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Civil Rights and Civil Wrongs

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MISS-CITIZENS' COUNCILS

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While no decent person will defend racial or religious hate, Mr. Cummerford writes, it does not follow that every possible action taken to eliminate them is either good or necessary. Indeed, he argues, the drive to wipe out discrimination and bias may ultimately lead to the destruction of individual liberty.

by Edward F. Cummerford • *of the New York Bar (New York City)*

IN HIS NOVEL of some years ago called *Nineteen Eighty-Four*, George Orwell depicted in frightening detail what life would be like in Britain in the year suggested by his title. A monolithic tyranny had come to power and had destroyed every semblance of freedom. Under the absolute and brutal rule of a dictator called "Big Brother" men and women had been reduced to the level of dehumanized automatons. No longer were they permitted to act—or even to think—for themselves. Rational thought processes and normal methods of expression had been supplanted by monstrous perversions called "doublethink" and "newspeak". Basic privacy as we know it had been eliminated completely. Fantastic devices for spying were in constant use by the agents of Big Brother so that one never knew, even within the confines of his own home, when he was being observed. Any thought of revolt or disobedience was readily dissipated by the terrifying warning: "Big Brother Is Watching You!"

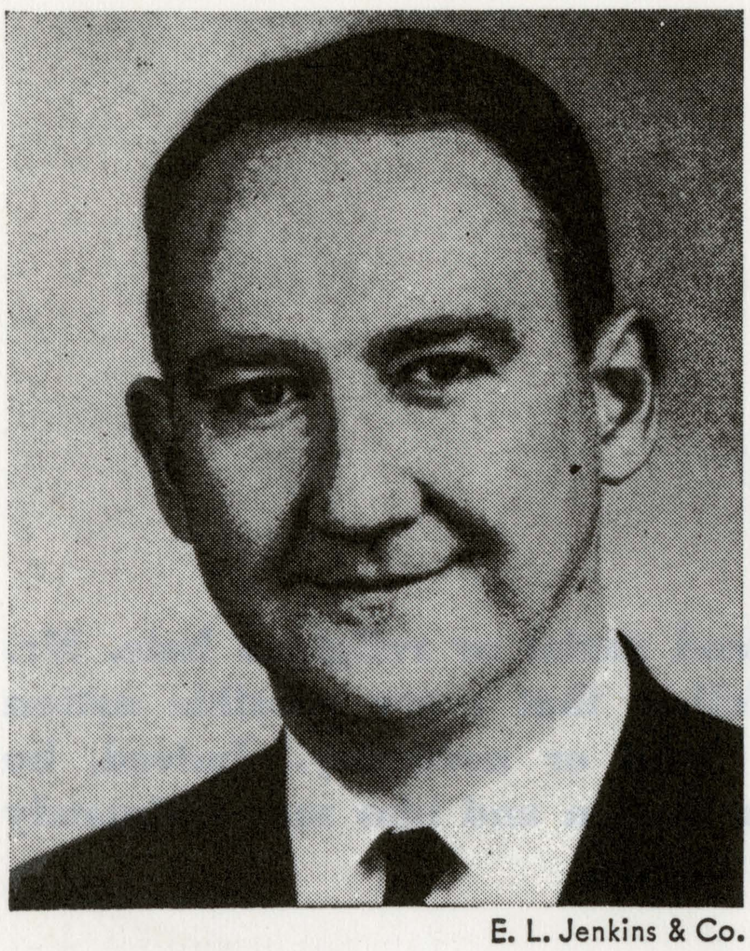
Yet, some will say, this was merely fiction and Americans need have no fear that such eventualities will ever come to pass in our land. Let us not forget that many times in the past fiction writers have foretold things to come with uncanny prescience. In general, nations lose their freedom in one of two ways. The first is by violence, either from within or from without; bombs, machine guns and the like do the job. The second is far more subtle and insidious; this is the slow, gradual process of evolution. By stages, freedom is chipped away and so gradually that few are aware of the real meaning of the process until it is, perhaps, too late. As each little bit of freedom is taken away, the highest and noblest motives are given and the "best people" in the land give their wholehearted approval. Their intentions may be of the very best, but of such is the greatest superhighway of them all constructed.

"Noble Experiments" Sometimes End Ignobly

In recent years this country has been subjected to an onslaught of so-called civil rights activity. These modern conceptions of civil rights do not refer to the basic freedoms enumerated in the Bill of Rights of our Federal Constitution such as freedom of religion and freedom of the press, but are concerned rather with a relentless drive to wipe out "discrimination" and "bias" based on race and religion, mainly the former. While no decent person will defend racial or religious hate, it does not follow that every possible action taken to eliminate them is either good or necessary. Prohibition was termed a "noble experiment" but it did more harm than good, for the simple reason that it abridged personal freedom without sufficient justification. The same basic error permeates much of the civil rights activity now in vogue. To condemn these activities no more makes one a proponent of bias than to oppose prohibition made one a bootlegger or a drunkard.

