

HARRY S. TRUMAN LIBRARY  
President's Committee  
on  
Civil Rights

15  
14

PROCEEDINGS OF THE COMMITTEE - TRANSCRIPTS  
April 3, 15, 17, 1947

15  
14

President's Committee  
on  
Civil Rights

UNCLASSIFIED

8/6/59  
Date

gpc  
Initial

1

Grover  
aj

~~CONFIDENTIAL~~

Thursday, April 3, 1947

The President's Committee on  
Civil Rights,

Washington, D. C.

The Committee met at 10:00 o'clock a.m., in the East  
Wing, The White House, Mr. Charles E. Wilson, Chairman, pre-  
siding.

Present: Mr. Charles E. Wilson, Mrs. M. E. Tilly, Rabbi  
Roland B. Gittelsohn, Mr. Charles Luckman, Mr. Francis P.  
Matthews, Mr. James Carey, Mr. Channing H. Tobias, Mr. John S.  
Dickey and Mr. Boris Shishkin.

Also present: Mr. Robert Carr, Miss Frances Williams,  
Mrs. Merle Whitford, Mr. John Durham, Mr. Milton Stewart,  
Mr. Herbert Kaufman, Mr. Joseph Murtha and Mr. Jackson.

~~CONFIDENTIAL~~

President's Committee  
on  
Civil Rights

2

CONFIDENTIAL

P R O C E E D I N G S

MR. WILSON: The Committee will please come to order.

(From 10:00 a.m. to 11:15 a.m. was devoted to a Business Session, which was not reported, and at 11:15 a.m., Hon. Tom Clark, The Attorney General of the United States arrived)

MR. WILSON: We are delighted to have you with us this morning, Mr. Clark. You got us started off on our first day and now we would like to have you enlarge on the statement you made to us then as to ~~along what lines~~ <sup>how</sup> you would like to see our efforts directed, and <sup>to</sup> make ~~any~~ other suggestions ~~you~~ ~~care to make~~ as to how you feel we can make our operations more effective along the lines that the President has laid out for us.

STATEMENT OF HON. TOM CLARK

Attorney General of the United States.

MR. CLARK: Have you come to any conclusion as to what you might be able to do from a statutory standpoint in spelling out more specifically the rights that might be secured, or have you decided that that is a Constitutional question?

MR. WILSON: I think that comes within the range of Mr. Dickey's subcommittee. Would you want to express an opinion on that, Mr. Dickey?

MR. DICKEY: I think Mr. Carr could give a better answer

CONFIDENTIAL

President's Committee  
On  
Civil Rights

3

CONFIDENTIAL

to the question than I could, Mr. Chairman, but in so far as I have reached a personal conclusion on it - and I will let the Executive Secretary or Mr. Matthews speak for the rest of the group - I don't believe that there is an insurmountable Constitutional question there. ~~I say "insurmountable". It would not be insurmountable so far as I personally am concerned in offering the suggestion that legislation of that sort should be considered by the Congress.~~

MR. CLARK: Well, assuming that, I would say that you could render a great service by suggesting legislation that would enlarge the present Sections 51 and 52 of the Civil Rights Statutes so that those who engage in mob activity or lynching activity, as it is commonly known, might be found guilty of a Federal offense. In other words, as I outlined before, I think, the only way we can attach responsibility now under the statute is against some officer for failure to do his job or for activity in connivance with others to perform acts in violation of the statute.

The various anti-lynching bills, ~~I think,~~ as I remember, are largely aimed at officials, sheriffs or constables, or people engaged in law enforcement. I think there is a responsibility likewise on the individual that engages in activity of that type. I believe that if we could attach responsi-

CONFIDENTIAL

President's Committee  
on  
Civil Rights

4

aj CONFIDENTIAL

bility to individuals who join with others in lynching parties or mobs, you would have done a great service.

As to whether or not that ~~is a question that~~ can be solved through statutory amendment is a pretty close constitutional question, ~~as I understand it~~. Perhaps it is worth trying.

As I said, I am anxious to try to secure a case in which we can ~~try to~~ extend the doctrine of Federally-secured rights to a person's right to life and his liberty and his pursuit of happiness. Under the Slaughterhouse cases these are not Federally-secured rights. I am going to try to use ~~this case~~ <sup>the ~~Lincoln election~~ case</sup> in South Carolina as a guinea pig, you might say. If we could extend the Federally-secured rights to include life, liberty and the pursuit of happiness, you would be able to handle a situation of this type under the existing law.

I think, too, that your Committee can spearhead interest, in localities and communities, of the responsibility of the community to prevent uprisings of this type. I think that that is most important. Law enforcement largely depends on the communities. You can't legislate morals in the people; you have to educate morals into people. We have to, ~~I think,~~ cause communities to become more interested and more public-spirited in this regard.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

5

CONFIDENTIAL

I think we have made a great advance. The other night I was studying just what had been accomplished, -and I don't mean this personally, -since I became Assistant Attorney General and head of the Criminal Division in 1943, and it is surprising that most of the cases have occurred since that time. I am speaking now of civil rights cases. I ~~don't think~~ there have been but 30 or 40 in <sup>our</sup> ~~the~~ history of ~~the cases~~ that have been carried through the courts, and some 22 or 23 have been in the last four years. I think it is 25 in the last five years. So I ~~think~~ we have made great progress, and the history insofar as statistics are concerned, with reference to mob violence, shows that there has <sup>been</sup> great progress ~~been made~~ in the last two years. But I think we can make much more progress. We can insure to all groups the protection of the Federal Constitution if we can get life and liberty held to be a Federally-secured right.

I understand that you are going to make a report along that line, and I think it would be very helpful. I believe if you could interest organizations in it, ~~interest~~ I am ~~not trying to name any so as to eliminate others~~ but interest those who are public-spirited and who have a wide coverage, in trying to bring home to the American people the importance of this question, and their responsibility, you would be

CONFIDENTIAL

President's Committee  
on  
Civil Rights

6

CONFIDENTIAL

accomplishing a great deal.

We have a Bill of Rights, you know, that we depend upon, but very few people think about a Bill of Responsibility; they don't think about that at all. They think about what "my right" is, but they don't think about "my responsibility to you." We have got to spearhead that.

Again I refer to a personal experience, but you take the juvenile problem, I think we are now getting it spearheaded and drawing attention to it. The reason I say that is every day people come in to see me about some local juvenile problem. That shows that they are becoming conscious of the problem.

~~So~~ there you have, I think, <sup>an</sup> just ~~as~~ important ~~a~~ problem <sup>and</sup> ~~possibly~~ more ~~so~~ and one that has been neglected, - one to enforce the laws, the State laws. Every time you have one of these occurrences it violates a State law, either a murder or an assault if there is not a death, and it is surprising the lack of cooperation, and in fact the refusal to cooperate, as well as a specific intent to throw obstacles in the way of investigations, that we encounter when we go in to investigate this type of case. Education is all that you can do with reference to that, I think.

I believe that Mr. Hoover talked to you, and he outlined

CONFIDENTIAL

President's Committee  
on  
Civil Rights

7

CONFIDENTIAL

the details of the program we <sup>have</sup> ~~had~~ been following. The Department has had, ~~established~~, ever since Mr. Justice Murphy was the Attorney General, a Civil Rights Section ~~within~~ within the Criminal Division, ~~of the Department.~~ We have used the FBI as the investigative agency, as we always use it, for the purpose of ferreting out the facts, and we have found it to be very successful. From time to time there have been some obstacles thrown in the way of the FBI, but generally we have been able to get at the facts. We have found in some communities that they just won't talk, ~~that is all~~, like in Georgia. We had a Grand Jury down there in addition to quite a number of FBI men who had been on the job for several months, but we just couldn't get any citizens there to give us information, although we know they have it. We have, I think, two incidents down there now with reference to the treatment of a witness, a Federal witness, that may prove productive when we try them, which I hope will be next month.

In Tennessee we had a similar experience. We ~~have had~~ ~~similar experiences in some other places.~~ Then in other communities, like in the Woodward case, although we had all the facts, the juries would turn them loose. We had a similar experience in Louisiana two weeks ago, where we had, I thought, a pretty <sup>strong</sup> ~~good~~ case, ~~strong case~~, but the jury turned the

CONFIDENTIAL



President's Committee  
on  
Civil Rights

8

CONFIDENTIAL

defendants loose <sup>very</sup> ~~pretty~~ quickly.

So I think that you are going to find that education will be very helpful.

As far as the Department is concerned, we want to continue our activity, <sup>and</sup> we would like to have any suggestions that you may have. I understand that some <sup>members of the Committee</sup> are worried about the rule that Mr. Murphy put in when he was Attorney General, with reference to ~~the~~ clearance by the Department, or the Criminal Division, of investigations before the FBI <sup>can</sup> ~~could~~ go into an investigation of a civil rights offense. That was, I think, employed and is now employed for two or three purposes. One is so that you would have a uniformity of enforcement over the United States. <sup>There</sup> ~~It is a statute that is~~ <sup>are</sup> very controversial, and if we had a case down South that we did not know about in the Department, we might get a ruling that would be contrary to some case that we had in the East, ~~or something of that type.~~ So we try to bring them all to the same focal point.

Second, I have used it to emphasize prosecutions. For example, in other lines of criminal activity we have authorized the FBI to take cases direct to the United States Attorneys. ~~Then all we get in the Department of Justice in Washington is the case when it is filed in the courts;~~ we very often don't

CONFIDENTIAL

President's Committee  
on  
Civil Rights

9

CONFIDENTIAL

know about the investigation at all. That is handled by the United States Attorney on a local level. ~~then~~ We will, of course, know the progress of the case in the court, and the disposition of the case. Frankly these <sup>civil rights</sup> cases, if we handled them that way, would very often never reach the courts. We have quite a number of complaints, - I wouldn't want to venture a guess on the exact number, but I would say it would run 10,000 a year, - on these statutes, and if we left those to local clearance I believe that you would find that we would have fewer cases than we have now.

Another reason is that of course, with that vast number of complaints, we have to ~~sort of~~ clear out the chaff from the wheat, and in doing that we try to get the stronger cases. For example, now, in our effort to extend the Federally-secured rights doctrine, if we <sup>choose</sup> ~~choose~~ a weak case we <sup>would</sup> ~~would~~ lose our objective very quickly. If we <sup>choose</sup> ~~choose~~ a strong case, we <sup>will</sup> ~~would~~ possibly have a better opportunity to overturn the decided cases in this field. Of course, there is only one place <sup>where we can properly evaluate</sup> ~~that we would be able to compare~~ the cases, and that is here in Washington where we ~~would~~ have all the cases available.

So those are some of the reasons. I don't think that there has been any delay that has caused ~~any~~ harm, ~~to the case~~.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

[REDACTED]

10

CONFIDENTIAL

Of course, if the FBI happened to be in the vicinity at the time some occurrence came about, they would immediately go into it without any clearance at all, and then they would report it to me, as they very often do, not only in this line but in other lines, and then we would tell them to proceed. For example, in Tennessee we had a person over there before the murders were committed. The two murders were committed the day after our people got there. And in Georgia we had them there very quickly. I think you will find in most cases that expedition is the rule rather than the exception.

So I think that by bringing them here we are able to get a stronger policy. For example, in some communities, as I have said earlier, there is a tendency not to prosecute this type of case, and if we get the things here we can force them into prosecution. In the Woodward case, for example, I filed an information, or rather I requested the judge to permit us to file an information, because we felt that possibly a Grand Jury wouldn't indict. That case, aside from the national publicity incident to it, would never have come to the attention of Washington if we had not had this rule.

So while in most of these cases you will find that they do come to our attention because they are more or less publicized, the Civil Rights Section of the Department thinks

CONFIDENTIAL

President's Committee  
on  
Civil Rights

11

CONFIDENTIAL

and I think that it would be best to continue this clearance policy. However, I would be glad to get your reactions to it. Certainly I don't want to delay or cause any delay in the investigations of this type of case. If your study has indicated that there has been delay, I will be the first to set aside the rule, and it is within my power to do that. If there is any responsibility as to that, it is my responsibility as the Attorney General. So if you think that we should set aside the rule, I will be happy to consider that. I rather doubt if it would be best, but perhaps it would be, and I would be happy to have your reactions to it.

We also have in this Section a rule that we send out people to prosecute. Sometimes that <sup>is</sup> ~~resorts as a sort of~~ a double-edged sword. In some communities there is ~~just~~ an in-born resentment of Washington lawyers coming in. Now we don't send a Maine lawyer to Texas to prosecute; we usually send a Texas lawyer to Texas, or a Massachusetts lawyer to Massachusetts. But we have found that it is very helpful, and the United States Attorneys generally ask for some help. We have found it helpful because the people that we send out are well acquainted with the legal end of the case, and having had a vast experience in the field they are able to get more out of a case than a United States Attorney or an Assistant United

CONFIDENTIAL

CONFIDENTIAL

States Attorney who has handled mostly other types of prosecutions. This Section only handles this particular type of prosecution, so they have an every-day running experience in the field which is very, very helpful. This Section has operated very successfully insofar as it has been possible to operate, and I think that an examination of their record will show that they have been not only very diligent but most conscientious in their efforts to bring about an enforcement of these particular statutes.

I have been hearing of your work and of your hearings and meetings, and I want to congratulate you and say that I am most happy to hear of the good work that you are doing. I believe that you can accomplish <sup>a great deal</sup> considerable in the field, not only in the remedial suggestions that you might make with reference ~~not only~~ to legislation but to administration, ~~but~~ ~~that~~ your focusing of the attention of the public on the problem will do a vast good in the advancement of the ideals that we all have, that no one is above the law and that everyone will get equal justice under the law.

If there are any questions, ~~any of you have~~, I would be happy to attempt to answer them.

MR. WILSON: I am sure there must be questions.

MR. LUCKMAN: I would like to ask one, if I may.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

13

CONFIDENTIAL

You spoke of one instance in which you had a man actually present in an area before a murder took place. Do you feel in the Department that you have any rights, under the legislation today, to act in any way to attempt to prevent what you think may become a murder?

MR. CLARK: We very often do. For example, during the war we very often would hear of what you might <sup>call</sup> ~~call tension,~~ - ~~some people call it~~ race tension, - so I would get in touch with ~~some other~~ people in the various agencies - I was then Assistant Attorney General - and we would activate the agencies in the area in order to try to prevent it. For example -- ~~perhaps this should be off the record.~~

(Off the record discussion.)

MR. LUCKMAN: Under the statutes today, if you learned or had reason to believe on Tuesday that a lynching was going to take place on Wednesday, would you have the authority, for example, to move the people ~~who~~ you suspected were going to be lynched the next day, to another location where they might be safer?

MR. CLARK: Not unless they agreed to it.

MR. LUCKMAN: Who agreed to it, the parties involved?

MR. CLARK: Yes.

RABBI GITTELSON: Would you have the authority to alert

CONFIDENTIAL

CONFIDENTIAL

the FBI in that area?

MR. CLARK: I would. I ~~wouldn't say that I had~~ the authority, ~~but I would do it~~. I do it many times.

I know of one or two instances where the National Association for the Advancement of Colored People <sup>has taken</sup> ~~would take~~ protective measures, ~~like for example~~. One was in that Louisiana case where they took two of the witnesses, ~~I believe it was~~, away so that they couldn't be bothered. They made them available to us. They have been very cooperative.

MR. MATTHEWS: If the prisoner was charged with an offense against the State statutes, would you have authority in that situation to move the prisoner for the sake of his protection against possible mob violence?

MR. CLARK: No, we wouldn't have any authority to move a prisoner unless he was in our custody.

MR. MATTHEWS: That is what I thought.

RABBI GITTELSON: On this matter of clearance, Mr. Clark, I think all of us recognize the need for some centralization, and as you properly presented it, the need to exert pressure from a central office on the local offices. However, some of us, at any rate, after hearing Mr. Hoover at our last meeting, were a little disturbed about the delay in getting the FBI actually on the spot for investigations. Now Mr.

CONFIDENTIAL

CONFIDENTIAL

Hoover gave me, at least, the impression that in some cases the clearance moved so fast that he would be able to get in there and operate in 24 hours. That was given as an example of fast procedure. Now obviously, in 24 hours all kinds of clues can vanish, accidentally or otherwise. I, at any rate, ~~and I think other members of the Committee, are~~ <sup>am</sup> quite disturbed over that 24-hour to 72-hour, ~~let us say,~~ possibility of evidence vanishing. Would it not be possible to preserve all the benefits of centralization by insisting on immediate reports from the field to Washington, but freeing the FBI from the requirement which they/ apparently are operating under now, of clearing here in Washington through the Criminal Division before they can even send investigators out to get clues before they vanish?

MR. CLARK: If Mr. Hoover thinks she has been hampered in any way, I will correct it.

RABBI GITTELSOHN: I didn't mean to give the impression that he thought he was being hampered, but that, having heard his testimony, we wondered why it ought to take even 24 hours to get the FBI working on a case.

MR. CLARK: It shouldn't. If that is true, we ought to perhaps authorize them to make immediate investigations and reports to Washington upon the happening of any event or upon any leads that they might have, or sources that they might

CONFIDENTIAL



President's Committee  
on  
Civil Rights

16

CONFIDENTIAL

develop, that there would be a lynching or something of the kind. I will get together with Mr. Hoover and have that done. Certainly you are right, there might be some clues or leads destroyed in a 24-hour period, and we don't want that at all. The only purpose is to have the benefit of this central authority that we can use.

MR. TOBIAS: I was about to say that I think the Committee's Subcommittee No. 1, that is dealing with legislation, is taking into account the suggestion about Federally-secured rights. But after that has been done, and as useful as that may be, it is still true, ~~it will be true,~~ <sup>only</sup> that the exceptional cases will be dealt with under such a statute, ~~when it is passed.~~ That is still the responsibility for the maintenance of law and order, and the protection of individuals under the law would be a function of the State and the local community, where the thing happens. What concerns me is that somehow or other we have to get back to the cause underlying these attacks upon particular groups of people, minority groups. I think that the chief cause is the cheapening of the personality of these groups through practices of discrimination that go unchallenged. A man is lynched because the people in the community realize that it doesn't cost as much to do him to death as it does a representative of a group whose personality

CONFIDENTIAL

President's Committee  
on  
Civil Rights

---

17

CONFIDENTIAL

is up to par. Therefore, he is the easy victim. And until he has the right of participation in local and State government to the extent that he can have some say who the officials will be, then he is going to continue to be cheap and his life is going to be taken.

Now all of that involves another responsibility of this Committee, Subcommittee No. 1, and that is the protection of people in the exercise of the franchise, and the right to become participants in government if the elective franchise is sufficient to give them that privilege.

Now the threats such as we experience in Georgia at the present time, to participation even under the declared law, declared by the Supreme Court of the United States, are such as to make all the more evident the lack of power on the part of the group concerned to protect itself, even to participate.

I don't see how we are going to be able to take care of the rank and file who are kept cheap in that way because they, as someone has expressed it, are second-class citizens. We have a double standard of personality in American life. Now that is clearly illustrated in a clipping that I took out of a paper this morning. Here in the District of Columbia a young white woman elected to go to a school that is declared - and I want to ask you whether it is true that it is declared by

CONFIDENTIAL

President's Committee  
On  
Civil Rights

18

CONFIDENTIAL

law - to be a Negro school in the District of Columbia. The denial of that right to her to choose the school where she feels she will get the thing that she wants, upon purely racial grounds, in the District of Columbia, ~~it seems to me~~ ~~to~~ highlight the problem not only of discrimination but the basic thing that we are talking about this morning, mob violence, because it is quite clear ~~to me~~ that mob violence results, on the scale to which we know it in America, because of these people who are below the line, below par in the acceptance of their personality.

So that it seems to me that even in order to get after the right to live and to protection from the job, we have got to get after the right of every citizen to be on equality with every other citizen in those basic rights like education, those things that involve life, like jobs, and everything of that sort; that if we are going to do a thorough job and not a superficial job, we won't just be thinking in terms of an added statute that in an emergency might take care of a situation, but of our total structure as it affects minority groups, ~~that will come up in one shape or another.~~ For instance, when the South Carolina primary law is challenged, and I have no doubt that it will immediately, if the veto of Mr. Thompson in Georgia does not hold, come up there.

CONFIDENTIAL

CONFIDENTIAL

It isn't a direct question that I am asking; I am expressing a concern.

MR. CLARK: Yes. I think that discrimination is certainly one of the bases of the problem that you are studying, and that your conclusion with reference to trying to eliminate ~~it~~ is certainly justified.

lhg

CONFIDENTIAL

MR. SHISHKIN: On this question of discrimination, General Clark, I don't know whether you have had an opportunity to give any specific thought to this, but in one of the major bills that has been introduced, the Ives-Chavez Bill of 1947, the anti-discrimination bill, there is no provision expressly dealing with discrimination in federal employment, and it presents a question that is likely to come up some time in the construction of that legislation, as to whether the federal government, in invoking a national policy on private employment, does not have a direct obligation of taking some steps to enforce that policy in its own employment. I was wondering whether you had any thoughts as to the best way in which that problem could be met - by modifying the law or by providing Executive procedure?

