HEW publication which reminds us that the struggle is still on. The publication is called "Access of Black Americans to Higher Education: How open is the door?"

Recognizing early that the road to college is paved by successfully completing high school, the report notes that a smaller proportion of blacks from 18-24 years old were dropouts in 1977 than 1967. This certainly is a progressive step, more black students had dropped out of high school that had enrolled in college in 1977. Although the degree to which this occurred was less that what was experieced in 1967, it was still dissimilar to the situation for their white counterparts.

In addressing this problem the report calls for increasing high school completion rates of black students through better academic guidance counseling, improved special education placement and tracking, improved classroom preparation, and increased participation in college preparatory programs.

These suggestions do not exhaust the list, but improvement here, means at least meeting minimum requirements for high school completion, which is a necessity for those wanting to go on to college.

As for access to higher education itself, there are tell-tale signs of increasing difficulty, which blacks need to heed, if they are to increase access.

No one will dispute Black higher education gains made after the mid-60's but today the picture is undergoing change; because blacks are either falling back in their access rates in some significant areas, or because they are barely holding their own in other academic areas.

The report cites a number of startling factors in black access to higher education in 1976:

—law and medical school admissions peaked in 1971 and have been consistently declining ever since;

—in the fall of 1972, black students comprised 8.4 per cent of full-time undergraduate; four years later, 6.4 per cent of the B.A. degrees were conferred on black students for which there is no apparent explanation;

—as the level of training rises for black students, their rates of access and graduation decline;

—at the graduate level, because blacks must work, blacks are more likely to be enrolled part-time than the average student;

—three times as many non-resident aliens (4,068) received doctorates in 1976, than blacks (1,213);

— higher education institutions in 29 states granted more master's degrees to non-resident aliens than to black Americans.

Obviously we need to seriously address the areas of access in every regard.

In secondary school programs, as previously mentioned, there needs to be better counseling, motivation, and information provided to black students on higher education programs. There also needs to be improved academic/college preparation.

These suggestions are not meant to be panaceas, nor will they resolve all the problems.

But we do have the tools, especially at the federal level, to improve black access to higher education, and we are making some modest progress; making better use of these tools, will obviously increase our success even more.

"NO" TO BLACK ENGLISH

By Benjamin L. Hooks
EXECUTIVE DIRECTOR, NAACP

Once more, the question of whether so-called "black English," is a distinctive language that should be taught in school is rearing its ugly, destructive head. Pushed by a number of blacks in the late 60s and early 70s as a form of cultural expression, and not surprisingly supported by some whites, the ostensible idea behind the drive to use this language form in public schools is that poor black children in predominantly segregated urban areas would learn more readily if they were taught in the vernacular with which they were most familiar.

Now, U.S. District Judge Charles W. Joiner is being asked to order the Ann Arbor school system to require black English as a standard learning tool. Two years ago, eleven black children who attended Martin Luther King Junior High School sued the local Board of Education in an attempt to force it to impose black English on the system.

They claimed that the system violated their civil rights by failing to take appropriate action to help them overcome their language barrier.

The very idea that black children will be further handicapped by any imposed requirement to learn their "three R's," which they so desperately need to compete in a highly developed society, cries out for resounding protest against the black English drive. The effort to require black English in public schools is a sin and a crime that should be condemned in no uncertain language.

No doubt, some of the black English promoters will make bundles of money from books and the development of teaching materials. They, who are already well educated and able to communicate in the basic idiom of society, can also afford to vent their egotistical drives for esoteric sounding ideas and research projects that are meant to benefit no one else but themselves. But, why at the expense of black children?

What about the permanent damage that black English will inflict on generations of minority children who will be unable to compete in this highly technical and complex society.

The simple fact, though, is that black children already know black English. It is a language form that is learned from birth. We would wish to believe that what some folk seek in supporting the black English drive is to facilitate better communication between the teacher and student.

So, while we are strongly opposed to black English being institutionalized, we see no problem in developing necessary classroom flexibility to improve comunication between teacher and student. But the burden of developing appropriate communication means should not be at the expense of the young, who would be rendered incapable of communicating properly as adults in standard English, the language of the marketplace.

They must be prepared and educated to function in a society in which proper, written and spoken English is the measure of ability, whether in filling out a job application form or passing increasingly required high school tests.

The responsibility for developing this communication flexibility, therefore, should be on the paid professionals, the teachers, to enter the classroom better prepared to deal with the cultural differences and backgrounds of their students.

The Carolina Times
(USPS 091-380)
C. R. MARTIN
Editor-Publisher, 1927-1971

Published every Thursday (dated Saturday) at Durham, N.C. by United Publishers, Incorporated. Mailing Address: P.O. Box 3825, Durham, N.C., 27702. Office located at 923 Fayetteville Street, Durham, N. C. 27701. Second Class Postage paid at Durham, North Carolina 27702. POSTMASTER: Send address changes to THE CAROLINA TIMES, P.O. Box 3825, Durham, N.C. 27702.

SUBSCRIPTION RATES: One year, $8.50 (plus $0.34 sales tax for North Carolina residents). Single copy - $0.20. Postal regulations REQUIRE advanced payment on subscriptions. Address all communications and make all checks and money orders payable to: THE CAROLINA TIMES.

NATIONAL ADVERTISING REPRESENTATIVE: Amalgamated Publishers, Inc., 45 West 45th Street, New York, New York 10036.

Member: United Press International Photo Service, National Newspaper Publishers Association, North Carolina Black Publishers Association.

Opinions expressed by columnists in this newspaper do not necessarily represent the policy of this newspaper.

This newspaper WILL NOT be responsible for the return of unsolicited pictures.