This drive to eliminate "discrimination" is largely a product of the years following the close of World War II. Generally it consists of litigation, legislation and other actions, lawful and otherwise, all purporting to have the same basic objective: the wiping out of "bias". In the legislative field the typical pattern has been enactment of a statute with an enforcing agency. Although these "antibias" laws vary in detail from one jurisdiction to another, they usually declare illegal "discrimination" in such areas as employment, housing, public accommodations and resorts, public transportation and sometimes education. About half our states, and some municipalities, now have such laws, many with enforcing agencies. In New York, for example, the basic statute was passed in 1945 and created as the enforcing agency the State Commission Against Discrimination, which came to be called simply "SCAD". Recently its name was changed to the State Commission for Human Rights.

Invariably these agencies begin their



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work in an unobtrusive manner but with the passage of time they often become increasingly aggressive, seeking more powers, asking broader areas in which to operate and harsher punitive measures for alleged offenders. Some have stated very candidly that if enough complaints are not filed to keep them busy, they will go out searching for examples of bias. Frequently they query employers as to the proportions of races and creeds in their employ; they scrutinize employment applications to see if there are any questions deemed discriminatory;[1] they scan advertising by hotels and resorts to ferret out language that might be a subtle cloak for bias. These commissions, in short, seem to view their scope as ever-widening. For example, in 1961 Ogden R. Reid, the then chairman of SCAD, said that he desired legislation to give his agency power to deal with bias in promotions as well as in initial hiring procedures. The trend is, unmistakably, in the direction of more and more power for these agencies. As SCAD said in one of its recent publications: "While no complaint has been too minor, *no objective has been too large*"[2] (italics added).

Sometimes the activities of these agencies verge on the absurd. In one instance the owner of a little barbershop on Long Island placed a sign in his window reading "Kinky Haircuts $5.00". SCAD, neither amused by his crude attempt at subtlety nor deterred by the ancient maxim *de minimis non curat lex*, took immediate steps to punish him. Several years ago the State of New York deleted the item "color" from the various details of personal description on drivers' licenses on the ground that that information was discriminatory. While such nonsense hardly merits comment, I cite it as an example of how far such notions can be carried.

In general, however, the activities of the antidiscrimination agencies are more ominous than amusing. In 1961 the press reported that the Philadelphia Commission on Human Rights had warned 17,000 employers in that city that they must not follow merely the letter of the antibias statutes but be prepared to show that they "really believed in the spirit" of such laws. Recently a civil rights committee of the New York County Lawyers Association advocated strengthening local laws against bias in housing by publicizing proceedings to embarrass the accused; should this not suffice, the committee concluded, "consideration might be given to the traditional criminal sanctions"[3].

A Revolutionary Decision in the Second Circuit

In addition to antibias statutes, there is now a marked trend toward litigation to accomplish related aims. Such suits invariably are filed in federal courts, using the Fourteenth Amendment as a catch-all foundation. In the recent case of *Taylor* v. *Board of Education, etc., of New Rochelle*,[4] the Court of Appeals for the Second Circuit held that where the student body of a public school had over the years, because of neighborhood changes, evolved from predominantly white to predominantly (94 per cent) Negro, the Negro pupils could apply to the federal court for transfer to a school whose racial makeup was more in accord with their preferences, irrespective of school boundaries or distances involved. This was in spite of the fact that the city and state involved had never required any segregation in public schools and the board of education concerned vigorously denied that any racial considerations entered into the mapping of school districts.

The New Rochelle case represents one of the most revolutionary and far-reaching decisions ever handed down in this country and its ultimate effects are beyond conjecture. Similar suits are pending against school boards throughout the land, all predicated on the theory that too high a ratio of Negroes in a school, even though the mere reflection of a particular neighborhood's racial patterns, is an evil and must be corrected by force of law.

The dissenting opinion of Judge Leonard P. Moore in the New Rochelle case should be read carefully in its entirety, for it cogently analyzes the false premises on which the decision is based and notes the results it is likely to have. Judge Moore observed:

> Regardless of protestations to the contrary, the effect and implications of the decision below are to place the operation of the schools of the country in the hands of the Federal courts or a single judge. His personal views as to those pupils who should be granted or denied transfers will control; he alone will decide what racial mixtures satisfy his concept of integration. Of necessity he will have to pass upon district lines if he chooses to permit neighborhood schools to continue. His decrees will cause schools to be built, altered, abandoned. Attendant thereto might even be an indirect fixing of the city's school tax rate to accomplish his bidding.[5]

Other possibilities, in addition to those Judge Moore suggests, spring to mind. May a student who feels that racial bias has kept him from a position on an athletic team, or from a part in a school play, or has been the

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1. Among items held improper are the applicant's birthplace, the birthplace of parents and spouses, original name (if name was changed), country of citizenship and the maiden name of wife or mother.