MR. CLARK: Frankly I don't know of any discrimination in employment in the federal government. We have attorneys of all races in our Department; we have clerks of all races; we have stenographers of all races. Some of our best attorneys happen to be colored men. I know of two or three. One was a captain in the last war, a boy named Bellinger, I believe, in the Claims Division; and then we have another who works in this very section --

MR. SHISHKIN: Well, the Department of Justice has had

CONFIDENTIAL

hg  
CONFIDENTIAL

an excellent policy in that respect, but there has been a great deal of discrimination in federal employment elsewhere.

MR. CLARK: That could very easily be adjusted by the heads of the various departments. I don't think you need any additional legislation to accomplish that.

MR. LUCKMAN: You would lean toward an administrative solution rather than attempt to include it in current legislation?

MR. CLARK: I think you could do it much more quickly. Of course if you thought that a change of policy would occur when you had a change of executives, perhaps it would be good to put it in the legislation. However, it depends on the heads of the departments, as you well know. ~~Even though there were a statute on it, if I wanted to try to evade or avoid it, I can to some degree evade or avoid.~~ It depends after all on the individual that heads up or enforces the particular statute. So I think that after you got your statute it would still depend to a large extent upon the individual executive.

MR. SHISHKIN: But <sup>do</sup> you think that in the absence of a legislative enactment there would be room for an Executive ~~enactment~~ <sup>order</sup> by the President that would lay down a directive and place the responsibility on the agencies?

MR. CLARK: Well, of course President Roosevelt <sup>used</sup> ~~has~~ such

CONFIDENTIAL

President's Committee  
on  
Civil Rights

22

3hg

CONFIDENTIAL

an executive order under the War Powers Act, ~~which~~ <sup>was</sup> created the FEPC. As to whether or not it would be necessary to have an executive order by the President in this instance, I would like to study that. I know each individual executive in each department could very easily adjust it very quickly.

RABBI GITTELSON: The question has come up several times, Mr. Clark, as to whether, from the point of view both of prestige and of facilitating the work itself, it might not be advisable to make of the Civil Rights Section a division in its own right, within the Department of Justice. Would you care to comment on that?

MR. CLARK: You mean have an Assistant Attorney General heading that division?

RABBI GITTELSON: Yes.

MR. CLARK: Well, we have six divisions in the Department now. Each usually handles a specific type of prosecution. For example, we have a Criminal Division that handles criminal cases. We have the Lands Division that handles all cases with reference to lands, condemnations and things of that type. We have the Tax Division that handles taxes. We have the Claims Division that handles claims against the Government and claims that the Government might assert itself. We have the Alien Property Division that handles all alien

CONFIDENTIAL

hg  
CONFIDENTIAL

property. This would be a division within a division if you created a division. We have this unit ~~that is~~ now within the Criminal Division, which is ~~autonomous in that it~~ reports to an Assistant Attorney General, but from a practical standpoint they usually report to me. So an Assistant Attorney General would report to me likewise. I rather doubt if it would be of any assistance from the standpoint of prosecutions at all. You would have the same people doing the work. I think the matter gets down largely to the question of the individual. I believe we have in that section, ~~that unit,~~ people who are very civil-rights-minded, as we call it, and I don't believe you would be able to get any better people by having it as a separate division. You might get more publicity from the standpoint of having an Assistant Attorney General in charge of it.

MR. TOBIAS: It would add to its prestige, don't you think?

MR. CLARK: It would do that, yes.

MR. DICKEY: Mr. Attorney General, I have at the moment some reservations as to how far we ought to go in dealing with the specific language of statutes, but that is something to be determined as we go along, and I well realize that the head of a Department is not in a position, always, to comment

CONFIDENTIAL



President's Committee  
on  
Civil Rights

CONFIDENTIAL

24

on specific technical questions. But do you have any opinion, ~~any personal opinion,~~ on the possibility of reaching the private participant in a lynching which arises from the victim being taken out of the hands of an officer of the law, on the basis of a rough analogy to the Lindbergh Act, by writing a federal statute based upon a showing in the hearings and in the legislative record that the great majority of the unsolved lynchings are cases where men were taken out of the hands of a state officer, and that there is a considerable social history to suggest that there was <sup>connivance</sup> on the part of the state officer in permitting his prisoner to be taken away from him? ~~and yet you find it extremely difficult to prove that?~~ Now with that legislative history behind the statute, do you have any offhand guess as to whether it would be worthwhile attempting to set up a statute to reach the private participant in such a lynching by providing that federal jurisdiction attach on the presumption, prima facie, and a rebuttable presumption, that the prisoner was taken out of the hands of the officer of the law, for the purpose of getting federal jurisdiction on there, unless within a certain period of time the state has prosecuted or indicted someone for murder - I should make it clear that that wasn't the case - or unless in the course of the trial in which that person was prosecuted, he proves that there has not been connivance with

CONFIDENTIAL

President's Committee  
on  
Civil Rights

25

shg

CONFIDENTIAL

~~with~~ a state officer, or, <sup>ad</sup> in the case of the Lindbergh Act, that he did not cross the state boundary? Have you given any thought to that? I realize that you wouldn't want to render a legal opinion on that.

MR. CLARK: Is this record going to be published?

MR. WILSON: No, this is merely for the information of the members of the Committee.

~~MR. CLARK: I just didn't want to have my offhand opinions on the law published.~~

I would say in my thought about it - and I have given considerable thought to it - that we might attach federal responsibility there on the ground that this party was deprived of a trial, that he was deprived of the right of having a jury pass on his guilt or innocence. I am speaking now of the victim. Say that the victim is in jail and all of a sudden this mob comes <sup>and</sup> ~~and they~~ takes him out. Now as you say, very often there is connivance, <sup>yet</sup> very often we are unable to prove connivance. Of course the whole problem is eliminated if we can prove connivance. Then we can handle it under the present statutes. But we will assume that we can't prove connivance and there is no question but what this mob has conspired to deprive this person of a trial which he was going to have. Say that he was in jail because he murdered somebody, or com-

CONFIDENTIAL

President's Committee  
on  
Civil Rights

[REDACTED]

26

7hg

CONFIDENTIAL

mitted a rape. He is entitled under the Federal Constitution to a trial, and he is entitled to certain rights in that trial. I was hopeful that perhaps we might attach responsibility on that ground, and extend even the present statute, and I believe that we could certainly work out some verbiage that would amend that statute which would be helpful in the prosecution of that type of case.

What I would suggest, if it meets with your approval, is that I ask Mr. George Washington - not the Father of Our Country, but one of his successors - to collaborate with you on that. He is the Assistant Solicitor General. He and I have talked about this at length and he rather thinks that perhaps ~~there could be gotten up~~ some type of statute <sup>can be evolved</sup> that would stand the test of constitutionality.

MR. DICKEY: It seems to me that if we are to get at this lynching question, or at least at the public desire which led to the establishment of this Committee, that we have got to do more than just spell out the situation which permits you to get at the state officer who acts under color of law. Perhaps we can't get at it but it does seem to me that we have got to try to get at it if we are to meet the public desire which led to this effort.

MR. CLARK: I think the Congress may possibly create a

CONFIDENTIAL

8hg

CONFIDENTIAL

right there that would come under the present Constitutional guarantees, where you would not need a Constitutional amendment. I am sure that Mr. Washington would be glad to collaborate with you with a view to getting up the verbiage of such a proposal.

MR. DICKEY: Might I ask one further question in that connection? Do you feel that this committee is going to be able to render the best help on this particular aspect of the problem by getting right down to legislative language, or do you feel that we can operate more effectively by saying that we have considered the technical aspects of this problem and we recommend the consideration of legislation in such and such a direction?

MR. CLARK: I would say that you should suggest the general plan or the general yardstick, rather than try to suggest specific legislation.

MR. DICKEY: Thank you very much.

MRS. TILLY: May I ask you a question? There are many of these lynchings that occur after a trial. What then?

MR. CLARK: You may be able to take care of that in the verbiage of your proposed statute. You mean where a person has been adjudged guilty and is either in jail or out, pending an appeal?

CONFIDENTIAL

CONFIDENTIAL

MRS. TILLEY: In such a case and also there are times when a man has been pronounced innocent, and is freed and then mobbed.

MR. CLARK: I think you will find that most of these happen before they are tried.

MR. TOBIAS: That is true.

MR. CLARK: Perhaps we could work in your suggestion, Mr. Dickey, along with these others.

MR. DICKEY: I realize that you have the other approach there.

MR. CLARK: We should use all the avenues, all the things we have, to bolster up our statute, and we would use them, of course. ~~That does pose a problem which in some instances would be true.~~

MR. CAREY: What rights are accorded an American national travelling outside the boundaries of our country; what protection is accorded him by the Federal Government?

MR. CLARK: ~~Well, just~~ the usual protections of international law. We would protest to the other government if anything happened to one of our nationals. We don't have any police powers in those other countries.

MR. CAREY: Could we hold that government responsible?

MR. CLARK: Yes.

CONFIDENTIAL

CONFIDENTIAL

MR. CAREY: Couldn't we develop something, along the lines that have been suggested, that citizens of this country should be accorded at least the same rights and privileges and protection, travelling or maintaining themselves in this country, that our federal government accords our nationals when they are travelling outside our boundaries?

MR. CLARK: Well, I think that is largely dependent upon diplomatic relations, and international law. For example, if I were travelling in England and murdered somebody, I expect, I would get pretty summary punishment, assuming I was not the Attorney General.

~~But I think that is a suggestion we ought to look into. However, I think we have stronger grounds on which to base it. If you will study the trends of the decisions I believe you will find that there is a pretty good chance of prevailing, at the present time.~~

MR. CAREY: I am thinking in terms of the tremendous national appeal that existed say in the recent shooting down of some of our fellows in Yugoslavia. There was more excitement over that and more action by the federal government than is indicated when citizens of this country are lynched right here within our own boundaries.

MR. CLARK: Of course they were soldiers of the United

CONFIDENTIAL

lhg

CONFIDENTIAL

States, and that is somewhat different.

MR. LUCKMAN: It puts them in a different classification.

MR. CLARK: Yes.

MR. CAREY: I think the difference runs the other way. One is a peaceful citizen and the other is part of the armed forces. I am just thinking of the political aspects of it. I think that we should have at least as much, or more interest in the human life right here at home. We should have more control and greater ability to protect a citizen here than we would elsewhere.

MR. CLARK: We do.

MR. CAREY: I am thinking in terms of the federal government providing adequate opportunity for a local administration to protect its citizens, but failing to do so the federal government would have reason to expect some accounting for acts of violence against its citizens.

MR. CLARK: Don't you think that conditional statutes are unsatisfactory? I wouldn't condition it on local action. I would just ~~flat-footedly~~ <sup>flatly</sup> say that anyone who engages in this type of activity is guilty of a federal offense. If the state wants to move in there first, all right, let them do it. We have many statutes now that overlap, state and federal, ~~and we don't prosecute them when the state does in many cases.~~ For

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

31

ng  
CONFIDENTIAL

example, in the case of gambling and things of that type, the state very often handles that, or sometimes we might handle it, for example on a federal reservation, ~~or something like that~~. Or, if we have a man who has been convicted and has received a shorter sentence than we think he possibly should have received, and he has committed some state offense and the state asks us to release him, we very often do that for state prosecution. But I believe you are going to <sup>place</sup> ~~touch~~ your statute in very grave doubts when you make it conditioned on the activity or inactivity ~~on the part~~ of a state, because that is a question itself. Suppose the state moves in tomorrow morning and returns a "no bill" from a grand jury. That is what they will do. Then your whole federal statute is stricken down by these 16 men that are on this state grand jury, or 23 men, or whatever number they have on it - most of them have 16.

So I think myself we ought to make it just an affirmative offense ~~it~~ against ~~the United States~~ the United States. Then you have got the human element of an Attorney General of the United States, and a District Attorney or Attorney General of a State - and we usually get along fine, I don't know of any with whom I don't get along - and if they move in diligently and sincerely, -- <sup>we</sup> ~~we~~ have got enough prosecutions,

CONFIDENTIAL



President's Committee  
on  
Civil Rights

32

CONFIDENTIAL

~~I don't want any more if I can keep from it~~ -- I would rather do it on a local level because it would do more good on the local level than on the national basis. If you can get the local law enforcement officers to act quickly and diligently and sincerely, you can do much more good, and it builds up the community, and that is what I want to see done.

At the same time I wouldn't want to have my action depend upon some activity of a local officer because you are going to find that there is many a slip there, and it might look as if there was a lot of activity but there might not be any sincerity in it.

MR. SHISHKIN: Our subcommittee has been exploring the problem of the sources of <sup>support</sup> ~~activities~~ of some organizations that have been spreading hate and intolerance, and considering the problem of the possibility of reaching at the sources of their operation, ~~and one of those - I mean dealing with the spending and taxing powers of the federal government in application to such private organizations~~ and I was just wondering what your reaction in general would be to the denial of tax exemption to organizations that are placed by statute into a category of that kind, however the category is defined?

MR. CLARK: Well, I hadn't thought about it, but as a

CONFIDENTIAL

President's Committee  
ON  
Civil Rights

33

ang  
CONFIDENTIAL

general rule I don't believe in indirection, I believe in direction. You are trying to do something indirectly that you should do directly. I would like to go off the record.

(Discussion off the record)

RABBI GITTELSON: On that loyalty executive order there is some reason to feel that the civil rights of federal employees may be endangered by that order. Would you have any comments or suggestions to make as to how we can on the one hand protect the Government against disloyalty, and on the other hand not subject federal employees to the kind of witch hunt which would be clearly a violation of their own civil rights?

MR. CLARK: ~~Well, I hope~~ there won't be any witch hunt. Certainly any power that I have will be used to prevent a witch hunt.

There are three things in the order, I think, that would protect that. One would be with reference to the organizations that an employee should not belong to, like the Communist Party or some such organization as that, the Attorney General is supposed to declare whether or not those organizations are subversive, and if they are that is a ground for the removal of the employee who belongs. There we have to use very careful discretion; we have to be certain that the organizations that we do declare subversive are actually subversive,

CONFIDENTIAL

President's Committee  
on  
Civil Rights

34

15hg

CONFIDENTIAL

and we should use the same amount of proof in that regard as we would in a courthouse when we ~~do it~~ determine whether or not a man is guilty.

In the second place, with reference to your various government documents that the Joint Intelligence Staff has a right to designate as being Secret or Non-Secret, I think they have to use a little ~~more~~ more discretion than they did, ~~perhaps~~ during the war when they just had a stamp that said Confidential, or Secret or Super-Secret, or something like that. But your protection would be in the head of the department. We don't take away, in this order, the responsibility ~~for~~ the authority of the head of the department. When the Congress passes an appropriations act appropriating to the Department of Justice \$100,000,000 ~~to run the Department.~~ it is up to the Attorney General to see that that is properly expended, and that the Department is properly operated. So this order recognizes that and so, when it came up to him to determine whether a ~~party~~ <sup>man</sup> was not loyal to the United States, he would consider these various factors - just what organization the ~~party~~ <sup>man</sup> belonged to, and if the Attorney General had determined it to be subversive, ~~what his adherence to those principles were with reference to this particular employee.~~ If it involved documents of the Government, the type of docu-

CONFIDENTIAL

16hg

CONFIDENTIAL

ments and just what they were. And then, on top of that, if he decides against the employee, the employee can go to the Civil/Service Board and get a recommendation from it. It still preserves, however, the authority and the responsibility - that is the main thing - of the head of the department. If you don't do that a man can't run his department. You have to give him authority and you have to place the responsibility *on him* somewhere.

I know that soon after I became Attorney General it was suggested to me that we admit error in a case down here that the Supreme Court decided some two weeks ago, with reference to a New York lawyer. And I said no, that I thought we ought to carry it on through and just see the pattern, see just what activity we could take, what the Court would say about it. And we took it up and the Court of Appeals decided it here in the District, gave us a yardstick to go by.

So I don't think you need to worry about any witch hunts or any persecution under the order. I think, myself - and I am quite sure that a number of you think - that there has been perhaps a little too much hula-baloo, ~~unnecessarily~~, about the Communists *and* ~~and about the~~ subversive activities, ~~particu-~~ ~~larly~~ in Government. Frankly the reports that I get - and I get hundreds of them from the FBI and other agencies, in-

CONFIDENTIAL

President's Committee  
on  
Civil Rights

36

1952  
telligence services - indicate that in comparison to the number of employees in the Government there is a very, very small percentage that even have any subversive tendency, much less belong to Communistic or Fascist organizations.

(At this point Mr. Shishkin asked a question off the record, and the answer thereto, and the following discussion was also requested to be off the record).

MR. WILSON: General, thank you very much; it has been tremendously helpful and a real pleasure to have you with us.

MR. CLARK: I am glad to have been here and I hope you will feel free to call on me at any time that you feel I may be of assistance to you.

- - -

(Adjournment at 12:45 p.m. to 2:00 p.m. of the same day)

- - -

President's Committee  
on  
Civil Rights

ter

37

CONFIDENTIAL

2:00 p. m.

MR. WILSON: Ladies and gentlemen, we are very happy to have Professor Robert E. Cushman, Professor of Government at Cornell. We are delighted to have you come, Professor, and talk to us on this subject, which, as you know, we have been studying for some time; and we would be happy to have you make a statement, and we would like to have the privilege of asking you some questions at the conclusion of your statement.

STATEMENT OF PROFESSOR ROBERT E. CUSHMAN,  
PROFESSOR OF GOVERNMENT, CORNELL UNIVERSITY.

PROF. CUSHMAN: Mr. Chairman and members of the Committee, as you know, I am a teacher by trade; so if my statement sounds like a classroom lecture, that is the result of an occupational disease, and you will have to overlook it.

I want to make five points or comment on five different things in connection with your program, about which I know something in a rather general way through my previous association with your secretary, Mr. Carr.

My first point is that it seems to me that one of the responsibilities and opportunities of a Committee like this is to clarify and emphasize the constitutional limits upon the power of the Federal Government to protect individual civil rights. I think there is a tremendous amount of confusion of

CONFIDENTIAL

CONFIDENTIAL

mind on that point, evidenced by the steady stream of demands that Congress do things which it quite obviously does not have the constitutional authority to do.

Most of us, I think, tend a little to keep active in our thinking the old Theodore Roosevelt doctrine of new nationalism, that there ought to be a Federal power adequate to deal with any purely national problem, whether the Constitution has put it there or not.

Well, unfortunately -- or fortunately, whichever way you happen to look at it -- that doesn't happen to be good constitutional law; but most people are not aware of the fact that it isn't. They can't understand why these problems are not met by a head-on drive upon the part of the Federal Government.

I was impressed by that in reading the accounts of the FBI investigation of this lynching down in Monroe County, Georgia, last summer. I suppose it would be fair to say that nine out of ten people who read the accounts and read that the FBI was investigating that lynching went on from there to the easy and somewhat natural assumption that if the culprits were caught, the Federal Government do something about it directly and expeditiously, having no clear idea of the narrow legal basis on which the Department of Justice has to proceed under Section 52 of the Code.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

39

CONFIDENTIAL

I think, to sum it up, it is of very great importance that we get as many people to understand that there is a division of labor in our Federal system of government between the National Government and the States and that the National Government's powers in this area are as limited as they are.

Point No. 2 -- I think that your Committee should propose and strongly defend improvements in and strengthening of the existing civil rights statutes dealing particularly with matters which are safely within the recognized area of Federal power.

I gather from the President's Executive Order setting up the Committee that that was one of the rather specific things that it was supposed that the Committee would undertake to do. I don't see how this can be very seriously controversial. I have checked over the field to the extent to which I am familiar with it; the things that occur to me concretely are the improvements, supplementing Section 52 of the present Code, especially improvements which would eliminate the rather awkward limit on Federal power which resulted from the court's emphasis in the Screws case on the element of a wilful intent to abridge civil rights in the case of an indictment brought under Section 52.

There ought to be, I should suppose, an increase in the penalty attached to that statute; and perhaps, a general clarification and amplification of it.

CONFIDENTIAL



CONFIDENTIAL

It seems to me in the second place, the second point at which improvement is indicated lies in the area of sharpening and pointing up the statutes which deal with both private and official invasion of the right to vote, particularly in Federal elections, but in State elections in so far as Federal power extends into that field; and the principal implementation which seems to me to be needed there is to give the Department of Justice authority or power to go into court and get injunctive relief against invasion of the right to vote in advance, and possibly the right to proceed under the Federal declaratory judgment Act in suitable cases. Also ~~probably~~ some clarification of the status of primary elections. *is needed.*

I have not been able to persuade myself, as a student of constitutional law for many years, that much, if anything, in the way of concrete legislation can be made to hinge on the republican form of government guarantee in the Federal Constitution. Maybe some of the lawyers present would disagree with that, but I think that is a rather frail foundation for anything substantive.

Finally, I gather that the very rarely used section of the Code dealing with slavery needs some modernization to give it adequate coverage; but in that general area I should think there ought to be no serious difficulty in providing at

President's Committee  
on  
Civil Rights

J5

41

CONFIDENTIAL

least some further aid to the Department of Justice in more effective enforcement of the laws that they now have at their disposal.