2. "Future Imperative", published by SCAD, 1961, pages not numbered.

3. Bar Bulletin, New York County Lawyers Association, March-April, 1962, page 165.

4. 294 F. 2d 36 (1961); *cert. den.* 368 U.S. 940 (1961).

5. 294 F. 2d 36, 50.

reason for a poor grade in a course, thereupon approach the nearest federal judge, seeking redress? If federal judges can dictate the drawing and altering of school boundary lines and the racial composition of student bodies, why may they not, by the same logic, determine the racial composition of a residential neighborhood by appropriate decrees and orders directed to realty agents and landlords? Can it honestly be maintained that the Founding Fathers, in their almost parenthetical reference to "such inferior courts as the Congress may from time to time ordain and establish"[6] in the Constitution, intended that a federal district judge should exercise such frightening power over the affairs of a local community which had little or no voice in his selection and has absolutely no say over his tenure?

Almost with each passing day new and strange events are reported in connection with this inexorable drive to wipe out "bias". Private property is seized and held by mobs; "sit-in" demonstrations are conducted in state capitol buildings, city halls, board of education properties and the like. Racial pressure groups dictate to private employers what the racial make-up of their payroll shall be, and to school boards what the racial make-up of the student body shall be. Crude pressure is exerted against private clubs because of their membership policies, and threats are heard to abolish them altogether.

What is most distressing about all of this is that those elements in the community which should be the most responsible—the press, the clergy, educators—yea, even the Bench and Bar—view these examples of mob action as something good, and even give them their full support and encouragement. One cannot avoid wondering if they have reflected on the proposition that if a mob can take over a lunch counter because it dislikes the policies prevailing within, it can, by the same token, take over a church or a publishing plant or a university which has incurred its displeasure.

In New York City, which often serves as a bellwether for other places, some amazing things have been taking place along these lines. Members of minority groups (generally considered to mean Negroes and Puerto Ricans) may now apply for transfer to another school, even many miles away, if the racial balance in the school they attend does not suit them. Large numbers of such students are transported daily in buses at great expense to the taxpayers. Several months ago a "mock antidiscrimination hearing" was conducted in New York City at which children, selected from appropriate racial backgrounds, acted out the parts of a would-be Negro tenant and a callous white landlord who refused to rent her an apartment. That innocent children, of any race, should be used as pawns in these weird sociological chess games is nothing short of reprehensible.

Teachers Are Told Words To Avoid

In 1961 the New York City Board of Education issued a directive to teachers in its system to stop using certain words and expressions which might prove offensive to minority groups. Among the proscribed expressions were "low socioeconomic", "fear of walking" [in certain neighborhoods], "complete apathy of parents" and—believe it or not—the expression "dedicated teacher"!

Thus, in about two decades, we have passed in rapid succession from the novel to the startling and from the startling to the grotesque. Into our repository of Anglo-Saxon jurisprudence, whose very foundation stones are the maximum freedom of thought and action for individuals with minimum restraint and interference by government, some new and strange concepts are being infused. What is more alarming is that they are being accepted, passively and unquestioningly, by most of our populace. Liberty is being subordinated to "equality". A type of absolute egalitarianism, riding roughshod over personal privacy and individual freedom, has become the order of the day. Matters that formerly were well within the realm of personal choice and decision are now branded as criminal or tortious, with the punitive police power of government standing by. Private business and social dealings now must contend with the government as an uninvited third party, overseeing and checking what private citizens do and even how and what they think.

When bureaucrats not chosen by the people can warn us to obey the "spirit" of laws or face penalties; when a federal district judge can sit as the absolute overseer of a local community's affairs; when school teachers are muzzled and coerced; when our citizens cease to be free individuals and become merely "ethnic groups" to be manipulated according to some sociological dictum; when our law and our courts become merely the extensions of the sociologists' workshops; when government can invade the hearts and minds of men to search out their subtlest motivations and innermost thoughts; when all of these things come to pass in our land of the free, it is high time we asked ourselves just where we are headed.

The most significant recent developments center on proposed federal legislation in this field. If such laws were to be enacted, the national government would be given jurisdiction and powers in areas never previously regarded as coming within its ambit. The erosion of state and local authority would be tremendously accelerated.

The hour already is late. We may be, even now, in the twilight of our liberty, standing on the very threshold of the type of era envisioned by Orwell. When liberty is taken from some, it tends ultimately to fade for all. When that dreadful day arrives, there no longer will be any need to argue about discrimination for we shall all be joined together in the terrible equality that is slavery. As Justice Sutherland observed a quarter of a century ago:

> For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time.[7]

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6. U. S. Constitution, Article III, section 1.
7. *Associated Press* v. *NLRB*, 301 U.S. 103, 141 (1937).

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