Point No. 3 brings me to a whole series of highly controversial proposals for Federal legislation aiming to protect quite a wide range of civil rights. Here are the proposals with regard to lynching, Federal FEPC, a code of civil rights for the District of Columbia, anti-Jim Crow law affecting interstate transportation, an anti-poll tax law, and quite a variety of others that could be put into that category. Some of these seem to me to be controversial because of rather serious constitutional doubts as to the authority of Congress at present to legislate with respect to them in any very effective and direct way.

A good many of them are politically highly controversial. They aren't as far as I am concerned. I think I am in favor of every one of them so far as the policy and content goes, although I do have a good deal of doubt about the constitutionality of one or two of them.

I hadn't planned to discuss those because it seemed to me that the extent to which a Committee of this kind is likely to get into the consideration of them is going to involve a number of problems of strategy with which an outsider can hardly be

CONFIDENTIAL

President's Committee  
on  
Civil Rights

42

CONFIDENTIAL

familiar. I don't mind saying that I am a good deal of a realist about these things. I think that some of these things are politically impossible in any manageable period of time in the immediate future.

I am not sure that it wouldn't be my judgment that it would be unfortunate to propose in a definite and immediate way a good deal more than there was any chance of getting and thereby lose what seems to me to be pretty well within the reach of the Committee; but there again I feel I am talking about things that one outside your circle is not equipped to discuss with any thoroughness.

The fourth point, and in my judgment a point which I think is a vitally important point, is this: A Committee on Civil Rights set up by the President of the United States has a unique opportunity to focus the attention of the American people on the fundamental importance and value of our American rights and freedoms. I don't mean by that merely the little narrow list of things about which Congress can legislate. I mean the whole American tradition of civil liberty in all of its aspects.

The reason I feel so strongly about the importance of this particular aspect of the opportunity that seems to me to be yours is that I am convinced that there is an intimate and

CONFIDENTIAL

President's Committee  
on  
Civil Rights

43

J7

CONFIDENTIAL

inescapable connection between the preservation of rights and freedoms in this country and an intelligent public opinion. If you don't have a community opinion which supports laws or the administration of laws devoted to the protection of civil liberty, in the long run civil liberty is not going to be adequately and satisfactorily protected.

On the other hand, if you don't have civil liberty, you aren't going to have any mechanism by which you can hope to get a public opinion which amounts to anything -- so that the two things are bound up together.

I have felt for a long time and continue to feel very strongly that those of us who are not members of minority groups and who, perhaps, have no special axes to grind, ~~a very large~~ number of people who don't feel the pressure at any time of any conceivable invasion of civil liberties -- that group lose track of the fact that we have a tremendous social stake in the preservation of the American code of rights and freedoms. We tend to, ~~I think,~~ associate civil liberties and civil rights, the very terms, with minority groups, with people who are being pushed around for some reason or another, and very often people with whom we ourselves do not agree and perhaps aren't particularly keen on being associated with.

Furthermore, we have left in the main to the minority

CONFIDENTIAL

President's Committee  
on  
Civil Rights

44

CONFIDENTIAL

groups and the crusading organizations as much of the job as has been done of educating the American people about American rights and freedoms. We get very little of it on any other level.

I think there is a great distortion of judgment about the problem, which has resulted from that; which is why I feel so strongly the advantage of having the prestige of the United States Government somehow associated with a problem of this kind. I thought when the Civil Rights section was set up in the Department of Justice that just the fact that it was set up was of great importance, irrespective of what it accomplished.

I thought when this Committee was created, that again was an item in the building up of prestige and the focusing of national attention upon problems that everybody ought to have an interest in. Your report will accomplish a great deal in that regard.

It is very interesting to observe that the Supreme Court in a series of decisions in the past seven or eight years has been moving along until it now occupies squarely the position that the civil liberties guaranteed by the first amendment to the Constitution of the United States -- freedom of religion, press, speech, assembly -- <sup>are</sup> ~~that is~~ in a preferred position in our constitutional scheme of values, that they are of deeper and more vital importance than other clauses of the Constitution.

CONFIDENTIAL

President's Committee  
On  
Civil Rights

---

45

CONFIDENTIAL

So that if a law is passed which appears on its face to abridge any of them, the presumption is no longer in favor of the validity of the law; the presumption is against the validity of the law until it can be shown that there is a clear and present danger which justifies it.

What it adds up to is that the Court, at least, has moved into this position of recognizing the very high importance of these rights and liberties which form part of the American tradition. I think just for purposes of pure propaganda in dealing with governments which are not democratic governments, as the Soviet Union, we can't possibly overemphasize the extent to which we are bound to defend the civil liberties which form the basis of democratic government in this country.

I think this Committee has an opportunity it certainly ought not to lose -- and I am pretty confident it won't lose -- in just registering its own conviction of the importance of this whole area.

That leads me to my final point, which is that I very much hope that out of your deliberations there may come a proposal for some sort of a continuing organization on a national level, to which would be confided, perhaps, a somewhat general responsibility as an advisory agency to keep attention focused on American rights and freedoms, to keep on capitalizing the

CONFIDENTIAL

President's Committee  
On  
Civil Rights

46

J10

CONFIDENTIAL

prestige of the Federal Government as being actively interested in seeing that the people of this country understand what those rights and freedoms are and how important they are to the continuation of the democratic process.

I could conceive that a council or committee or some sort of organization, perhaps a civilian group operating through a paid staff, could keep going a set of interests and activities which would not subject them to criticism as taking sides in any particular controversy, but which would serve as a clearing house of information, an agency which might organize from time to time public conferences of leaders of thought in various fields connected with the general problem and which might conceivably carry on, perhaps, a certain amount of research either on its own or in connection with some of the research agencies here in Washington which are equipped to make studies on particular problems.

That is about the substance, Mr. Chairman, of what I have to say. It is not very impressive, but it summarizes my own immediate thoughts, at least, with regard to what I conceive to be your assignment and what you might possibly be trying to make out of it.

MR. WILSON: That is a very excellent exposition, Professor Cushman, and very helpful; and I am delighted that we

CONFIDENTIAL

President's Committee  
on  
Civil Rights

47

CONFIDENTIAL

have the record of it because I think it will be very helpful as we attempt to carry out this job which you have outlined.

I think, generally speaking, the Committee will find itself very much in agreement with what you had to say.

Now, have you questions for Professor Cushman?

MR. LUCKMAN: I have one, Professor Cushman, which I simply did not understand the meaning of. When you were listing the individual suggestions, I think under Point 3 you spoke of an anti-Jim Crow law affecting interstate commission?

PROF. CUSHMAN: Transportation. The follow-up of ~~that~~ Morgan Case.

MR. LUCKMAN: Yes.

RABBI GITTLESOHN: You mentioned the Supreme Court restriction by interpretation of what was probably the original intent of ~~Sections 1 and 2~~ of the post Civil War civil rights legislation.

Would you care to venture an opinion on what the prospects or chances would be of a more liberal Supreme Court interpretation if new civil rights legislation of that type were written and, of course, eventually came before the Supreme Court for a test of constitutionality? Do you think the change in the complexion of the Court in recent years would have any great effect on their interpretation of such laws?

CONFIDENTIAL



President's Committee  
on  
Civil Rights

48

CONFIDENTIAL

PROF. CUSHMAN: I don't know that I have any clear opinion about that. The point was a technical one and I think there is some reason to believe that the opinion which the Court wrote in the Screws case, which injected this pretty unworkable element into the picture of insisting that a jury be charged that if Jones beat Smith over the head, if he is an officer of the law, he must have had in mind when he beat him that he was violating his civil liberties or civil rights instead of just trying to beat him.

That makes it pretty difficult to do any business there. Well, the impression that I have is that what you got out of that was something of a compromise among members of the Court, <sup>by which</sup> and by getting that much the Court avoided holding the statute inapplicable altogether.

~~I wouldn't want to go to bat on that, but that I have~~ heard rumored around. I don't know of any possible way of anticipating what the Court would do with a new statute.

3- The word "wilful" is in the statute. It would be easy to take it out and see what you had left if you went into court on it, and you probably wouldn't know until you did. There is a disposition on the part, I think, of some of the Justices to keep in mind all the while that penetration of Federal authority into an area traditionally occupied by the States, and

CONFIDENTIAL

President's Committee  
on  
Civil Rights

113

49

CONFIDENTIAL

particularly in the field of the enforcement by the States of State law, is something that should move pretty slowly. I don't think the orthodox judicial slant on that is very friendly, to it.

Nevertheless, I would expect most of these specific changes which have been suggested in the present statutes to be upheld. The Court went pretty far in the Primary Cases, of course.

MR. TOBIAS: You spoke of what I think Cavour referred to as an enthusiasm for the possible. Take, for instance, the situation in the District of Columbia, the segregation policy here, which from some points of view would be politically impossible of eradication; yet it is just that kind of thing that makes it impossible for us to refer with emphasis in the working of our system, particularly when we have in mind certain governments of different ideology -- I think it is important, and my whole enthusiasm for the work of this Committee is that it shall lift American prestige in the world, which these practices are making it impossible to do.

It will be a difficult thing to bring about a change, for instance, in the segregated public school system of the District of Columbia, but it is a standing reflection on our American democracy that we have adopted in the nation's capital

CONFIDENTIAL

President's Committee  
on  
Civil Rights

50

CONFIDENTIAL

the least desirable pattern of education. It seems to me that even though that might be classified among the politically impossible things, that we ought to have an enthusiasm for it, anyhow.

PROFESSOR CUSHMAN: I am not sure I wouldn't go along with you on that particular issue, partly because I don't <sup>think</sup> know that it would have the same kind of ramifications ~~outside~~ that a frontal attack on a nation-wide scale might have. Of course, there is nothing that I resent so much in this whole field as the fact that this is a Jim Crow town. It just burns me up.

What I had in the back of my mind was that, as you say, --- you quote Cavour -- I usually quote Burke, who told the House of Commons once:

"I hope I shall never fail to do a proper thing because there is something else more proper which I am unable to do."

That is a reasonably sound practical bit of philosophy. In any event, I was merely drawing attention to the fact that it is possible for a set of proposals to get into a context where you just are going to have them scrapped.

I was a member of the staff of the Brownlow Committee, the President's Committee on Administrative Management, back in 1936. When that job was done, I am firmly convinced that Congress would have passed most of that program. Very little

CONFIDENTIAL

President's Committee  
on  
Civil Rights

51

CONFIDENTIAL

of it was controversial on any serious basis. Mr. Hoover, Governor Lowden, Mr. Landon had all promised to come and testify before the appropriate committee. Two weeks later the President sent his Supreme Court <sup>proposal</sup> to Congress. When that fight was over, he couldn't have gotten the reorganization of the National Screw Thread Commission out of Congress. The whole thing was just wrecked by being associated with something else which had been resented.

Now, maybe that is a philosophy of timidity, and I am not expressing a judgment about it. Frankly, I don't know what I would do if I had responsibility in a matter of this kind. I don't think the Committee ought to ignore these issues. Whether it should make specific proposals for immediate action would be a matter that would seem to me would be one of the most difficult problems you would have to deal with. To simply say this law ought to be passed right away -- maybe it should be.

RABBI GITTLESOHN: What are some of the things you feel are politically impossible on the list you gave us? You said some of them are politically impossible.

PROFESSOR CUSHMAN: Maybe none of them are. I don't know whether a national FEPC is or not. I think that is getting into the general field where it is within possible shooting

CONFIDENTIAL

CONFIDENTIAL

distance of your getting a kind of support for it which you didn't previously have. Of course, I think the anti-poll tax legislation is <sup>quite allowable</sup> ~~thoroughly~~ bad. I happen to be one of the constitutional lawyers that has very grave doubts about the constitutional power of Congress to legislate poll taxes out of existence. And the same about any thorough-going anti-lynching statute. I think you can go part way in dealing with lynching. You can improve the legislation with which you deal with conspiracies and mob violence, if you can draw in some officer.

I don't think there is any sound footing for an anti-lynching statute which simply moves in and makes it a Federal crime to kill somebody by lynching him. That is my own opinion.

MR. SHISHKIN: ~~Apart from the political concern, there are two phases to this question with regard to the political limitations; but~~ as to the constitutional doubts, you feel that the anti-lynching and anti-poll tax statutes are the ones about which there might be ~~a constitutional~~ doubt?

PROFESSOR CUSHMAN: Yes.

MR. SHISHKIN: I think it is important for our Committee to know the limitation.

PROFESSOR CUSHMAN: I don't think there can be any serious

CONFIDENTIAL

j17

CONFIDENTIAL

doubt about the constitutionality of a properly drawn FEPC statute based on the commerce clause. I mean if the Fair Labor Standards Act is good constitutional law, I don't see why the basis of objectionable employment conditions shouldn't be extended, if Congress wishes to extend it, ~~and~~ certainly the Congress has full authority over the District of Columbia, ~~and~~ if Congress wishes to establish a policy of non-segregation on all interstate carriers, there can't be the slightest doubt about its authority to do so. That would be my feeling.

Those two are, in my judgment, dubious. I hasten to say that lawyers in whose judgment I have very great confidence disagree with me about that, so maybe it is worthwhile to try them out and see what you can get out of the Supreme Court in order to be sure.

MR. LUCKMAN: That is one thing you can be sure of.

PROFESSOR CUSHMAN: Yes.

MR. SHISHKIN: What is your feeling with respect to the proposal for a Federal law that would require private organizations whose activities might affect civil rights of citizens to disclose the sources of their financial backing?

PROFESSOR CUSHMAN: I am in favor of it. I am in favor in general of this general policy of disclosure all along the line. ~~Probably a lot of organizations that haven't anything~~

CONFIDENTIAL

j18

CONFIDENTIAL

to do with civil liberties. <sup>My</sup> my reason for feeling as I do is that if you think about the process of forming a public opinion in this country at the present time, you can no longer think of it in terms of Holmes' epigram about truth competing against falsehood in the market place.

You have these propaganda organizations, and a good public relations man will tell you if you will pay him a certain amount of money, he will sell any idea to the American people that you want to buy and have presented to them.

In a context of that kind, how are you going to get any protection <sup>of</sup> to the integrity of a public opinion emerging from ~~that~~ clash of highly charged propaganda campaigns? Well, maybe the disclosure of who is paying for them and what is back of the organization that is putting the campaign across may not be too useful, but it is a little help. After all, if you do know who is paying for an onslaught on the public eye and ear and what sort of an organization it is, that at least helps you make up your mind as to whether it is a crowd you want to go along with or whether you don't.

I can't myself see any reason why one should seriously object to it. I realize that many organizations do, but on the whole I feel that we are bound to come to it sooner or later just in self-protection, just in order to know where these ideas

CONFIDENTIAL

President's Committee  
on  
Civil Rights

55

CONFIDENTIAL

come from, which we know somebody is paying somebody a lot of money to disseminate.

The American Civil Liberties Union, I gather -- I have had some correspondence with Roger Baldwin about that -- I ~~think they are~~ divided, ~~their ranks are~~ pretty badly divided on that point, but my own opinion is very firm on it.

DR. DICKEY: If you did have responsibility and you had to choose where you were going to throw your effort, where would you throw your effort in this whole field of civil rights?

PROFESSOR CUSHMAN: You mean from the standpoint of looking at it as a member of this Committee or just in general?

DR. DICKEY: Well, to make it easy, as a member of this Committee -- or to make it difficult, perhaps. I am very much impressed with what you say myself that we may have to choose here in emphasis as to what needs doing most first.

PROFESSOR CUSHMAN: Well, I think -- without repeating myself -- I think that certainly there couldn't be any question about the proposal of improvements in the existing legislation. I can't see that anybody could object to that.

DR. DICKEY: You mean attempting to meet the difficulties of the Screws case? That would be a pretty small mouse to turn this Commission loose on, would it not?

PROFESSOR CUSHMAN: Yes, maybe so, but certainly that much--

CONFIDENTIAL



President's Committee  
on  
Civil Rights

56

CONFIDENTIAL

there wouldn't be any disagreement that that ought to be part of your program. At least, that would be my feeling about it.

I confess that I feel the educational potential in this is as important as anything you are likely to do. I mean if the thing could be implemented satisfactorily, it seems to me that the presentation of a report that focused attention on the whole broad field, whether you came out flatfootedly in favor of a particular statute, ~~civil rights statute~~ or not, the emphasis on the general importance of broadening the information of the American people about these subjects and the intention of trying to see that that was kept going seems to me to have more possibility of paying dividends than almost anything else you can do.

I don't think Congress is going to pass an FEPC statute because your Committee commends it.

I have no objection to your recommending it, and I hope Congress will pass it, but my own feeling is that to get national attention focused on some of these problems is of very great importance.

DR. DICKEY: Do you think that a civil rights statute for the District of Columbia would stand as high as any other vehicle in importance that we might use to focus national attention on these questions?

CONFIDENTIAL

CONFIDENTIAL

PROFESSOR CUSHMAN: I think you are probably right. Yes, I think so.

DR. DICKEY: Of course, that leads you, I suppose, right into the suffrage issue, doesn't it?

PROFESSOR CUSHMAN: Yes.

~~MR. WILSON: Leads into what?~~

DR. DICKEY: Suffrage.

MR. WILSON: Oh, yes.

PROFESSOR CUSHMAN: I am not sure that I know just what you have in mind there. Of course, on the suffrage issue, I think the present civil rights statutes do need some further implementing and revision in order to stiffen up what the Department of Justice can do in the existing area which it now occupies. If you have in mind --

DR. DICKEY: I had in mind the suffrage problem in the District of Columbia primarily.

~~PROFESSOR CUSHMAN: I am not too sure I know exactly what it is.~~

~~DR. DICKEY: That is, the District does not have a vote.~~

PROFESSOR CUSHMAN: Yes, yes, ~~very~~ of course. I was thinking in terms of Negro suffrage in surrounding territory.

Of course, I have never been able to understand exactly why the District of Columbia shouldn't have suffrage on some

CONFIDENTIAL

CONFIDENTIAL

basis or other. I don't know why it shouldn't be a point that a Committee like this might well consider.

DR. DICKEY: We have been told by some that you won't get civil rights in the District until you get suffrage for everyone. Then, on the other hand, we are told by others that if you get suffrage for all, you can just put it down you are not going to get civil rights.

PROFESSOR CUSHMAN: I hadn't been thinking about that particular problem in this context at all. I think it probably belongs here, however.

RABBI GITTLESOHN: Dr. Cushman, I am very much interested personally in your suggestion that we try to make this a continuing effort rather than let it die with the expiration of this Committee. I think all of us are pretty well convinced by now that at best we will be able to touch only a small segment of the total problem.

Do you think the pattern of the White House Conference for Children, for example, might be fruitful for a continuation of this kind of work on a similar basis?

PROFESSOR CUSHMAN: I am not familiar with the detail of that, but something of that sort -- I hadn't really thought the thing through in my own mind.

It would seem to me it ought not to be a governmental

CONFIDENTIAL

President's Committee  
On  
Civil Rights

59

CONFIDENTIAL

enterprise, <sup>which</sup> ~~mean~~ another bureau or <sup>office</sup> ~~part~~ of the United States Government. As soon as you give it that status, you would rob it of a very large part of any influence it might have.

RABBI GITTLESOHN: But it should have government sponsorship?

PROFESSOR CUSHMAN: Yes, by all means, but it ought to be composed of a representative group. There should be drawn into it <sup>the</sup> planning and management, a representative group of distinguished citizens such as such a group as this, probably not as large as this if it were to be a continuous working agency.

Perhaps the results would be a bit intangible, but there are a lot of things that could be done. The lack of understanding in this area is really appalling, and we are tending to lose civil rights simply because people no longer appreciate that they have existed and are worth doing anything about. While I don't think the Government can engage in propaganda, it can engage in an educational program on a dignified level, which would seem to me to produce results.

MR. SHISHKIN: Professor Cushman, there was one point that was brought out in some of our discussions with respect to restrictive covenants, particularly that phase of it where the restrictive covenant might be used as a device to support the price of the property or enhance the value of the property

CONFIDENTIAL

CONFIDENTIAL

through conspiratorial methods. Perhaps there is a further limitation on the area we could reach by directing it to the point where the holdings might be large and might have interstate aspects, such as insurance companies or banks or other large holders; but starting at this easy point of that limited application, do you think anything might be done by reaching it through the anti-trust laws technique?

PROFESSOR CUSHMAN: You mean here in the District?

MR. SHISHKIN: I meant nationally.

PROFESSOR CUSHMAN: I hadn't thought of it. I hadn't supposed that these covenants were of such scope that they would be brought within any sphere of interstate commerce.

MR. SHISHKIN: Only in so far as <sup>large</sup> holdings were concerned, but there are situations which might be placed within the area of monopolistic practice involving real estate, and I was just wondering whether you thought that was beyond our reach completely or whether there might be some means of dealing with it federally.

PROFESSOR CUSHMAN: It is not a problem that I know anything particularly about. It doesn't offhand seem to me to be very promising, but there might be something in it that I don't see.

MR. CARR: One other matter that has come up again and

CONFIDENTIAL

President's Committee  
on  
Civil Rights

61

25

CONFIDENTIAL

again is the use of <sup>the</sup> taxing and spending powers to withhold subsidies or tax exemption privileges from organizations, public or private, <sup>which</sup> ~~who~~ practice discrimination or in other ways threaten civil rights.

How promising an approach does that seem to you to be?

PROFESSOR CUSHMAN: Well, there is certainly a potential weapon there. We will know a little more about it, perhaps, in another year or so in New York. We have been having a battle up there for quite a little while, trying to get some legislation like that through the New York State legislature. I don't believe it passed.

MR. TOBIAS: No.

PROFESSOR CUSHMAN: I am not too convinced that a great deal is likely to be accomplished by that method, ~~but~~ it is very difficult to enforce, as the New York experience seems to indicate.

Of course, theoretically we have a statute in New York which would seem to be adequate to deal with that problem, but when it comes to picking out the institutions in New York that receive tax exemptions and are discriminating on the basis of race or creed, nobody seems to be able to pin anything on anybody in particular. That is the general impression.

If you tried to do that on a national level -- there is

CONFIDENTIAL

j26

62

CONFIDENTIAL

unquestionably a weapon there. I am not sure it isn't a back-handed way of coming at the problem, but it might be useful to experiment with it.

MR. WILSON: If it could be made to work, it would be a truly effective way.

PROFESSOR CUSHMAN: Yes.

MR. WILSON: Because it would cover so much ground.

PROFESSOR CUSHMAN: Yes.

MR. WILSON: The use of Federal funds or Federal funds withheld.

DR. DICKEY: The New York legislation that you refer to--- does that relate to withholding of State funds?

PROFESSOR CUSHMAN: Tax exemption. I think it is a fairly old statute.

DR. DICKEY: Property or income? Income tax?

PROFESSOR CUSHMAN: Property. I don't think these institutions would pay any income tax.

DR. DICKEY: I was thinking of contributions by an individual to the institution.

PROFESSOR CUSHMAN: Merely an assessment on the real estate.

RABBI GITTLESOHN: That is right.

MR. WILSON: In New York State, if I am not mistaken, in institutions -- we will just call it an orphanage as an

CONFIDENTIAL

CONFIDENTIAL

example -- if it is going to get State funds, it can not discriminate, as I understand it. And recently there has been an attempt made, I believe, to make that stand up. And institutions that formerly did discriminate on the grounds of race or creed have had to change their practices.

PROFESSOR CUSHMAN: Yes.

MR. WILSON: I do know there are institutions in New York State that have had to right about face on the subject of discrimination. I happen to know one of them.

MR. TOBIAS: The proposed bill was to make that applicable to private institutions as well.

MR. WILSON: This has to do with any private institution or semi-private institution receiving State funds, and nearly all of them do receive a certain amount of State funds, as I understand it.

MR. TOBIAS: Tax exemption would be that in another form.

MR. WILSON: That is right, just another form of it, but somewhere along the line -- and I think we ought to find out about it in New York State -- teeth must have been put into that situation the last few years because there has been a considerable change. It may be a lever that we could use to the desired end.

MISS TILLY: Does the New York law take into account

CONFIDENTIAL



j28

64

CONFIDENTIAL

deductions of income for gifts to these institutions?

MR. WILSON: So far as I know, it does not. It is simply the receipt of State funds. If they receive State funds, at all ~~May a tax question?~~ then they must not discriminate. I think within the last few years there has been considerable activity concerning that. I think we ought to find out more about it and what has caused the change, if any.

MR. TOBIAS: ~~Part of it has been the threat of such~~ legislation.

MR. WILSON: Probably. It might be a lesson for us.

PROFESSOR CUSHMAN: There was an action -- you probably noticed accounts of it in the press -- an action started against Columbia on that basis. They didn't succeed, apparently, in proving discrimination on Columbia University. What I gathered was at stake was the exemption of the Columbia University property from taxation.

MR. WILSON: I think in Columbia's case that was the threat. Have you any other questions for Professor Cushman?

If not, we will excuse you, sir, and thank you most heartily because I think you have been tremendously helpful to us and stimulating in your suggestions.

PROFESSOR CUSHMAN: Thank you very much for the opportunity. I enjoyed it a great deal.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

65

CONFIDENTIAL

MR. WILSON: Ladies and gentlemen, this is Mr. Victor W. Rotnem, who was the former Chief of the Civil Rights Section, and is now a practicing attorney here in Washington. We are delighted to have your views on this subject, which we know is one close to your heart, sir, as it is to ours; and we would be glad to have you, if you will, give us the benefit of any statement that you care to make on the subject, and then we would like the privilege of asking you some questions when you finish.

STATEMENT OF VICTOR W. ROTNEM,  
FORMER CHIEF, CIVIL RIGHTS SECTION,  
WASHINGTON, D. C.

MR. ROTNEM: I am quite impressed to find a group like this meeting on these problems. I know that you have, I am sure, hundreds of thousands of people interested in seeing to it that something real by way of a future program comes from your deliberations.

I have wondered much how I could be most helpful, having seen the work of the Section during the full war <sup>period.</sup> It is hard to make clear what we tried to do, unless we orient ourselves into the field of criminal law because we, of course, were a functioning unit, ~~more than a unit,~~ of the Criminal Division.

The Criminal Division in Justice certainly has a large

CONFIDENTIAL

President's Committee  
on  
Civil Rights

66

CONFIDENTIAL

share of the toughest, dirtiest problems that come before the Government. After all, it is their job -- a group of specialists -- to fill the Federal prisons. When you came to look at the criminal law, as it affected civil rights, you, of course, found great differences of opinion among the United States Attorneys, ~~a vital part of the criminal field~~ as to what was and was not a good criminal case.

The appraisal of a criminal case, I am sure, is as difficult a job as any civil servants in government have to do. The judgments that must be made as to whether or not this is a case, whether or not these people merit the punishments that are provided in the criminal statutes, <sup>are very hard</sup> ~~are~~ matters of that ~~kind~~ <sup>to make</sup>.

Now, I am sure you have had explained to you the history of why in the criminal field of civil rights there was almost from the beginning of the Section a control at the chief's desk as to investigations -- that is, the direction of them -- the direction of the case as it proceeded to the grand jury and from there to trial, looking at the process that goes on in relation to an estimate of a case, you have a bunch of mail, first, that comes in to you, or people come to see you with complaints. From that you must decide which matters merit FBI investigation.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

67

CONFIDENTIAL

*not* Some of the best cases originally came on a penny card -- usually from the South -- but a penny card anonymous. Great mistakes were made and can easily be made in sometimes investigating a matter which didn't merit investigation. *I* I am sure all of you have had some experience some way or other with the Federal Bureau of Investigation.

If you haven't, imagine yourself in a small town and agents come to investigate a problem such as a typical civil rights problem, or suppose you are the town banker and they are looking into some phase of your income tax. Does that investigation get around the town in a few days? It certainly does. The better investigations were always those where we had the benefit of not too much publicity, not too much fanfare, not too much overconcern about when we had started investigating; so that we might through the agents obtain those fundamental pieces of evidence that are required for conviction in a criminal case.

One of the greatest difficulties we had was that a civil rights case was usually so interesting, concerned so many people, that well-meaning folk would run stories in the press, would come to see us, run to the newspapers after they had seen us, petitioning us, urging us to investigate. Many a time it was wisdom to pretend that we were still considering investigation and to let it be known that we had started to investigate

CONFIDENTIAL

j32

68

CONFIDENTIAL

about three weeks after we had begun, so that we might have that advantage of operation before souvenir hunters, and what not, were in the field poking around.

*with* Many times have best-meaning amateurs gone into a southern area meaning to help and actually hindered more than they knew. ~~It is all natural~~ when you stop to mull it over, those ingredients at the beginning of a case.

One job that we never did satisfactorily do was to explain to the public the difference between the ordinary procedure of a grand jury in a State process as opposed to the preferable Federal system. The Federal grand jury, especially in our cases, was rarely a good vehicle for investigative purposes. How anyone could expect 24 ~~well selected~~ *admittedly* -- but ~~24~~ average people sitting in a room to suddenly be learned in the art of investigation -- it just doesn't work that way. Accordingly, the best criminal cases -- certainly it was true of every one of ours that came to indictment and ~~conviction or~~ trial -- ~~that case was~~ *were* so thoroughly prepared by investigation before we went into the grand jury room that we could have ~~tried in the average situation~~ *tried* the very next day. Of course, the very next day was the best time to try that case also.

Any criminal case is best if, as we say, it doesn't get too old and have whiskers on it. Take the first lynching

CONFIDENTIAL

President's Committee  
on  
Civil Rights

69

CONFIDENTIAL

indictment in Mississippi during the war, which was a surprise to almost all of us. The fact that a grand jury in Mississippi would indict under a lynching theory -- they did. ~~But~~ that grand jury would never have indicted had they met the second day. They met, they heard this terrible story, they took a vote, and they voted the right way. Had they gone home and met again the next day, there would have been no indictment.

The only exception I know of where there was a long drawn out process was in Detroit in the Sojourner Case. There we did slave for weeks with the grand jury, and an indictment was returned finally. That was an exception. There was quite an affair during the war. I don't know if you all remember it, but it was in New Iberia, Louisiana, a terrible situation. A book was written about it later. Several prominent Negro professional men had to leave town overnight. I don't know whether any of them have dared come back even now.

It was so involved and we did deliberately try to supplement the FBI investigation with several days of grand jury. Maybe the result was good. The report they issued, or the stories that came out -- I am inclined to think, however, we would have done better had we used the process of Mississippi -- had we not been so much the sociologists as the criminal lawyers and pushed for that indictment, indicted, and put the defendant to

CONFIDENTIAL

President's Committee  
on  
Civil Rights

70

CONFIDENTIAL

trial. When you do that, I assure you you can't always be too fair. Any criminal prosecutor who has much success in the arts of getting indictments and getting convictions, I imagine as you look at him, talk to him, every once in a while you sort of conclude that part of the reason this man has success in his field is somewhere or other in his make-up there is a slight touch of the gutter. He can't be too concerned always, if he is looking for results.

I know that is very, very dangerous, and yet I am trying to give you that picture of the necessity of sometimes, if you want convictions, of using the artifices, using the things that, of course, well-trained criminal lawyers use just as the defense lawyers; and we have to admit when we get into this field that we are in the arena with one side bringing forth their best and the other side doing the same.

If you are going to use the criminal process in this field and if you want success, you have to bow to giving the criminal prosecutor a certain leeway. You can't hold him to too strict a standard, in other words.

Now, an interesting thing occurs when, as in civil rights cases, quite often you select a case because you see in it an excellent opportunity to test a question of law in the Supreme Court. Now, how is that done? In the criminal case if there

CONFIDENTIAL

President's Committee  
on  
Civil Rights

71

CONFIDENTIAL

is an indictment and then the defense demurs, it is possible to have a direct appeal to the Supreme Court on a constitutional issue. It is one place where the Government, so to speak, gets a break in the process.

So in a few months you are in the Supreme Court on this issue of law.

The other way, of course, is that the defendant loses and appeals and it gets there as in Screws. Now, the average lawyer for the defendant is entirely too smart to demur and let us go to the Supreme Court because he knows that the chances are <sup>four to one</sup> ~~4 to 5~~ that if he will put us to trial, he will win a <sup>acquittal.</sup> ~~civil rights case in the South~~. But I guess there are many lawyers, however, who are magnetized by the opportunity ~~to~~ themselves to go to the Supreme Court on an issue. It was surprising how many of these cases did by this process go to the Supreme Court.

Then, however, you have a very interesting debate with yourself sometimes because in a civil rights case you may have the finest opportunity to get this test of law, as, for instance, in the Classic Case, which the Criminal Division had been working ~~on~~ for 20 years to have an opportunity to shoot at.

Now, the Classic Case was not a strong case. Really if you knew its facts, you would not be unreasonable if you were

CONFIDENTIAL



President's Committee  
on  
Civil Rights

136

72

CONFIDENTIAL

10- to say it was ridiculous to indict in that case; and yet by indicting, you had this issue, which went to the Supreme Court, and you had one of the great cases of the Twentieth Century.

So as the lawyer directing such a case -- and your superiors, who let you go with such a case -- you have to make that delicate judgment whether in spite of this being a weak case you are justified in going with it because of the importance of the question. That is a hard question to settle if you appreciate what a criminal indictment does to a man's record for the rest of his life. Poor Patrick Classic, I suppose, wherever he goes has this indictment staring him in the face and he will have to explain it between now and his death and after him, his children.

The other field where tests came in the Supreme Court, where the Section assisted, was in briefs amicus where in a civil case, usually a damage case, usually brought by one of the great groups, the Civil Liberties Union or NAACP -- in the final appeal, if the Solicitor General approved, the Government would file a brief and assist in the strategy of the case.

In that regard in the Department ~~it~~ it always has been this way and naturally always will be -- the number of briefs amicus that go to court entirely depend on the policy of the Solicitor General. Mr. <sup>Fahney</sup> ~~Fay~~ was very helpful in my work when

CONFIDENTIAL

j37

73

CONFIDENTIAL

I was in the Department. You could always talk to him about any case. However, he was not in favor of too many briefs of this type. His policy was very few. ~~Others would go to the other extreme and almost overdo it.~~ That, of course, the Section can't do much about. I think we petitioned for eight and received one while I was there. And yet I couldn't feel hurt about the negative decision of any one of them. There was a real difference of opinion.

For instance, one that I worked hardest to get was the Jehovah's Witness ~~case~~ <sup>Sainte</sup> Flag Case. It wouldn't have made any difference if a brief had been in there or not. We thought so at the time, but when it was argued and all the briefs were in, I must admit they had covered every point ~~and~~ very well. *But* ~~we~~ <sup>we</sup> would have liked to have felt we were in there doing something.

One method, ~~of course~~ <sup>the</sup> that ~~a~~ <sup>the</sup> section ~~such as~~ <sup>could</sup> that can use, although it runs largely to the bar, <sup>was</sup> is the writing of law review articles on points of law that ~~come up, as they work on~~ cases. We did much of that, and that work is continuing.

*So* I think to the lawyers in such a section there should be a constant encouragement toward such kind of work, that it should be as much of a feather in their hats as a conviction would be.

CONFIDENTIAL

President's Committee  
on  
Civil Rights

74

CONFIDENTIAL

And also in the Political Science Quarterly some of the topics are, perhaps, better put there, and I think you have had a sample before me of one political scientist who was pretty darned interested in this field and pretty darned good, Professor Cushman. A whole lot of very effective educational work could be done by better informing the political science professors as to what the problems are in civil rights, including an understanding of what the problems are of men in Washington who try and do the practical work.

Convictions in civil rights cases in the South -- and practically every case was in the South, of course -- were had after we developed a group of southern trial lawyers. I never sat in a southern court room while any of our cases was being tried. If I had, as chief of that Section, it would have been a story and they would have been trying me. I would have hurt the case.

I did a few times sit back in the United States Attorney's office and try to keep my presence in the city quiet. I think the average prosecutor from Washington in a civil rights case is much wiser to conduct himself in that way unless he can become part of that community. Maynard Smith is one of the most effective trial men I ever saw in that field. He is not with the Section any more, but is practicing. He came from

CONFIDENTIAL

j39

75

CONFIDENTIAL

the adjoining county, almost, in the Screws case.

There you had the perfect trial lawyer. ~~You could bet that was a conviction, which it was on the first trial.~~ Upon retrial it was lost. It was so old I don't see how anybody could have won it, that kind of a case, vicious as it was. ~~But~~ the selection and training of a group of southern trial lawyers, who know how to work with United States Attorneys, has been essential in such a program as this.

11

Almost always when the more important cases were developing the United States Attorney was invited to come to Washington, sometimes by our section, sometimes by the Attorney General, sometimes by the Solicitor General, and he then received the background of why this case fitted into the whole program.

His cooperation with the grand jury is so vitally important that if you do not take the time to let him know the background, you are apt to have no success at all.

I mentioned earlier the Sojourner Case. It was an exception where you had a length of time. The reason we obtained the indictment was, I believe, that the United States Attorney ~~came in~~ with the Washington men staying out of the room, and talked to that grand jury man to man. He had lived with them.

You never bring these cases to the grand jury until the United States Attorney has had a chance to work with them in

CONFIDENTIAL

President's Committee  
on  
Civil Rights

76

j40

CONFIDENTIAL

many cases. Sometimes the United States Attorney would say, "Don't bring this case to this grand jury. Wait until we get a new one." And about the middle of the next session he would call and say, "All right, boys, let's go." That is the ABC's of this kind of stuff.

The whole Criminal Division, when you look at it as a whole, has in it many specialized groups. One group of men works on indictments, ~~who are experts at drafting them.~~ There is the Appellate Section, which does the brief work. ~~That is largely in the Supreme Court and more so now in the Circuit Courts.~~ You have a group of trial men and a group of generally well-trained lawyers.

Now the Division is having its difficulties because of wartime cuts, but when we didn't have them, it was a pleasure often to be able to sit and actually make a selection from, perhaps, 50 men, as to who in Washington in the group were the best men to send on this case and find that almost always they were <sup>glad</sup> ~~ticked to get~~ to jump in and help, even though it wasn't their field. The interest of lawyers in government in these cases was so much more than you would think there was -- not the kind of men who go out and make a speech and join certain organizations, but as lawyers they were very interested.

So I point ~~that~~ out ~~to indicate~~ that a great deal of help

CONFIDENTIAL

President's Committee  
on  
Civil Rights

77

j41

CONFIDENTIAL

comes to a section such as the Civil Rights Section from the other parts of the Criminal Division, and, of course, the Solicitor General's office, ~~if there is an interest in the field, and the assistant to the Solicitor General and the Attorney General's office itself.~~

A great number of these cases are of such importance nationally that the Attorney General just simply quite often has to take the file home and read up the facts and know it as intimately as the men down the line, and the Attorneys General do that. Every one I have known. And so with the Assistant Attorneys General.

Time after time, Tom Clark, as our boss in the Criminal Division, came in and took a file home Friday night and went over it. I do not know how he could cram the stuff in the way he did and come in on Monday morning and ask us the questions he was able to ask. He is an excellently equipped criminal trial lawyer. ~~He knew aht all the information meant and~~ picked it out.

Growing up in a division like that you had an informal method of trying a case in the office, trying it out just before we ~~are~~ ready to go. Three of us would take one side and three of us would take another and we would bat it out and spend an afternoon. We might conclude at the end of it

CONFIDENTIAL

President's Committee  
on  
Civil Rights

78

42

CONFIDENTIAL

that in spite of all these pressures that <sup>would</sup> ~~isn't~~ a case to go <sup>to</sup>.  
None of that can the public see or know of.

Now, moving over into the field of speech making, going about <sup>and</sup> making speeches and addresses to groups, I think a great deal more of that could be done than has been done. I think every important meeting in the United States where there are over two or three hundred attending, you would want them to receive the proper information from whatever group is primarily charged with civil rights problems, whether it be criminal or otherwise.

You get those matters in the Civil Rights Section because that is the only section people can come to. Such speeches should be thoroughly prepared in advance. ~~You could talk~~ extemporaneously, but you should have it before you. A good part is the later distribution of those speeches. They should follow a program that you are developing so that at the end of a year you have a series of 18 <sup>or 20</sup> addresses which almost merit publication. ~~There should be some careful thought.~~

I am sure you have all heard of the great amount of time that the Section spent with crack-pots. Sometimes they are totally crazy people who either write letters or come in person. And entirely too much time has to be spent on that problem by men who are so well equipped that they shouldn't be burdened

CONFIDENTIAL

President's Committee  
on  
Civil Rights

79

43

CONFIDENTIAL

with it, but God knows how else you could do it. Many times the Chief of the Section has to take on a couple of hours a day listening to one or two of them. In the case of some of them, if you called up the District Building and guided them over there, they would be at St. Elizabeth's by 6 o'clock.

12-

Every group has that in the field. In regard to the Civil Liberties Union here, the local person handling it, the young lady is doing the job just for the fun of it. People come in and she sends them to me. It is the same type, pathetic stuff. You have to just take them and give them an hour and listen to them. You are sort of in prison. It would be nice if something could be done about that in the Department to save the time of these men and women who are wasting it there.

By the same token, you can't answer every piece of mail that comes to you because you have to become an expert in picking out the "nut" mail. If you answered everything, it would come and come and come. There are still people who continue to send in communications even though they are not answered.

And then, of course, you see the pressure groups and their methods, how they wire, write, and cut coupons and papers -- a ridiculous waste of money and effort.

CONFIDENTIAL



President's Committee  
on  
Civil Rights

44

80

CONFIDENTIAL

I am trying to jump to different things now, trying to think of things as they strike me now. Another phase of this work, in the viewpoint of government men, is the problem of the press and the pressure groups who are interested in specialized fields of civil rights.

Naturally, your labor union groups will be so interested if it is a civil rights case involving a labor union, but try and interest some tough labor leader in a problem involving Jehovah's Witnesses and he thinks you are a little off the beam.

Many men who have an interest in this field have just a hobby interest, a very sincere one, in one small segment of the field; and, of course, sometimes their hobby leads them into an enthusiasm which I guess the discipline of government has to calm down a bit. You couldn't go along with them as much as you might like to. Pressure groups are very often unfair on the men in the Section, asking the impossible, <sup>by</sup> ~~having~~ to many times, I suppose, when they have a case, even though a good case, they have to, for their own existence, continue to look like they are the bunch that is making this immovable object, the Government, get to work.

Many of the leaders of such groups could do much self-education and much study as to the possible areas where we may

CONFIDENTIAL

President's Committee  
on  
Civil Rights

145

81

CONFIDENTIAL

operate as a civil rights group. They should know those limitations better than the men in the Government themselves.

On the other hand, the very groups that I am criticizing however, in another way are the most helpful of all groups to the Section. They keep it on its toes. They bring the problem to it and assist in a hundred different way. Large groups always come in after some terrific episode such as a lynching or some special case that gets worked on like the boy's case down in Virginia where he was about to be hung the next morning. In those cases large groups come in.

<sup>Thurgood</sup>  
~~Thurgood~~ Marshall, General Counsel of the NAACP, would almost always be in such a group, and <sup>he</sup> ~~Thurgood~~ would sit sometimes a couple of chairs away and would himself do the kind of work that I think leaders should do more of and tell his people what this was all about, bringing them down to earth as they would make these wild statements; and, of course it was twenty times better that he tell them than that I tell them. That kind of responsibility groups should take. They should take it more. I suppose sometimes they are doing this disciplinary checking over of a case before they ever come to Washington. Of course, much of it is stopped that way. However, they have a responsibility to not bring in things which are frankly just junk cases.

CONFIDENTIAL

j46

82

CONFIDENTIAL

I haven't any special group in mind when I say that. It is just that in the five years there were an awful lot of them. I ~~imagine there always will be,~~ though.

3- MR. WILSON: Would you like to suggest or could you or will you suggest any special line of approach to this general subject from this vast experience that you had in the Section that you think we should apply ourselves to specifically, and particularly to be helpful to the Department of Justice?

MR. ROTNEM: It is difficult ~~right away~~ to answer that without saying, of course, so much depends in the Department on who the Attorney General is. As long as you have a Tom Clark as Attorney General, you know that the criminal work involved in the Criminal Division, including the Civil Rights Section, gets every help it could have.

MR. WILSON: Except that we have been under the impression that there may be things that we could suggest -- procedures, changes, and so on -- things we could suggest that would uphold their hands a bit.

MR. ROTNEM: First of all, you have to appreciate that so much depends on the Attorney General and his policies in relation to this type of work, where you have these 96 United States Attorneys that, after all, are bound to follow the leadership of the Attorney General. They are responsible to

CONFIDENTIAL

j47

CONFIDENTIAL

him, and if they know he is interested in one of these cases, generally they are interested in this case, even though otherwise they might tend not to be. I don't suppose there is any answer to an insurance that future Attorneys General have this interest in this subject, and yet it is your biggest difficulty always.

An Attorney General of the right sort will always see to it that this Section functions much as I have tried to give you a picture of it. ~~You have probably had the picture so much that I bored you with what I said.~~

MR. WILSON: Are there any questions that you would like to ask Mr. Rotnem on the general subject?

MR. LUCKMAN: I would like to ask whether during the time you had this responsibility there was any occasion for prosecution of cases involving restrictive covenants.

MR. ROTNEM: Such cases were considered in the brief amicus stage a couple of times. I do not remember any set of facts where we could go with a criminal case or felt we could.

MR. LUCKMAN: There were no actual prosecutions?

MR. ROTNEM: No.

MR. LUCKMAN: Were there any investigations?

MR. ROTNEM: One, I believe, in Mississippi.

MR. LUCKMAN: Were there very many complaints received by

CONFIDENTIAL

j48

84

CONFIDENTIAL

the Department in regard to restrictive covenants?

MR. ROTNEM: Not a great deal. It is interesting that there weren't more. It was not a field that people wrote letters about. The cases that were discussed as a rule were brought to us by counsel, who discussed them. Invariably on that question we couldn't come in with a brief.

RABBI GITTLESOHN: Mr. Rotnem, I would like to have your views, if I may, on a question we have already addressed to several people, but which you might, because you are an ex-chief of the Section, be able to voice an opinion more freely than they. Do you feel from the point of view of both prestige and possibilities of accomplishment anything would be gained if the Civil Rights Section were to become a division in its own right, rather than a section under the Criminal Division?

MR. ROTNEM: I have thought about this a great deal. I have heard it debated a hundred times, different ways. My conclusion, after my experience, is it would be a very bad thing to remove the criminal work from the Criminal Division. The judgments that need to be made -- as you remember, the Appellate Section, the men who handle the indictments, the other trial men, the Assistant Attorney General -- working with the other divisions, especially the assistance you get right in the criminal shop, you would never get that kind of

CONFIDENTIAL

President's Committee  
on  
Civil Rights

j49

85

CONFIDENTIAL

assistance if you had a separate division. That is the way government is. In this set-up the whole division feels like you are part of it, and you are.

It is one of the nicest government shops I ever was in, and I have been in many. They are exceptionally well trained men and nice ~~gays~~ to work with. I am afraid you would lose much more than you would gain.

Also I think this: If you set up a division or a bureau, you would have to go into a great number of fields beyond the criminal field. Maybe that is the reason you should do it, but if that does seem necessary, I would certainly say ~~look out~~ ~~and~~ leave this criminal work right where it is, or you are going to do something basically ridiculous.

But what are the other things you would have this bureau do? Unless you have a lot more legislation than you have, if you set up a bureau apart from the criminal field, or have it with it, you will be creating a magnet for a vast number of complaints that you will have to answer, and without more legislation, all you will be doing is to encourage a vast correspondence unit, which will have to, in a thousand different ways, learn how to say "No, we are sorry, but we can't do anything about this."

I will be darned if I think it is good for our government

CONFIDENTIAL

j50

86

CONFIDENTIAL

1-4

to have to say no to citizens when they write to them, and to deliberately set up something where what will be asked will require negative answers. When you set up any division such as this, you automatically spur groups to activity, to come and see you, to write you. Good -- if you are ready to give them something.

I would like to say something off the record, if I may.

(Discussion off the record.)

MR. ROTNEM: I think it would be fair to ask you what kind of additional duties you would think of if there were a bureau or division. Have you formulated some ideas on that?

MR. WILSON: I think the general difficulty, Mr. Rotnem, was as to just the question of if it was decentralized to that extent and there was the greater emphasis on it that might be brought about -- but I think and we have asked this question of a number who know the situation as you do, and the answer generally has been very much as you have given it to us, that we would really lose by such a move rather than gain in good results.

Are there any other questions that you want to put to Mr. Rotnem?

MISS WILLIAMS: I would like to comment, Mr. Wilson. Mr. Rotnem, isn't it true that the idea that came out of Interior as to a bureau was opposed by the NAACP not on the

CONFIDENTIAL

151

CONFIDENTIAL

basis of the handling of criminal business but on the basis that they felt it would be an over-all administrative agency?

MR. ROTNEM: Yes.

MISS WILLIAMS: They were not opposing the handling of civil rights within a division of the Department of Justice?

MR. ROTNEM: No. It was somewhere along in the early days when they were starting to think of an FEPC. And this was almost another idea. It was about in there.

MISS WILLIAMS: There was a proposal that was dropped, and it was because it had that far administrative sweep and not the criminal.

MR. ROTNEM: But, of course, right away if you are going to have that division, you are going to have a tendency to put all civil rights work into that bureau, and the chairman of some Senate Committee might do that for you very nicely. You run all kinds of risks. Or the draftsman of some executive order may very nicely accomplish that, if there was no Committee like yourselves who knew what it was all about.

MR. WILSON: Are there any other phases of this you would like to discuss with Mr. Rotnem?

If there are none, I want to thank you very much for the time you have given us and your courtesy in coming before us and giving us this fine exposition of your own work there,

CONFIDENTIAL



President's Committee  
on  
Civil Rights

---

88

52

CONFIDENTIAL

which is helpful to us. We appreciate it very much, sir.

(Whereupon, at 4:00 p. m., the Committee adjourned.)

UNCLASSIFIED

~~CONFIDENTIAL~~

8/5/59 JVC

77

April 15, 1947 - AFTERNOON SESSION - 3 P. M.

TESTIMONY OF HARRY M. PLOTKIN,  
Assistant General Counsel, Federal Communications  
Commission.

MR. PLOTKIN: Before you begin, the capacity in which I appear -- I am a member of the staff of the Commission, and this falls within my responsibility. I speak, I suppose, as an individual rather than for the Commission.

MR. SHISHKIN: That is right.

MR. PLOTKIN: My name is Harry M. Plotkin. I am assistant general counsel for the Federal Communications Commission.

MR. SHISHKIN: This record is only for the Committee's own use.

MR. PLOTKIN: Yes, I know that.

I have been <sup>with</sup> before the Commission five or six times <sup>years</sup> previously. My responsibility with the Commission is generally, in addition to handling such matters as litigation and legislative problems, questions involving interpretations of the provisions of the Commission's Act with respect to use of radio by political candidates, or questions involving the interpretation of the rules and regulations requiring appropriate announcements of sponsored material, or fair use of radio in connection with a discussion of public controversial issues. Such matters usually clear through me at Staff level.

With respect to the problem of disclosure, I wonder if

~~CONFIDENTIAL~~

182  
95

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

78

CONFIDENTIAL

you could give me just a little bit more of a clue as to what you are looking for.

MR. SHISHKIN: This Committee is only a part of the Civil Rights Committee, and the area in which we are exploring is the activities of individuals and organizations that contribute to the spread and creation of bigotries and hate campaigns and other actions that cut across the area of civil rights, and what we as a committee are particularly concerned with is not so much the effect of what they do, but the sources from which they derive their strength, and their financial resources, the background, and how the Committee could reach into that area of the economic sources of operation. We are particularly concerned, therefore, with three things: One is the possibility of disclosure, not of any particular group, but of any group that operates in the general area of interchange of what Mr. Ernst has moderately called the <sup>market</sup> place of thought not only in this but also the question of the use of the taxing and spending powers of the Government in reaching into that, any utilization of those powers in order to bring that out to the surface.

MR. PLOTKIN: So far as radio is effective, I suppose the disclosure of these groups can fall under two headings: In the first place, some of these groups either own radio stations

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
ON  
Civil Rights

79

CONFIDENTIAL

or are potential owners of radio stations. The situation on that is this: Before anyone is licensed to operate a radio station he must file an application with the Commission. The application is available for public inspection at the Commission. We regularly issue lists of the applications that are pending, but that list is not always very illuminating because we list only the name of the applicant, and if it is a corporation -- maybe the Saginaw Broadcasting Company. A good many of these individuals choose as the name of their company the city in which they are going to broadcast. So there is nothing to disclose. However, people are free to come into the hearing on the applications, and the applications do have identity with all the stockholders. If the individual is a corporation, it must list information containing a list of all the stockholders of the corporation. If it is a very large corporation, I think it is only the 50 top stockholders, or something like that, but in a normal case they are required to list all the stockholders and the general background in filing information.

MR. SHISHKIN: You also require information about these stockholders; do you not?

MR. PLOTKIN: Yes.

MR. SHISHKIN: What, specifically? Can you tell us about that?

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

80

CONFIDENTIAL

MR. PLOTKIN: Well, generally, most of the things we look for is in the financial background, what outside financial interest does he have in other organizations? And information concerning the citizenship, and also any information concerning the conviction for crime. In general, that is just about all you can find in the application, you can find out whether he has been convicted of a crime involving moral turpitude, whether he has been involved in any antitrust violations, what financial interest he has in other business enterprises, whether or not of communication, and the information concerning citizenship.

If the application has to go to a hearing -- and in general an application does not have to go to a hearing unless it involves interference to an existing station, or unless it is in competition with another existing station, or unless we have reason to believe that the applicant is not qualified. If it goes to a hearing, then the applicant is expected to appear and testify, and all the principal stockholders and the members of the board of directors are expected to appear and testify there, subject to cross-examination.

The hearing, of course, is a public hearing, and the transcript either may be purchased or is available for inspection at the Commission's reference room. The applicants and

CONFIDENTIAL

CONFIDENTIAL

stockholders will come and tell us in greater detail about their background, what their experience has been, and if there is anything in the background that any of their competitors think will bear adversely upon their ability to operate a station in the public interest you can usually count on them to bring it out in cross-examination.

Similarly, if we have any reason to expect that there are such facts in his background, we will try to bring it out in cross-examination.

Now, these facts come to our attention, and usually complaints are received that such and such a person who is applying for a radio station is not really qualified. The charges are usually in general terms, but if they appear to be made by responsible people we will undertake to conduct a field investigation, and at the hearing we will either introduce the evidence or will cross-examine the applicant concerning the charges that are made.

In that connection, if the applicant were a member of a hate group, or in any way associated with an organization that was peddling hate, we would consider that as relevant evidence and would permit that in the record.

MR. SHISHKIN: How would you classify hate groups?

MR. PLOTKIN: Well, I do not know. I was using the

CONFIDENTIAL

CONFIDENTIAL

stereotyped phrase, and we have not had -- the only case, really, that we have had of that kind was Reverend Bob Schuler out on the West Coast several years ago in which case Bob Schuler was actually operating a radio station on the West Coast, and we revoked his license primarily because of the attack he was making on other religious groups, particularly the Catholic Church, and I suppose that would be a clear case, deliberately an incitation against Catholics.

MR. SHISHKIN: That was in terms of the contents of his program?

MR. PLOTKIN: Yes, on the radio station, itself, and that case went -- authority to consider that evidence in revoking his license was upheld by the court in the case.

MR. DURHAM: Did that go to the Supreme Court?

MR. PLOTKIN: Ceriotari was denied by the Supreme Court. So or authority is pretty well established. The name of that case is Trinity Methodist Church South v. Federal Communications Commission. It is in Fed (2d). The exact citation I forget. It was decided here by the Court of Appeals.

There are several cases now pending before the Commission in which charges have been made that the applicants involved are associated with groups or are, themselves, people who have been spreading anti-semitic charges, at least in one case.

CONFIDENTIAL

CONFIDENTIAL

One situation I recall -- I had better not mention names, since the case has not been heard -- the charge has been made that this group has been very active in circulating the pretecols of the elders of Zion, and certain materials of their publications were sent in which, on the face of it, contain some pretty rabid anti-semitic material. The information was brought to our attention by some local union in that area, and it is usually unions that are most active in calling these facts to our attention. Local unions who are familiar with the situation will bring the facts to our attention.

In that connection, we do have a hearing. Not only is the hearing open to the public, but local groups are permitted to come in and testify at the hearing, even though they do not have sufficient legal interest to be a party, and we do listen and permit the introduction of testimony by any local group or any local citizen if he has information that is relevant.

That about concludes, I think, the information and the disclosure of information concerning these groups who attempt to secure a radio station.

I might add one further point: That after some of these people may get a license, without our being aware of the fact that they are, say, members of a hate group or in their activities they do use hate techniques, however, if they use a

CONFIDENTIAL



HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

84

CONFIDENTIAL

radio station for any such purpose we have the authority either to revoke their license or not to give them a renewal of license. A radio station license is granted for only three years, and they have to come up for renewals every three years, and if during their operations we have received complaints from responsible people concerning the operation of the station, we ask the station for a statement, and if there are sufficient instances of what appears to be violations against the interests of the public, we may hold a hearing on a station's renewal and will not renew a license if a case is made out that the station has not operated in the public interest.

MR. SHISHKIN: Now, actually, so far as the statute is concerned, you do not have any classification that would, in itself, serve as a basis for such action; do you? All you have is the broad category of the public interest, convenience and necessity; is that right?

MR. PLOTKIN: That is all.

MR. SHISHKIN: That is discretionary with the Commission?

MR. PLOTKIN: Yes, that is right. There are certain statutory prohibitions which do not apply here. You cannot be the representative of any Government and own a radio station. You cannot be an alien. Radio stations must be owned by citizens. You are forbidden to broadcast libelous or

CONFIDENTIAL

CONFIDENTIAL

obscene material.

A number of these instances affect this type of situation. Our authority in this type of situation comes from the requirement in the statute that we grant licenses only to people who are qualified and only to people who operate in the public interest, and what those two terms mean, of course, we have tried to build up law on it over the past 20 or 25 years. There is nothing mandatory in the statute about it, and I must point out that it is a very difficult thing generally to prove.

I might give an illustration of an attempt to prove one. A recent illustration in New York involved the New York Daily News. The American Jewish Congress asked to intervene in that case in opposition to the application of the New York Daily News on the ground that the New York Daily News was not qualified. As proof of their lack of qualification they attempted to show that the man under which the newspaper operated, the Daily News, was anti-Negro, anti-Semitic, and, therefore, presumably any radio station that the News would get would be operated in the same way.

Now, as I say, we took several days of hearing. I think it stretched on for weeks, and the type of evidence that they tried to produce on it requires very close content analysis, and there was very serious bickering back and forth as to the

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

86

CONFIDENTIAL

competence of it. As a matter of fact, the Daily News has filed a motion to strike it, which is now under consideration by the Commission.

But in any way not having to decide whether the Daily News is or is not such an organization, the difficulty of proving such a charge is generally great except where you get a clear-cut out and out case, like Gerald L. K. Smith, or something like that, but in cases where you get it close to the line where you are going to get differences of opinion, it is very difficult to render a decision as to whether or not the organization is a hate organization. Surely, that case was a clear-cut case on the facts, because they operated the radio station in such a manner that there was no dispute of facts. The only question was whether we had a right to take away his license, the license of the person operating the station.

The use of radio stations by these groups comes down, I think, under two headings: First, whether it is in connection with a political campaign; and, secondly, whether it is not in connection with a political campaign.

Under Section 315 of the Commission's Act, if a radio station permits its facilities to be used by any one candidate it must afford equal opportunities to all candidates. Now,

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

87

CONFIDENTIAL

that means that if any of these hate groups were associated, say, with a political candidate, his right to use a station is pretty much unqualified because Section 315 provides that a radio station shall have no authority to censor any broadcast made by a candidate under Section 315.

Now, in general, the problem is covered -- the reference in Section 315 is not to hate groups, as such, but where radio stations where refuse to carry broadcasts by candidates of the minor party, such as the Communist party or the Socialist party, and as we construe the Act, it applies to all parties. Whether it is a recognized party makes no difference. The station has to carry it.

An interesting question on that came up during the last campaign when the charge was made to us that Bilbo was using the radio to foster anti-Negro propaganda down South. While it was never presented to us officially for a ruling, my own <sup>is</sup> feeling<sub>A</sub> that if a man is a legally qualified candidate for the office of the Senate, he has the right to use the radio station, and the station must give the time to him. It is probably one of the prices we have to pay for freedom of speech in a democracy, but that is applicable specifically only to candidates during an election.

With respect to the situation that does not involve a

CONFIDENTIAL

CONFIDENTIAL

political election, there is no special requirement in the Communications Act. The Commission has, however, over a period of years arrived at certain standards in its decision with respect to that. We have held that a radio station must be fair in the presentation of public controversial issues. It cannot present just one side of a controversial issue. It must present all sides of a controversial issue.

I do not think such issues as bigotry is a public controversial issue in that respect. I do not think that a radio station would be required to permit -- if issues of tolerance are to be discussed, to permit a person who is violently bigoted to present a case <sup>of</sup> a bigotry. I think we would take the position in that case that a radio station has an obligation of presenting all responsible sides of a controversy, not certain issues. There is no real controversy even in a democracy, and --

MR. SHISHKIN: Excuse me. But what about the other way around? If a man wants to go on the air for 15 minutes to present a bigoted point of view for racial discrimination and intolerance, would that be construed as discriminatory?

MR. PLOTKIN: You mean, would the radio station be required to carry it?

MR. SHISHKIN: Yes.

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

89

CONFIDENTIAL

MR. PLOTKIN: No. A radio station has a great deal of discretion.

MR. SHISHKIN: Suppose it were required to carry it. Would the other side be accorded the privilege of being heard?

MR. PLOTKIN: Yes. If a complaint comes in to us that there has been a discussion of a public controversial issue, and only one side has been presented, and the complaint is from a responsible person, we write the station concerning the substance of the complaint and ask the station for its comments. The station then comes back and gives us its comments, and points out whether it did carry it, and if it did not carry it, why it didn't, and then if there are any new matters raised in there we send that letter to the person who originated the complaint, and we keep sending each fellow's letter back to the other person until all questions of fact are resolved.

When all questions are resolved, if the radio station thinks it wants to give time, it gives time; and if it does not the matter is closed.

MR. SHISHKIN: I am not very sure on that point that I raised, and the reason I wanted to have it cleared up is because we are exploring one avenue of approach in which we would not

CONFIDENTIAL

CONFIDENTIAL

classify anything as falling into any particular category, but would cover the whole ground.

But some suggestion has been brought to us about the advisability of pursuing a course which would give special consideration to particular issues and particular kinds of thought. So you say that if tolerance is preached you would not classify it as controversial and, therefore, if anyone wanted to preach intolerance as against that you would say he would not be entitled to the time. But if intolerance was preached, would you then classify it as controversial?

MR. PLOTKIN: Yes, I would probably classify it as controversial, and the other side should be given an opportunity to reply.

Now, as I say, we have no sanction to force the station to give the time. We say permitting one side of a public controversial issue to be discussed and not the other is not operation in the public interest and, therefore, if there were cases like that in the station's operation, when it came for renewal we would hold a hearing on it, and if there was sufficiently numerous instances of that we would revoke his license.

Now, the intolerance case presents a slightly different proposition. So far I have been talking about controversial issues, which do not have any hate connotations, like the

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

91

CONFIDENTIAL

O.P.A., strikes, wages, any number of issues that are involved in either economics or politics, where a station carries one side and does not carry the other side. Now, generally, I am not at all sure that if a station carried, say, pleas by bigots for out and out intolerance that they would necessarily be held to be operating in the public interest, even though they permitted the fellow for arguing for tolerance to argue. In other words, the allowing of time for the preaching of intolerance would be sufficient reason for revoking a license, even though the station permitted the person on the other side of the issue to present his views.

We feel that the preaching of intolerance is improper use per se, regardless whether he permits the other side to come on or not. That is an improper use, per se.

MISS WILLIAMS: Except when you are running for political office?

MR. PLOTKIN: When you are running for political office you run into a specific statutory provision which requires the station to carry a broadcast of a candidate, provided it carries the broadcast of his opponents.

MISS WILLIAMS: What happens after Mr. Bilbo is elected?

MR. PLOTKIN: After he is elected he is not seated, I presume.

CONFIDENTIAL



CONFIDENTIAL

MISS WILLIAMS: Well, take Talmadge, or anybody. Once elected, he is no longer a political candidate, so he would no longer be excused under the statute?

MR. PLOTKIN: That is right. That is a specific statutory provision. Therefore, it no longer protects the radio station. If then the radio station permits them to use its facilities for preaching hate and bigotry, then he is not cloaked with the protection of the Commission's Act and would have to meet the test, and probably some of the material that has been broadcast over some radio stations would come close to the line.

We have had not any called to our attention like the Bilbo case during the election. The radio stations were pretty careful on it. They were fearful of losing their license, or even more, they are reluctant to go through a hearing. The loss of a license is not the thing they fear so much as a hearing. In our entire history we have only taken away two or three licenses for that type of operation. So that statistically they are not probably so much afraid of losing their license as going through a hearing.

MR. SHISHKIN: Is broadcasting designed to <sup>spread</sup> employ hatred classed as controversial?

MR. PLOTKIN: Generally, it would be. We do not have any

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

CONFIDENTIAL

definition of a controversial issue. But usually there is doubt when an issue is controversial. You can usually tell a hurry if it is controversial, if a responsible group, on side, say, "We disagree, and we want an opportunity to be heard that is all.

MR. SHISHKIN: I just wanted, on that point, to indicate that we have been looking at that phase of it quite a bit, and we find, to some extent, on that issue statements may be made over the radio that would not fall into the same evaluation as any other means of communication. Recently last month a newscaster of the National Broadcasting Company on his usual morning round-up announced the news story with regard to the hearings on the housing bill, and it was a news item. He was reading the script, and he said that it was the same old bill under a different number, backed by the same groups as before. "It is a bill which its opponents term 'Socialistic,' a grave threat to private enterprise," and so on. What he said in itself is completely innocuous, but if you had heard the tone of derision about "this same old bill," and the tone of menace about this being socialistic, and a threat to free enterprise, -- actually I asked for a transcript, and they sent it to me immediately. When you read that as a quotation it is completely innocuous. There is none of that value there. He was simply

CONFIDENTIAL

CONFIDENTIAL

stating what the opponents said, and there was nothing wrong with that, but I was wondering whether in that phase of delivery any attention has been paid to that problem.

MR. PLOTKIN: What is fear and what is not becomes quite difficult at times.

MR. SHISHKIN: The point I was making is: If it is incitement to hate or riot, would the actual form in which it was delivered on the radio, rather than the contents and the words, being used, be a factor in a F.C.C. hearing?

MR. PLOTKIN: Yes. See, that becomes a matter of proof. A transcript would not show it up.

MR. SHISHKIN: A recording would.

MR. PLOTKIN: Yes, a recording would. A good many network programs are recorded, but generally local programs are not. Before the war we gave some thought, for this reason among others, of requiring radio stations to make recordings of all programs, but this was just as the defense program was getting under way, and so forth, and the War Production Board came in and pointed out the tremendous amount of equipment that would be necessary, and asked us to hold off until at least after the war was over.

MR. DURHAM: Have you given any more thought to that lately?

CONFIDENTIAL

CONFIDENTIAL

MR. PLOTKIN: No. I am afraid we have our hands full with enough other things to tackle than that one. It is not a popular requirement.

MR. DURHAM: This wire ~~now~~ would not be much of a job?

MR. PLOTKIN: It is not the wire so much, the equipment itself. It is rather expensive, and a lot of local stations -- it would soon mount up with a station on the air 18 hours a day. It is something that we have got to come to sooner or later from the point of view of protection, if there is going to be a lawsuit for libel, did the man say it or didn't he say it? There is just no way of doing it unless you have it recorded. A script in many cases is not adequate. In some cases there is no script kept at all, and in some cases a charge is made of departure from the script, and people that operate anything as important as a radio station ought to have permanent records.

Newspapers do, and radios have as great influence on the public as newspapers, if not greater, and there ought to be a public record on which accountability can be based.

In that connection, the public are entitled to see scripts.

MR. SHISHKIN: The case cited was that of a complaint.

MR. PLOTKIN: Yes. The demands would become so great

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

96

CONFIDENTIAL

that the station oftentimes would have nothing to do but supply script. We ask for script in a lot of cases, and we have no difficulty in getting it. If a Congressman asks for it, we will tell them that Congressman so and so asked for a script, and we usually get it.

But we just could not ask for scripts in all cases. It would be an impossible thing.

There is one other problem of disclosure that comes up, and it is covered by our rule under Section 317 of the Communications Act. A true identity of the person <sup>supplying</sup> ~~supply~~ the material must be disclosed. Somewhat the same provision is applicable to newspapers, except I think we are a little bit more specific as to the type of information that must be disclosed.

Now, in most of the cases of sponsored programs, there is no problem. The station is only too willing to identify the sponsors. As a matter of fact, he does it to the point where it becomes nauseating in many cases. For instance, in a Pepsi-Cola program they tell you who the sponsor is over and over and over again. But the problem comes down to the situation of where they are trying to peddle propaganda or education from the fine point of view, and they do not want you to know who is behind it.

Specifically, the case comes to mind -- and I think the

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

97

CONFIDENTIAL

LaFollette Committee turned this one up -- the National Association of Manufacturers some ten years ago wanted to get its message of free enterprise across to the American people, and what they did was ~~made~~ <sup>to make</sup> recordings of speeches or dramatizations on particular issues, and then offered them free of charge to the radio stations for carrying them. The radio stations carried them without identifying the sources of it. Well, in our opinion, that is as much of a sponsored program as it is when Lucky Strike brings you Jack Benny. It is supplying <sup>for</sup> very real considerations.

So we now have this provision in our rule, this Section 3.289. This is a rule with respect to standard broadcasts, and we have similar rules with respect to FM broadcasting and television. It is a rather lengthy rule, but I will read only the relevant portion of this:

"3.289. Sponsored programs, announcement of. -  
(a) In the case of each program for the broadcasting of which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, any radio broadcast station, the station broadcasting such program shall make, or cause to be made, an appropriate announcement that the program is sponsored, paid for, or

CONFIDENTIAL

CONFIDENTIAL

services referred to in subsection (b) hereof are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent.

"(d) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for or furnished, either in whole or in part, for which material or services referred to in subsection (b) hereof are furnished, by a corporation, committee, association or other unincorporated group, the announcement required by this section, shall disclose the name of such corporation, committee, association or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group shall be made available for public inspection at one of the radio stations carrying the program.

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

100

CONFIDENTIAL

"(e) In the case of programs advertising commercial products or services, an announcement stating the sponsor's corporate or trade name or the name of the sponsor's product, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the program."

So that the situation is this: That if a group is set up under the name of a committee to peddle particular ideas, when those ideas are broadcast, when its material is broadcast, the station must make an announcement giving the name of the Association or committee that sponsors it, or that is furnishing the material.

Now, the name may be purely innocuous. As, for instance, in California, they will have a Committee To Vote "Yes" on such and such a referendum, which means nothing. So in this statute it provides that the station shall keep a list of the principal officers of the corporation or committee, and that list shall be kept at the station and is open to anyone. They will have to give the name of the promoter. They will have to say, "This program is sponsored by Mr. Gerald L. K. Smith."

MR. SHISHKIN: What about Mr. Smith going through his nephew, or another person?

CONFIDENTIAL



CONFIDENTIAL

MR. PLOTKIN: Well, we have another section which will cover it. It says:

"Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent."

We attempt to cover it, but obviously there are ways of getting around it. There are ways of avoiding it, of course. Either the station can be innocent or the station can claim to be innocent, but just like everything else, writing a rule is one thing but administering it or enforcing it may be another thing.

MR. DURHAM: Can you tell us anything about the administration of that particular thing?

MR. PLOTKIN: There have been no specific problems since its enactment.

MR. DURHAM: Do you have many cases involved?

MR. PLOTKIN: No.

MR. SHISHKIN: Well, there are some programs. Some of them have been running for a long time, of public discussion, panel discussion, or debate. I have particularly in mind a

CONFIDENTIAL

CONFIDENTIAL

program that has just wound up, and I do not know anything about it, and certainly I am not pointing any finger at it, but the program that I have in mind has been sponsored by the American Economic Foundation, and was known as the "Wake Up America" program.

The director, the program director of this, was also a man who was also an officer of the Tool Owners Union. That Tool Owners Union organization applied for an incorporation in New York, and was, in the decision of the New York Commission, refused the corporate license and very severely rebuked. If you take the list of sponsors, which is a list of people who never meet, a list of advisers, which is also a list of advisers who never meet, it makes it a very imposing organization. Actually, if you study the record of its broadcasting activities you will find that there is a very subtle thread that runs through its program that is extremely tendentious, and is selling ideas in the guise of a free and open debate.

How is something of that sort handled?

MR. PLOTKIN: It is rather difficult to handle. Let me give you a very specific problem. It was up several years ago when the Ford Symphony Hour used to be carried, and W. J. Cameron came in and spread the gospel, and he didn't even attempt to be sure it was straight gospel, and the program was

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

103

CONFIDENTIAL

carried for a great many years. It was carried on a network that had an over-all balance, and that is about the only thing we can do.

We cannot do anything but respect individual programs. The only thing we can do is to make sure that the over-all operation of a particular station is, roughly, fair. If they have the Camerons, they try to give the people on the other side the opportunity to meet it.

MR. DURHAM: In that case, Mr. Chairman, I suppose the <sup>disclosure</sup> problem was met ~~on~~ all square<sup>s</sup>. You had the name of the sponsor, and you could certainly guess the name of the man that was putting up the money for it.

MR. PLOTKIN: There was no doubt about it. They said the Ford Motor Company was putting up the money. Those have not been so much the problem of disclosure but of fair practices.

MR. SHISHKIN: In the case of the Tool Owners Union, it was shown that a man named Rucker and his wife and this other man, who was a program director of this radio program, were the sole officers, and that they wrote the policy. The organization, however, was presented through advertisements and other means as being a widely representative organization of other people.

Would that be a factor?

CONFIDENTIAL

CONFIDENTIAL

MR. PLOTKIN: Yes. You see, if the station knew about it --if the station knew about it it was deliberately perpetrating a falsehood. That would be a factor in its renewal of its license, but, in the first place, proving it is a falsehood, and, in the second place, proving the station knew it was a falsehood, is a very difficult administrative procedure.

MR. SHISHKIN: But a program of this sort could not be reached by listeners?

MR. PLOTKIN: Well, it could. If they said, "This is being brought to you by such and such a group," the listeners would have a right to inquire of the station, "Well, who are their principal executive officers?" and if they then said they did not have it, they then would be violating the rule. Then either they would either have to drop the program or require such a list to be maintained.

MR. SHISHKIN: Do you go into the consideration of the financial support of a program of that sort?

MR. PLOTKIN: You mean as to whether or not the organization that puts up the money is only a front organization?

MR. SHISHKIN: Yes.

MR. PLOTKIN: Yes. That is a factor if the station knows about it. The station may be innocent, or the station, if it is not innocent, and is willing to play the part, certainly

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

105

CONFIDENTIAL

will claim to be innocent, and it is difficult to prove it.

MR. SHISHKIN: Can you then initiate action on your own for investigation?

MR. PLOTKIN: Yes, we could. We have such a case, as I might point out, in New Mexico. It did not involve any of these problems. It involved a political problem. Station KOB in Albuquerque is owned by a fellow by the name of Pepperday, who was a political opponent of the then Governor Dempsey, and they were sparring back and forth. Pepperday was also the publisher of a newspaper down there. There was a commentator put on either every day or every week -- I think it was every week -- on KOB, just blasting the living daylights out of Dempsey regularly. Dempsey complained to us. As a matter of fact, there was a hearing on that complaint, and included in the complaint of Dempsey was, first, that it was unfair use of radio, and, in the second place, that there was no announcement being made as to who was sponsoring this commentator, and the commentator was actually appearing on someone else's behalf.

So we sent someone down there to investigate. True, the station had not been making the sponsorship announcement, but they said they did not know that anyone else was paying for it, and they did not know they had an obligation to make an investigation.

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

106

CONFIDENTIAL

We wrote them back and said we thought that they did have an obligation to make an investigation to find out who was sponsoring the broadcast. So it is easy to lay down the rule that a station has the obligation to make a reasonable investigation. We only want to say "reasonable investigation," because if you make the station go to great lengths of investigation it can be a wonderful excuse then for the station to carry the broadcast of somebody they want to, and not to carry the broadcast of somebody they don't want to carry, on the excuse, "Well, we don't know whether you are really paying for this, and we can't find out whether someone else is paying for it, so we have to pursue a middle course on that."

We want to find out who was sponsoring it. On the other hand, we don't want to rule in such a way as to give them an excuse for not carrying a program that wanted time.

MR. SHISHKIN: What about the allotment of time for sustaining programs? The time that is allotted to one particular sphere of interest alone consistently? Would that serve as a basis for a --

MR. PLOTKIN: Yes. We hold that if it is a public controversial issue that is being discussed, all sides must be given a reasonable opportunity to present their point of view, and if they let one side do it free, they have to let the other side

CONFIDENTIAL

CONFIDENTIAL

do it free.

As a matter of fact, the situation very often exists where one side pays for it, and they ought to give the other side time free because the other side has substantially fewer resources than the other side.

MR. SHISHKIN: In the case of a program accorded the American Federation of Labor, that is the sustaining program free. But what about this one network and the one accorded to the N.A.M. on the same day the first one was presented, both of them were presented within a few hours?

In the case of the labor program, the networks made a very detailed disclaimer, saying that the views represented are those of the labor organization and we are not responsible for them. The disclaimer was so great as to indicate that the *labor* views were not to be taken too seriously.

As to the N.A.M. program, only the fact that it was sponsored by the N.A.M. was mentioned. Is that kind of treatment subject to any investigation?

MR. PLOTKIN: Well, there are techniques of giving a benefit to his opponents without willfully saying it. All people use it, if they can get away with it. We try to catch as many persons as we can, but we can't catch them all by any means.

CONFIDENTIAL

CONFIDENTIAL

MR. SHISHKIN: What about this situation: There was a program in which I participated in which free time was granted us on the question of the expression of rent control, which presumably may be classed as a controversial issue.

MR. PLOTKIN: Yes, that is controversial.

MR. SHISHKIN: They accorded the time to us. There was nobody accorded the time to answer it, and I was a little puzzled about that. They told us they were giving us network time, and it was at the height of the interest in rent control this spring when the question was brought up, and was headline stuff in the press.

So far as I was able to discover, however, the program was carried only on one station, and it was an obscure station. It was not carried in Washington, New York, Philadelphia, or Chicago, or any other place. Do we have any grounds for having been represented that we were talking on a network program, whereas --

MR. PLOTKIN: We have no control over networks. We do not license networks. We license the individual station, and in a case like that the only complaint you have, if the opponents of rent control, say, had spoken over the network, and all of the affiliates of the network carried it, and when you spoke the affiliates did not carry it, you would have a charge that

CONFIDENTIAL



CONFIDENTIAL

they were not being fair.

MR. DURHAM: Why don't you have control over networks?

MR. PLOTKIN: The statute does not give us any.

MR. DURHAM: What is the reason for that?

MR. PLOTKIN: Simply the networks did not want it. I mean, it is part of the legislative history.

Well, when the 1927 Act was first passed -- and that would be the progenitor of the present Act -- the networks were just coming into being. When the Act came to be reenacted in 1934 networks were quite important, but I am sure they were not anxious for Government regulation, and the statute was practically reenacted, and no authority was given over networks. There has been some controversy since that time. As a matter of fact, the president of the Columbia Broadcasting System at one time recommended that networks be licensed, but at a later date he withdrew his recommendations. At the present time there is no legislation pending on it, I am sure. Congress would not give us the authority, and I am sure that we would not think of asking Congress for the authority.

MR. DURHAM: Is there a field of public interest there that demands attention?

Mr. Plotkin: Well, my own feeling on that, since the Commission itself has taken no official position -- my own

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
ON  
Civil Rights

110

CONFIDENTIAL

feeling is that in many respects it is much more important to license networks than it is individual stations because your programing is determined by networks, not by individual stations. Either that individual station pulls in or pulls out that network plug. We do have some authority on that, more than appears on the face of it, for this reason: All of the networks, with the exception of Mutual, also own radio stations. NBC owns WNBC in New York, WRC here, WTAM in Cleveland, KOA in Denver, stations in San Francisco. CBS owns three or four stations.

MR. SHISHKIN: Mutual does not?

MR. PLOTKIN: Mutual does not, but the stockholders who own Mutual own stations, so for all intents and purposes all the networks own stations. They have to come in and secure licenses. Usually anything that happens on their network usually happens on their own stations, so that we do have some influence in the field, although we don't have a direct one. I think the situation would be better all around if we were to have control over networks.

MR. SHISHKIN: What constitutes an affiliation of a network?

MR. PLOTKIN: Usually it is a contract. The station agrees to take programs of the networks, and the networks agree to feed the programs over that station. The networks,

CONFIDENTIAL

CONFIDENTIAL

understandably from a business point of view, like to serve only those markets where good markets can be had. As a result, the big cities get an abundance of service and the little cities get hardly any. There are a lot of non-controversial points, just technical points, where licensing of networks would be a very helpful thing.

I don't see us getting any such authority from the Eightieth Congress, though.

MR. DURHAM: I have this little question. You may have answered it earlier. How do you measure this problem of disclosure in this field? Can you give us such a measure? Is it much or little, or is it an important problem or an unimportant problem?

MR. PLOTKIN: Failure to disclose?

MR. DURHAM: Yes.

MR. PLOTKIN: You mean how important would we consider failure to disclose? The responsibility of disclosure on the part of the station, now, or on the part of the interest using the station?

MR. DURHAM: On the part of the interest using the station.

MR. PLOTKIN: Well, our only control is through the station. Therefore, our only sanction is with respect to the

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

112

CONFIDENTIAL

station. Therefore, everything depends on the station. Either the station discloses, or does not disclose, and if there is non-disclosure it can lose its license. The Supreme Court has held that where they withhold financial information we are authorized to take away their license. Any other non-disclosure that is relevant could be subject to the same penalty. We operate only on the licensee.

MR. DURHAM: What I was really getting at is this, I guess: Do you have to spend much time and money on these so-called disclosure cases? Is it a <sup>big</sup> administrative problem for you, or do you bother with it very much?

MR. PLOTKIN: Well, if it is the type of disclosure that I discussed first, disclosure involved in an application, that is part of our every-day business. We look at applications, and prima facie we assume they are telling us the truth. We make no detailed investigation into the identity of persons who own radio stations. On the face of it, we do the same as the Bureau of Internal Revenue. We assume that the truth is being told to us. If we have a responsible complaint, or we are sure the facts that are being told to us are not the truth, we make a field investigation, but I would assume we don't make a field investigation in one-tenth of one percent of the cases. If there is a complaint, 95 or 99 percent of the cases are

CONFIDENTIAL

CONFIDENTIAL

disposed of by writing letters back and forth. We write a lot of letters on any number of subjects, and we dispose of it in that way. If the matter is serious enough, it will involve a hearing, but I don't think there are more than one or two such cases a year.

MR. SHISHKIN: What would you think about a possible requirement that any person who repeatedly has access to radio for expression of ideas or dissemination of ideas, whether he be a commentator or debater, be required to furnish information with regard to his sources of income?

MR. PLOTKIN: Well, we have got several bills introduced in Congress which look the other way. I think it cuts the wrong way rather than the right way. The bills that have been introduced propose to require commentators to list their nationality, where they were born, where their mother and father were born, their affiliation with organizations.

MR. SHISHKIN: Does that call for information concerning sources of income?

MR. PLOTKIN: I don't know, but sooner or later it will get away from the financial end and into the background, and what his racial background is, what bad organizations he has belonged to. Certainly the temper of the times today would lead to that result, rather than the other result. I think it

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

114

CONFIDENTIAL

is probably dangerous rather than helpful, simply because no matter how it starts out, once the precedent is established, they are going to force it over onto the witch-hunting side, trying to <sup>disclose</sup> ~~dispose~~ of a man's economic interests. I would be scared of it, myself.

MR. SHISHKIN: Is there anything else?

Frances?

MISS WILLIAMS: No.

Mr. Shishkin: I think you have a statute in the record of administration and a set of rules that are far clearer because of a more clearly defined area of operations upon means of communications than we would have with the multiplicity of operations that may be carried out by word of mouth, newspaper publications, and things of that sort.

Mr. PLOTKIN: Well, the First Amendment protects against censorship, and section 326 of the Communications Act specifically provides that the Commission shall have no authority to censor broadcasting, and every time the Commission attempts to even squint at a program the charge <sup>of</sup> ~~is made~~ "censorship."   
The press and the radio <sup>can always</sup> ~~just love to~~ hide behind the First Amendment, and any legitimate inquiry into their activities starts them to yelling "censorship." As a result, you have got this problem. I think we conscientiously try to stay away

CONFIDENTIAL

CONFIDENTIAL

from any problem of censorship. The line can get to be pretty thin. We try to lean over backwards so as to avoid any possibility of censorship, but there is the additional problem of not only avoiding censorship, but if the other side yells "censorship," it creates a bad situation, as we are subject to charges from the Hill.

So not only is there a natural tendency on our part, and a tendency to tread easily in this field, but there is an easily understood timidity on our part in these situations.

MR. SHISHKIN: Have you had any cases involving complaints of subversive statements or programs coming from the Left Wing source?

MR. PLOTKIN: You mean Left Wing complaining against Right Wing statements, or Right Wing complaining against Left Wing statements?

Mr. SHISHKIN: I have in mind about Right Wing.

MR. PLOTKIN: Yes. For instance, to go way back when Cecil Brown was removed from the air -- the charge was that he was kicked off the air -- we got a good many complaints about the fact that <sup>liberal</sup> little commentators were being squelched. When KFI a year ago removed several commentators, the charge was made that KFI was removing its liberal commentators and replacing them with conservative commentators. The charge was

CONFIDENTIAL

CONFIDENTIAL

made that the networks were just trying to remove their liberal commentators and keep only their conservative commentators. As a matter of fact, the charge is now made that not only have they successfully removed all liberal commentators, but they are now going after middle-of-the-road commentators.

On the other hand, when Upton Close was removed, the charge was made that he was being throttled.

MR. SHISHKIN: Is he now off the radio?

MR. PLOTKIN: I don't know. I never listen to the radio much any more. But I know he was on again.

Merwin K. Hart was sponsoring him. The National Economic Council was sponsoring him. Whether he is on or off now, I don't know. All the time we get complaints about Fulton Lewis, Jr.

MISS WILLIAMS: Off the record.

(Discussion off the record.)

MR. SHISHKIN: Well, thank you very much. We certainly are grateful to you for coming over and giving us this background. That will be very helpful to the Committee.

STATEMENT OF PAUL RICHMAN,  
National Representative for the Anti-Defamation  
League of B'nai B'rith

MR. SHISHKIN: I wonder if you could give for the record a little bit of your background and your position.

CONFIDENTIAL



CONFIDENTIAL

MR. RICHMAN: I am the national representative here in Washington for the Anti-Defamation League of B'nai B'rith. B'nai B'rith is the largest Jewish service organization in the country, with a membership of men and women of about 300,000, and it started about 104 years ago. They have chapters in almost every city and town in the country. It began primarily as a philanthropic, fraternal organization.

The character of the organization has changed. We deal primarily with education, and our main branches are the Hillel Foundation, which services Jewish students on university campuses, and then we have the B'nai B'rith youth organizations for those who are in high school and prior to the entry of college. We try, with them, to integrate the Jews into the American scene, give them the highest form of democratic impulse and the best traditions of Judaism.

The Anti-Defamation League is probably the strongest branch of the B'nai B'rith, which was started by Sigmund Livingston about 35 years ago, and it developed its full force with the advent of Hitlerism. Methods were developed to combat the force of Hitler propaganda in this country.

A very interesting fact was that at the beginning of the depression, up to the year about 1936, there was comparatively little anti-Semitism in the United States, as compared to

CONFIDENTIAL

CONFIDENTIAL

what happened after 1936 when the Nazis began financing various projects in America, and that coincided with the improvement of the economic conditions of America. In the worst throes of the depression there was not as much anti-Semitism as there was with the improvement of economic conditions.

But, of course, as I said before, the money was poured into this country after economic conditions began to improve. We would not say that if we had a depression again that anti-Semitism might not reach another height, but it is an interesting observation, a fact.

We have branches of our organization aid workers in nearly all the large cities of the United States. I happen to represent the office here in Washington. I am more or less the national representative here in Washington. I appear in legislation with the executive offices of the Government, and with the newspaper men, and so on.

MR. SHISHKIN: I suppose Mr. Durham has had a chance to tell you about the special interest of the subcommittee.

MR. RICHMAN: Yes. We had a long talk, and I think our conversation should have been recorded then, because what I was planning to say today is a repetition of what I told Mr. Durham. So he is pretty familiar with my suggestions and recommendations.

CONFIDENTIAL

CONFIDENTIAL

MISS WILLIAMS: We have two new students today.

MR. SHISHKIN: And also a record which will be read by all the members of the subcommittee.

MR. RICHMAN: Yes. Well, I did not know just how this was going to operate today, so I did not prepare anything.

But I think I might start by saying that since this is a legislative subcommittee -- am I correct -- subcommittee interested primarily in legislation?

MR. SHISHKIN: No. Our subcommittee is primarily interested in this: We have got the work of the full committee divided in such a way as to deal here in our own committee with the sources of hate activities, their financial and economic support, and the ways and means of reaching at the sources through disclosure or the use of the Government powers.

MR. RICHMAN: Yes. Well, I discussed this whole matter with Mr. Durham at my office, and I also gave him some information which I shall not repeat here, but I would like to say that I have been at the heart of this whole business for a long time, since 1938, working in almost every phase of the problem, and I worked with various people in the Department of Justice, with the Congressmen, with special lawyers, and I have matured quite a bit in this field.

I was very much in favor of laws of prohibition against

CONFIDENTIAL

CONFIDENTIAL

the things when I first started out, and today I am more or less a disciple of Morris Ernst in this field. My fight here was a day-to-day fight. We did not know exactly how to grapple with Nazi propaganda, and we had to learn exactly how they operated, the source of their funds, the personalities through whom they worked, the organizations which they set up, and so on, and then after we learned that we had to find a means of combatting the situation.

For instance, in 1938 there was a passed law involving the registration of foreign agents. At that time the foreign agents supposedly had to register with the State Department. The way the law actually operated, it had no teeth in it, there is no real enforcement, there is no set-up in the State Department to go after the people who did not register. It was a very loose operation.

In determining the law, in discussing the matter with several people in the State Department and the Justice Department, I learned that a group of lawyers working on New Deal legislation in this community, headed by Felix Cohn -- I had known Felix, but I did not know he was running this group. I got together with them, and almost insisted that they work on legislation involving this serious situation. The result was I did get them to investigate the operation of this propaganda agent act of 1938, and we did work on a revision. I spent many

CONFIDENTIAL

121-129  
CONFIDENTIAL

hours with that group, evenings, and finally worked out this new law which did not go into effect until after the war was on, so that it really did not meet the serious problems we had to face then.

MR. SHISHKIN: It came too late?

MR. RICHMAN: That is right, it came too late.

MR. SHISHKIN: Was your feeling that the Vohrees Act was pretty ineffectual?

MR. RICHMAN: Yes. Any law which makes a man a criminal and forces him to register as a criminal is bad by its very nature.

You see, laws should be developed around social and economic and political issues. Nothing exists in a vacuum. Anti-Semitism does not exist in a vacuum, alone. It is a disease, it is a diseased mind. ~~Anti-Semitism itself is a disease, but it cannot gain any~~ or anti-racialism is a disease, and it does not gain any real force until it is connected up with a social, economic, or political issue, and your laws must embrace the entire concept of the problem before it can be meaningful or have any effect.

You take, for instance, ~~today~~ the Ku Klux Klan. The Ku Klux Klan in itself would be a harmless group in themselves. It embodies the ignorant, illiteracy, and that sort of thing,

CONFIDENTIAL

CONFIDENTIAL

prejudice without any reason, and so on. It would not develop unless there was some bigger force behind it. We have, for instance, in an investigation of certain Klan set-ups found that certain textile owners were interested in fighting the C.I.O. and A. F. of L. organizations down there, and they whipped up opposition by financing certain of the Klan chapters in certain areas.

Now, the mill owners had certain ulterior motives. They may or may not have been prejudiced men. Their main purpose was not in developing the Klan but in defeating the unions in the South, and that was a technique that they developed to overthrow the unions, and their organizers, and it whipped up all kinds of excitement in connection with the Klan. It gave them impetus.

Now, the Klan, while it has dwindled in its membership because of certain operations there, and has become more or less momentarily ineffective, I believe that with Talmadge coming out to capture the governorship, that he will again use the Klan politically to gain his governorship. In other words, use the Negroes, Jews, or Catholics, or whatever will arouse the ignorant masses.

So I look forward to an increase in growth of the Klan except for one thing: I think that Drew Pearson and his

CONFIDENTIAL

CONFIDENTIAL

exposures have caused the people to fear the Klan, so that many of the people who joined the Klan after the first world war are very fearful of joining again, or having their name connected with the Klan because of the threat of exposure, and exposure is the greatest weapon we have in American life, and I think it is the greatest force in maintaining our democracy.

That is why in recommending this type of legislation that I do, which would be in line with Morris Ernst, I would recommend that people who wish to indulge in hatred of any individual or any group be permitted to enjoy themselves but at the same time register, say, with an office here in Washington, register the officers of their organization and, what is more important, register the source of their funds.

Now, the way the thing would work out would be this: That a big politician who was out seeking funds would have to register those funds for specific purposes of hate mongering, and responsible people, reputable people in the community, would fear giving them any funds because the whole thing might come out in the open. Reputable people in the public eye are more fearful of their reputations than anything else.

MR. SHISHKIN: How would you establish a category of organizations that would have to register?

MR. RICHAN: I think that would not be difficult. Those

CONFIDENTIAL

organizations that are setup to bring individuals or organizations into public disrepute -- that type of organization or individual would have to register. I don't think there would be much difficulty in categorizing these organizations in that manner. Their purpose is to, by defamation, by slander, by falsehoods, bring any group or individual into disrepute.

In reply, I think I know what you are referring to. Let me put it this way: Many of us in Washington have to register as lobbyists. Now, far as I am concerned, I do no lobbying, or if it might be construed as lobbying I don't know about it. I am not lobbying in the sense of a great many people who are paid to do nothing but lobby. That is not my field, but nevertheless I registered, and it might catch some people in organizations who might protest that they are not involved in this sort of thing. They could say so. There would be a question of doubt, and, of course, if any case came up, say, where any case was developed by the Department of Justice it would have to be a pretty strong case. The fact that they did not register, or the fact that they were doing certain things that they did not report, would be sufficient to indict that group.

MR. SHISHKIN: Well, the question that I had in mind was that there would be activities of a Fascist group, dealing not

CONFIDENTIAL



CONFIDENTIAL

so much with the status of the minority or the hatred, itself, but other aspects of anti-democratic invasion of civil liberties, preaching the doctrine of humanitarianism, and that kind of thing.

Would that <sup>be</sup> include ~~that~~ <sup>this</sup> in ~~his~~ category?

MR. RICHMAN: I believe that you have an opportunity now to hang that type of thing onto the other, because the type of thing -- the type of thing that you refer to is much more popular today, and I think your bill could be formulated to make that the main feature of the bill and hang all these other things from the point of view of both right and left groups, which might be required to register, onto it.

MR. SHISHKIN: Your approach is quite different from the basic Ernst proposal. The Ernst proposal is that exposure and disclosure as methods should operate without regard as to what is preached or what ideas are promoted; that any ideas that are being <sup>promoted</sup> ~~promoted~~, or any attempts to influence ideas in the market place of thoughts should be subject to public check, and, therefore, there should be registration or disclosure of the sources of funds that are behind such promotional ideas, no matter what they are.

Mr. RICHMAN: There is a question in my mind. I know that that is Morris Ernst's approach, that all organizations,

CONFIDENTIAL

CONFIDENTIAL

even organizations like our own, would be required to register. It might be all right, except that when all these organizations register it might, to some extent, nullify the effect of this whole proposition. I don't know. I am breaking away there from Morris Ernst's proposal to this extent: I was just wondering whether or not it would be more effective if only those organizations that operate to bring other groups into disrepute, into public disrepute, would be required to register. It could be class against class, capital against labor, labor against capital, race against race, or creed against creed. I mean those groups that enter into public controversy rather than those groups that approach it from the point of view of, say, religion, or, say, on the basis of a positive approach to democracy without tearing down anybody else, like, say, inter-race groups, inter-creed groups; groups like that I don't think they should be required to register.

MR. SHISHKIN: Not political parties?

MR. RICHMAN: Well, Morris Ernst would probably exclude religious groups, but, to be consistent with his proposal, all religious groups should disclose all their sources of funds, too, because within religious groups are a great many hate groups.

MISS WILLIAMS: That is very true.

CONFIDENTIAL

CONFIDENTIAL

MR. RICHMAN: Well, a very great many hate groups are to be found within some religious groups, and some of the worst elements today -- take, for instance, Gerald L. K. Smith, a very fine Baptist, who is in disrepute among his own co-religionists.

Take a fellow like Blessing; take a fellow like Harvey Springer; take a fellow in Minneapolis like Herrstrom, ministers who preach the gospel intertwined with hatred and politics, anti-New Deal, anti-liberal, anything I mean at all. Then you ought to require, according to Morris Ernst, all religious groups to register.

In my approach, I would require only those religious groups who are out to tear down other religious groups, or get into politics.

MR. SHISHKIN: Or any other groups, in other words?

Mr. RICHMAN: Or any other groups, yes.

MR. SHISHKIN: Well, the thing that bothers me about this is what happens on the question that I raised a moment ago? The reason that I was referring to political parties is not because registration would be objectionable, or would be a problem to deal with, but one of tearing down or casting an aspersion on the other group, or upon another party in a political campaign, as a test, would create a public criterion

CONFIDENTIAL

CONFIDENTIAL

in law as a basis for registration, which might eventually be used for other purposes.

One of the main functions of the Republican Party is to tear down the Democratic Party, and, therefore, it is in a separate category, and I was wondering whether you would not take those separately as far as political campaigns are concerned.

MR. RICHMAN: Well, they do more or less expose sources of their funds right now. They do that. You might carry on -- in fact, the basis of a certain law that I have been interested in resulted from my work with the Gillette Senate campaign of expenditures committee where we saw where certain subversive elements integrated themselves into into the parties, and we saw that about 50 percent originated from national political headquarters were of a hate nature.

So we suggested the law that all anonymous literature is subject to a violation of laws.

MR. SHISHKIN: Well, that has been enacted.

MR. RICHMAN: Yes, it has been enacted, so I think the political angle might be stretched out into other -- I mean, it might be stretched to anybody who indulges in public controversy. I don't think I would force organizations dealing with positive elements like religious groups to register. I think

CONFIDENTIAL

CONFIDENTIAL

it would weaken the whole thing when everybody has to do it, and there would be so much registration, so many checks and figures, that I don't think it would be a good thing. I might disagree there with Morris Ernst. I would break it up first. If that did not work, I would require everybody to register. But I would try this other, first.

MR. SHISHKIN: You would first try what category?

MR. RICHMAN: Controversial groups outside of politics.

MR. SHISHKIN: But the test will be what? Defamation?

MR. RICHMAN: Defamation, and then I would say controversy, entering into controversial fields, controversy means fighting against any other group. I think it would have to be against groups.

MR. DURHAM: You would include in that farm organizations and labor organizations that have controversial roles on either side of a public question?

MR. RICHMAN: That is right. They do more or less register, anyway. Their funds are subject to public inspection, most groups are. I think even labor today is pretty much in that category there, too, the source of their funds.

MR. SHISHKIN: Well, one difficulty that I see here -- I am wondering what your reaction would be -- would be the difficulty that would be inherent in the wordage of the act. If

CONFIDENTIAL

CONFIDENTIAL

<sup>use</sup>  
use the criterion of an organization or group in bringing another organization or group into disrepute, it is a negative criterion, and you say those who throw others into disrepute come and register?

MR. RICHMAN: Suppose we would put it on the basis of controversial issues, or organizations that enter into questions of public controversy? You take the radio today through the N.A.B. code establishes the right of any individual or group maligned over the area to get the right of reply on equal time and equal basis. I think that is a very excellent principle, which might be also expanded into this thing. In other words, when a man enters into controversy over the area with right to any group, that group has the reply.

MR. SHISHKIN: Actually, it is a good principle to be stated, but in its application it is most vaguely applied. The Federal Communications Commission, as we have just heard, does not really have any firm ground on which to act as a Government agency.

MR. RICHMAN: Well, I know from my experience with radio controversial matters, that we made it work where we wanted it to. You take Bishop Shiel, when he was maligned. You take the case of P.M. that was maligned by Fulton Lewis. I don't know whether they were maligned or not, but I know that they got the

CONFIDENTIAL

CONFIDENTIAL

right to answer Fulton Lewis on his own time. I think from the cases that I know about where the opposition was determined to get time, they got time.

Now, it may be that the people do not know about their rights. There is a question there.

MR. SHISHKIN: What is controversial? Wouldn't that be difficult to define?

MR. RICHMAN: That is right.

MR. SHISHKIN: Let me put it this way: I asked this question of one of our consultants before, and I think this is the kind of a question that the Commission will be asked when they come out with something:

If someone on the radio program, or elsewhere, is preaching tolerance, that would not be controversial, I presume, in your opinion, would it?

MR. RICHMAN: No. <sup>That is a case B</sup> ~~any~~ people getting along through the principles of brotherhood.

MR. SHISHKIN: If a preacher goes on the air and preaches tolerance, and the principles of brotherly love, nobody can come around and insist on the right to rebut that by saying, "This is a controversial statement, and I would like to say something about the doctrine of Aryan superiority; therefore, intolerance," he would be denied that. Then comes this other

CONFIDENTIAL

CONFIDENTIAL

fellow who preaches intolerance. According to the Federal Communications Commission spokesman, not to reveal any secrets in the record, he would say that if somebody comes in and preaches intolerance, that would be controversial, and anybody who preaches that would be immediately subject to the requirement of affording an equal time for somebody to rebut that.

What is your feeling about that?

MR. RICHMAN: I don't think that there would be too much controversy about the word "controversial." The positive things of life are pretty well and pretty clear and obvious, even to children. ~~Such positive things as the people react unfavorably to negative things.~~ We know pretty well by experience the things that are controversially generally in the American democratic picture.

MR. SHISHKIN: But you would say that preaching intolerance was controversial?

MR. RICHMAN: Yes, I would say so. Now, when we speak of intolerance, we don't say that the man does not have a right to express his intolerant viewpoint. All we say is that if a man wants to be intolerant, and preach controversy on a certain subject, he should register and give the source of his funds.

MR. SHISHKIN: In the administration of this whole thing, including registration, use of the powers of the Federal

CONFIDENTIAL



CONFIDENTIAL

Government, whether they be taxing powers or spending powers, whatever the case would be, would you think that the proper administration of this approach in the field of civil rights would be best located in an independent agency of the Federal Government, such as the civil rights commission, or whether it is to be placed in an existing department, or what would be the best procedure?

MR. RICHMAN: When the bill was prepared by Senator Gillette at that time it was called S-990.

Mr. SHISHKIN: Of the Seventy-ninth Congress? Seventy-eighth?

MR. RICHMAN: I don't recall that. I would have to look that up. It was decided then that it be put in the Interior Department because the Interior Department already deals with various races, such as Indians and Mexicans and groups of that kind, and that possibly that department, more than any other department, might be better qualified because of experience with certain groups. I don't know whether that is applicable because it is not so much races or groups that we are dealing with here, but, rather, with controversial questions, with ideas, so that while it might go in the Interior Department, I don't think the reason given at the time was proper.

With regard to administration, I have no strong opinion on

CONFIDENTIAL

CONFIDENTIAL

that. I don't know whether that would be an opinion or not.

MR. DURHAM: Aren't you dealing with groups, really?

Because you don't care what they say, apparently, but you want to know that if they do say it --you want them to disclose the source of their funds?

MR. RICHMAN: Well, yes. Well, since we are broadening it into groups engaging in controversial subjects, I am just wondering whether we might put it on a much higher plane than individuals or groups and broaden the whole thing so that it involves ideas rather than groups, and then the groups violating the principle would be forced to register.

MISS WILLIAMS: Isn't the central problem the safety of the country in terms of its democratic way of life that really makes the concern for this subject, and the agents here in the Government who are supposed to have that in charge is the Justice Department. No matter what you think it is, or how well it does, I mean the logical --

MR. RICHMAN: Well, this country normally in peace time -- this country is unique in all countries of the world, since we have so many of every race and every group and every creed. The strength of this country is based on the variety of the groups that we have here. But at the same time it is also paradoxically the weakness of this country in an emergency

CONFIDENTIAL

CONFIDENTIAL

state or in time of war. Unless we can unify and strengthen the unity of all the groups in time of emergency or in time of war, it does involve security, and for that reason I would approach in time of emergency or in time of war the problem in a different category. I would then throw in a prohibition law at such a time.

We got up a formula some time ago for meeting just such a situation in times of emergency and war, prohibiting the use of propaganda emanating from outside of this country which would tend to divide group against group, and race against race. That, I think, should be prohibited, and that is the only place where I would still insist on prohibition.

MR. SHISHKIN: In time of war?

MR. RICHMAN: In time of emergency. When the President declares a state of emergency we ought to prohibit any type of propaganda that emanates outside of this country to stir up, to divide the American people. When the emergency ceases I think we ought to do away with this prohibition law. Because today psychological warfare is as important, perhaps more important than physical warfare. Hitler captured country after country without firing a shot through psychological warfare, and by dividing the countries and conquering them through propaganda, and our laws are obsolete. Our security laws are

CONFIDENTIAL

CONFIDENTIAL

obsolete because the law as yet has not come around to taking psychological warfare into consideration, and I am afraid that unless we have such a law to meet psychological warfare that we will be overrun before we have a chance even to fire a shot.

MR. SHISHKIN: Isn't the time of emergency rather late? I mean, we did not proclaim national emergency to exist until 1940, and we have evidence of tons of literature imported from Germany since 1936.

MR. RICHMAN: Well, the importation of literature was stopped by the Post Office Department -- I have forgotten exactly what year -- I think it was 1941.

Mr. SHISHKIN: But not with the embassy.

MR. RICHMAN: But not with the embassy. It was more through the radio and people who listened to certain signals and codes on the air, and then repeated the slogans and phrases as they came over the air.

Now, if you could indicate that there are certain people in this country paralleling the same kind of propaganda which was emanating from, we will say, foreign broadcasting stations or repeating literally the same language, or the same general pattern of ideas as was sent out by foreign countries, I think those people should be subject to indictment. In an emergency only, and in time of war. The emergency period is more important

CONFIDENTIAL

CONFIDENTIAL

than the time of war, because the people are alerted in time of war, whereas they are not so much in an emergency period, and I think that is a very important point.

Our laws today are obsolete from a security point of view, and such laws I would put, certainly, in the hands of the Department of Justice, but with regard to these social, political and economic phenomena, or controversies, I don't know whether I would put it in the hands of the Department of Justice. I am not sure about that. I don't know who might administer this thing best. It might be done best by an independent agency.

But my thinking is not too mature on that point.

MISS WILLIAMS: I would like to say something off the record.

(Discussion off the record.)

MR. SHISHKIN: To get back on the record, I was wondering whether you don't see a problem in using that approach of getting into situations in which the organizations on the face of their activity are dealing with issues like <sup>moral</sup> ~~new~~ rearmament, a large organized effort, or one step further than that, in one direction or another, in that sphere, wouldn't you find it difficult to categorize them?

MR. RICHMAN: No, not in the field of <sup>moral</sup> ~~new~~ rearmament, as

CONFIDENTIAL

CONFIDENTIAL

except sometimes their field of leadership gets over into the field of politics where Mr. Butler ~~once~~ praised Hitler as a great ~~possibility~~ *Personality* of this age. Of course, when he got off into such questions he would have to register, but ~~mere~~ *Moral* rearmament is another positive approach to the religious field. It is another reinforcement of the brotherhood of man idea. I don't think it would be controversial. I think it is very simple to know when a man gets into a controversial field.

MR. SHISHKIN: Then you would recommend registration --

MR. RICHMAN: For instance, if I, as a Jew, who believed in Judaism, and its principles, would carry on within the realm of my belief and faith, and I decided one day to criticize, say, the Christian or Protestant or Catholic groups, the minute I did that I would have to register. I could still go on if I would register, but it would not prevent me from saying, "Go ahead, register, and say all you like, and a lot of people would carry on. It would not eliminate everything, but what I am saying is this: That for any movement to gain great force, momentum, it would require a lot of funds from big people, people with lots of money, responsible people. They would be hesitant in most instances if their funds were made a matter of public inspection.

MR. DURHAM: Do you see the thing shaping up as a kind of permit, the procuring of a permit for the purposes of expressing

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

---

1

CONFIDENTIAL

criticism of another group?

Mr. RICHMAN: Well, it is the same point we made with regard to registration of lobbyists. People complained that their constitutional rights were violated. Each individual certainly has a right to seek out his Congressman and express his views on different legislation, and argue on anything where he thinks the American principles are violated, and so on, and I think personally that the lobbyist registration act does not certainly carry out what it was intended to. I don't agree with that particular registration law, because the biggest lobbyist in America don't lobby. They operate in other ways to get what they want. They don't have to lobby. They elect their Senator, or their Congressman, or there are other ways of their operations to get what they want.

The little fellow registers.

Well, there is no great stigma attached to registration, so people register and don't make much fuss about it, and people who feel that they are too limited in their rights as American citizens in registering --

MR. DURHAM: But in that case you went down to register, even though you don't lobby because sometimes you might want to lobby and not run afoul of the law?

MR. RICHMAN: Well, I did it because our organization has

CONFIDENTIAL

CONFIDENTIAL

been misrepresented by our enemies. We probably have received more indictments from the groups in this country who call us every name under the sun.

We do have some enemies in people who really don't know the name of our organization. Most of the work is done in the nature of good will operations, various groups, and we are not anywhere near as bad as they have us pictured. So some Congressman might see me around the Hill, and might misconstrue my missions, and try to make trouble, and so in order to avoid trouble I just went ahead and registered so that when they do see me on the Hill they will know that I have registered and will not misconstrue my efforts there.

MR. SHISHKIN: Would your registration include individuals who might make controversial statements publicly in a magazine article, over the air, in a newspaper, in a pamphlet?

MR. RICHMAN: That is a very pertinent question. I am thinking outloud, now.

I would say this: That where this individual <sup>w</sup> writing attacks an organization or a group in an attempt or with the intent of bringing that group into disrepute, I would say that person ought to register if he writes any articles, yes. It does not mean he cannot do it. Just a registry.

MR. SHISHKIN: Would registration require his statement of

CONFIDENTIAL



CONFIDENTIAL

all his sources of income?

MR. RICHMAN: When he enters that field, yes.

MR. SHISHKIN: Subject to investigation of his veracity of the statement?

MR. RICHMAN: Well, every registration is subject to that, yes. It does not stop the fellow from doing it. He can go ahead. Before he enters into such a field, he has to be able to back his convictions with --

MR. SHISHKIN: Would that registration include in his statement income, or would that in connection with his registration be a matter of public record?

MR. RICHMAN: Yes, it would have to, in order for the law to be effective.

MR. SHISHKIN: I was not trying to be dull or obscure when I asked that question earlier about whether tolerance is controversial and about whether intolerance is, because the difficulty I see in this is that once you apply that to legislation, while such a proposal may be given consideration, it can, and undoubtedly would be claimed with some weight that in any controversial issue there are two sides, and if anyone in an economic issue made any attempt at defamation or passing aspersions at a group or a number of groups, he would be engaging in a controversy, whether it would be political or

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

142

CONFIDENTIAL

economic or social, by giving only one side, and that this should be applied equally to both sides.

MR. RICHMAN: I thought about that, the difficulty you would run up against. I believe it would also be preferable if the reply could be given equal force, that is, the same magazine would cover side by side, or in the next issue in the same space -- or, rather, it would have to be at the same time to be effective because some people would not read the reply, would not have a chance to read the reply. I think that might be more preferable, except that certain organizations -- we will characterize them as hate organizations -- have their own periodicals, and I don't think that the opposition could possibly be given fair treatment by such an organization. That is, by constantly harping on that question, that even though there would be an opposition reply each time, they could just dote on that particular subject time and time again, and they would carry the weight of their side and influence people that way.

MR. SHISHKIN: I am not as optimistic as you are with regard to the ease with which the definition on what is controversial could be made. In the case, just to give one illustration, of an economic discussion, the question, say, of the closed shop would be generally accepted by reasonable men to be controversial, certainly, because it has been the cause

CONFIDENTIAL

CONFIDENTIAL

for debates for a sufficient number of years, and anyone, any labor spokesman, who would be casting aspersions at the activities of an employer's organization, or an employer openly advocating open shop, would certainly be in the same category as an employer who cast aspersions on labor unions because they resort to a closed shop. Once you get into that situation, it would lead you pretty far astray from the real area in which we are here dealing.

MR. RICHMAN: Of course it would. I sometimes ~~was~~<sup>think</sup> thought we might even narrow this whole problem down to groups, limited to controversial questions who name other groups as their antagonists. In other words, if you are arguing just on the merits of the closed shop and some author or group argues on the merits pro and con, they should not register, but the minute they attack another group as their ~~opposites~~<sup>opposition</sup> you might have that approach. In other words, when they name their opposition and attack the opposition by name, then they might be forced to register.

What do you think about that?

MR. SHISHKIN: I mean, I am in doubt. <sup>Talk the</sup> ~~That~~ protective tariff, for example, versus free trade, ~~not~~ advocating any legislation or anything of that sort, ~~but~~ an attack upon the Protective Tariff Association who are protectionists on the

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

144

CONFIDENTIAL

argument of free trade, will certainly be a controversy.

MR. RICHMAN: Yes. Well, suppose they would name their opposition and say that these are the people who are behind this movement. The minute they mentioned the name of a group -- they could argue on the merits of the thing without naming anybody, but once they named their opposition in a controversial issue, then they would be required to register, because they have cast an aspersion upon an organization. I think it might be done in that way. People just arguing issues would not have to register, but the minute they attacked -- well, I see the fault in that, too, because, for instance, the attack on international bankers. Many congressmen attack international bankers. While most international bankers are not Jews, and there are only one or two international Jewish banking firms, who are about seventeenth or eighteenth on the list of the international bankers, yet when that term is used constantly everybody knows that they are referring to Jews. International bankers, they were Jews, you see. So, however you try to approach this problem, you meet with these difficulties.

MR. BURHAM: How would you feel that your interests might be served if you had a central office or bureau in the Government here, where the Government was empowered to get all kinds of information about various groups and organizations for

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

145

CONFIDENTIAL

reference and file, and that is all? Would you feel that that would be a step in the right direction?

MR. RICHMAN: Why, a commission to investigate organizations would be another approach. We have today the Federal Trade Commission, the Pure Food Commission to investigate organizations which put out bad food or practices of bad trade conditions, and we are trying to get a fair employment practices commission. I advocated at one time a fair election practices commission, which might be a non-partisan commission to see that American politics was cleaned up in ways. I think we might have some sort of American Fair Play Commission to include all of these approaches, but the trouble is that where you get into the field of speech and press you already touch a subject that is very precious to the American tradition. They don't want free speech and free press violated.

American people are horrified by censorship, and I believe this free press and free speech tradition is the greatest foundation, the strongest foundation of our democracy.

MR. DURHAM: Oh, quite so.

MR. RICHMAN: And we don't want to hurt that.

MR. DURHAM: Surely *not*.

MR. RICHMAN: We just want to get after the poisons, the excesses, the violent social and economic upheavals that might

CONFIDENTIAL

CONFIDENTIAL

break down the pillars of our democracy by the termites who gnaw and the many supports by the various groups that make up our democracy, and these termites of hate who are gnawing at it constantly who might destroy the things that make democracy so strong and so great. I don't think you could approach the area of truth and propaganda in the same way as you approach food, drugs, and trade practices.

MR. DURHAM: I did not mean to imply by my statement that the sole purpose of this organization would be to investigate organizations, but it would be something in the nature of the bureau suggested by Mr. <sup>Klaus</sup> ~~Coss~~ earlier before you were here. It would appear in the record. ↑

~~MR. RICHMAN: Who is Mr. Coss?~~

~~MR. DURHAM: I just wanted to make that clear.~~

But go ahead with your remarks.

(Discussion off the record.)

MR. SHISHKIN: To get back to the record, the main issue which guided my question was the main thing I was concerned with, and that is that when recommendations are brought to us they will not be given consideration only by the subcommittee but also by the full committee. And also my concern is with the shaping of recommendations that will be as practical and as realistic as possible from the point of view of accomplishing

CONFIDENTIAL

CONFIDENTIAL

our purpose, and also our actions in a society which is used to freedom of thought.

MR. RICHMAN: I believe that the recommendation should be very practical and of the kind that would be acceptable.

MR. SHISHKIN: Now, the thing, frankly, here, that has bothered me about procedure which would call for registration of all those that engage in controversy and also their statement of income and sources of income should be open to public inspection is this: That I think the first reaction would be that:

a. The principle is sound that freedom of speech carries with it a corresponding responsibility to society;

b. That as a reaction of an average American, he would holler to high heaven about his right to either appraise or blast hell out of anything he chooses without having to disclose his personal income, which is now safeguarded by security, and is available only to the Government, and it is that security that I have been bothered about, as to the practicality of a proposal of this sort.

You know the kind of reaction I have in mind.

MR. RICHMAN: I see that, and I think it is a very pertinent point. But I would try to narrow it down to people who go out on a crusade of hatreds against a group and not involve

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

148

CONFIDENTIAL

themselves purely in controversial issues per se. I think, for instance, if labor could argue its point against capital without involving, say, organizations like, say, the National Association of Manufacturers, or the Chamber of Commerce, and so on, naming them, I don't think they ought to be required to register. They are arguing only on the merits of the case, itself. The minute they start out by attacking any specific group --

MR. SHISHKIN: Or individual?

MR. RICHMAN: No. Because an individual has redress through libel suits.

MR. SHISHKIN: Yes, but what you are suggesting is a little different from libel. It certainly falls short of it. You can make a pretty vehement attack on either Ernest T. Weir, or the Weirton Steel Corporation, as a labor spokesman, without committing libel, because all you will get is probably a blast out of Mr. Weir in return, and probably sevenfold.

MR. RICHMAN: Well, you see, an individual can respond effectively either through the courts, or there are other ways. A group or a member, for instance, if you attack the Negroes, well, it is such a large group of people, or you attack the Jews, or you attack anybody, that the individual member of that group who does suffer by disrepute has no real course of

CONFIDENTIAL



CONFIDENTIAL

redress, and I think to compensate the members of a group the opposition ought to be forced to register.

MR. SHISHKIN: Just to finish what I was saying --

MR. RICHMAN: Of course, there are always ways of getting around it. I mean the clever strategist, say, but anything William Green says and Phil Murray -- everybody knows that they represent the C.I.O. and the A. F. of L., and in that way you have named the group without becoming involved.

MR. SHISHKIN: But, by the same token, just to finish my thought, that if a spokesman of the same kind would bring the Jew into disrepute by the Catholic into disrepute, or the Catholics as a group, or the Jews as a group, those statements need not necessarily be libel in the same category as personal libel?

MR. RICHMAN: They are not presently in the same category as personal libel, no.

MR. SHISHKIN: So you would recommend laws that would --

MR. RICHMAN: No, I would not recommend <sup>group libel</sup> ~~that you rewrite~~ <sup>laws.</sup> ~~the law.~~ All I am saying is that you require these people to register and give the source of their income when they start going after Jews or Catholics or groups.

MR. SHISHKIN: I don't want you to think I am talking about the difficulties.

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

150

CONFIDENTIAL

MR. RICHMAN: Your approach is very practical. They are problems that will have to be contended with, but there is no law is perfect, and what we try to do is to meet this major proposition, and the intent of the law could be very easily circumscribed so that enforcing it the Department of Justice would know generally what the law is aimed at and, while there would be these imperfections, I don't think the Department of Justice, under any attorney general, would prosecute individuals or groups who were not violating the main letters of the law in regard to hatred against groups. I think the law could be written so as to circumscribe the intent you are interested in.

MR. SHISHKIN: I think you can see that the problem of the Committee is not an easy one.

MR. RICHMAN: No.

15 MR. SHISHKIN: We need all the help we can get, and if our current staff will need your help again, I hope we will have the opportunity to call on you.

MR. RICHMAN: Of course, we are just discussing this disclosure approach. Of course, the educational approach, the other legislative fields of fair employment practices, and so on, cannot be discussed. We, in our office, have material on all phases of the problems, and it has been so long now that we have been in this service. If you need any thing, just command us.

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

151

CONFIDENTIAL

MR. SHISHKIN: We have the unfortunate experience today of having a couple of members of our subcommittee detained, and, as you know, Mr. Ernst is very sick. He is still in the hospital.

MR. RICHMAN: Yes, so I heard.

MR. SHISHKIN: But the record will be read by all of them and will be the basis of our formulation of recommendations, and before we get to the end of that we will certainly get in touch with you again.

MR. RICHMAN: I gave Mr. Durham copies of suggested legislation on the problem I discussed, none of which are in perfect form, but if your committee thought there was any idea that they were of value, we would get a group together <sup>to</sup> try <sup>to</sup> and perfect the legislation in the way that you --

MR. SHISHKIN: Is that a very long document?

MR. RICHMAN: No.

MR. SHISHKIN: I wonder if we could have that duplicated and attached to the record of this hearing?

MR. DURHAM: I can get it right now.

MR. SHISHKIN: Well, we will not have an opportunity to do it this afternoon, but if we can have them duplicated, and have them attached to our record, I think the Committee will appreciate it.

CONFIDENTIAL

CONFIDENTIAL

MR. RICHMAN: After discussing this legislation with a good many Jewish groups, there seems to be no unanimity of opinion on legislation. I don't think I have speaking for my own group, but on this approach this is more my personal opinion as a result of my own experience here with national legislation problems.

The thing that I submitted to you, however, I don't think that our own group would be adverse to. I think that they would probably agree on that.

MR. DURHAM: Which one was it, now, that you had in mind? I just want to be sure.

MR. RICHMAN: This is the prohibition bill. It should be emergency in war period. This is the disclosure bill, which ought to be perfected, brought up to date, and include some of the points that you so well made today.

MR. SHISHKIN: Do you mind if I mark it "disclosure bill"?

MR. RICHMAN: ~~Yes~~. Go ahead. Well, I have here the original bill on the literature in connection with federal elections, which is now a law, so we don't have to discuss that.

MR. SHISHKIN: Do you think you can have it duplicated and have it attached to the record?

MR. DURHAM: Do you think we ought to duplicate them <sup>or</sup> ~~and~~ just put them in the record?

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
On  
Civil Rights

153

CONFIDENTIAL

MR. SHISHKIN: Well, that is your staff <sup>problem,</sup> ~~position.~~ Which-  
ever you want to do.

~~Mr. Durham: What do you think?~~

MR. RICHMAN: I haven't thought of any better approach to  
this than the Morris Ernst approach. I mean generally speaking  
<sup>He</sup> ~~There~~ might <sup>Suggest</sup> be some modifications, ~~such as he would suggest.~~ I  
am not sure that I am right and Morris Ernst is wrong, and the  
points that you make ought to be incorporated, too. That can b  
done. The bill as it is there does not include any of the dis-  
cussions that we have had today. That bill was gotten up in  
1940, and I think we have learned a lot since that time on the  
disclosure approach.

Mr. SHISHKIN: Well, thank you a lot. We are very gratefu  
to you.

MR. RICHMAN: I am very happy to have served <sup>you.</sup>

MR. SHISHKIN: Before we close the record, I wonder if you  
could say whether you have any further plans for consultants to  
come before this Committee that we could decide on tomorrow or  
Thursday?

MR. DURHAM: I don't have anyone scheduled now.

MR. SHISHKIN: Do you have anyone in mind?

MR. DURHAM: But at some point I think you might want to  
consider whether you want to hear Arthur Garfield Hayes, for

CONFIDENTIAL

HARRY S. TRUMAN LIBRARY

President's Committee  
on  
Civil Rights

154

CONFIDENTIAL

example, of the Civil Liberties Union, <sup>or</sup> ~~and~~ perhaps Stetson Kennedy, who is a southern author, and has been writing considerably about the revival of the Ku Klux Klan, and possibly others that you might think of, yourself.

~~Now, this is off the record.~~

~~(Discussion off the record)~~

MR. SHISHKIN: We had one witness that we missed today.

MR. DURHAM: ~~There was~~ Louis Nemzer. I must confess error there because I did not tell him the precise time, and there was confusion there.

MR. SHISHKIN: I was wondering whether in connection with those two suggestions you made, and Nemzer, whether you could write to Mr. Hayes and also get in touch with the other people and see if we could possibly schedule them by devoting a half day at the next Committee meeting, which will be Wednesday and Thursday two weeks from now. That will be on April 30 and May 1.

I think that will complete the record of this meeting.

(Thereupon, at 5:45 o'clock p. m., the meeting was adjourned.)

----