

**REPORT OF THE
COMMITTEE ON OFFENSES AGAINST
THE ADMINISTRATION OF JUSTICE
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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REPORT OF THE COMMITTEE ON
OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE

RICHMOND, VIRGINIA, January 6, 1962

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

No function of government is more important than the administration of justice. It has been necessary that the General Assembly continuously examine this function and improve it where deficiencies or abuses are found to exist. In 1938 the Virginia State Bar was created to guard against unethical conduct by members of its profession and the unauthorized practice of law by laymen. This served to alleviate the situation then faced, but it has since become necessary to take further steps.

In 1956, the General Assembly created two Committees to investigate and report upon matters connected with the administration of justice (Chapters 34 and 47 of the Acts of Assembly, 1956 extra session). These Committees ended on the convening of and during, the regular session of 1958. However, in that same session the General Assembly directed a new and continuing study of the matter by enacting Chapter 373 of the Acts of Assembly of 1958 (§§ 30-42 through 30-51 of the Code of Virginia), which Chapter created this Committee as one separate and distinct from its predecessors. The duties falling on the Committee are set out in the following Section:

§ 30-42. (a) There is hereby created a joint committee of the General Assembly to be known as the Committee on Offenses Against the Administration of Justice, hereinafter sometimes referred to as joint committee. Such joint committee shall investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being observed, administered and enforced and shall specifically direct its attention to the observance and to the methods and means of administration and enforcement of those laws, whether statutory or common law, relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto.

(b) The joint committee is further authorized to investigate and determine the extent and manner in which the laws of the Commonwealth relating to State income and other taxes are being observed by, and administered and enforced with respect to, persons, corporations, organizations, associations and other individuals and groups who or which seek to promote or support litigation to which they are not parties contrary to the statutes and common law pertaining to champerty, maintenance, barratry, running and capping and other offenses of like nature." . . .

The first Chairman of this Committee was Honorable John B. Boatwright, member of the House of Delegates from Buckingham. On his retirement in 1960, Senator Joseph C. Hutcheson of Lawrenceville was

elected Chairman. Other members of the Committee are Senators Curry Carter of Staunton, and William F. Stone of Martinsville, Messrs. Russell M. Carneal of Williamsburg, Francis B. Gouldman of Fredericksburg (Mr. Gouldman also serving as Vice-Chairman of the Committee), Lyman C. Harrell Jr., of Emporia, and James M. Thomson of Alexandria, all members of the House of Delegates. John B. Boatwright, Jr. and Fletcher W. Harkrader, Jr. have served as Clerk-Secretary and Recording Secretary respectively, and William H. King of the Bar of the City of Richmond acts as counsel for the Committee. Also, investigators are employed by the Committee to gather evidence respecting matters under review.

It should be added that the Supreme Court of Appeals of Virginia in ruling on the question of whether the Committee should be enjoined against conducting investigations respecting the National Association for the Advancement of Colored People and certain of its affiliated organizations held, in addition to denying injunctive relief, that the Committee was a continuing one and did not cease to exist on the convening of the General Assembly in 1960; and further held that the records of the Committee were privileged and were not subject to compulsory disclosure (see, *National Association for the Advancement of Colored People, et al. v. Committee on Offenses Against the Administration of Justice, et al.*, 201 Va. 890, 114 S. E. 2d 721, decided June 13, 1960).

MAJOR OFFENSES INVESTIGATED BY THE COMMITTEE

After the 1960 session of the General Assembly, the Committee became aware of a new, serious and growing tide of unlawful conduct resulting in litigation within its area of investigation.

The Committee has found that such conduct originates, not with known and publicized individuals, but with groups and organizations which train and prompt those outwardly guilty of misconduct. The Committee has made this finding as a result of extensive information and material obtained through its investigators, through the taking of testimony, and through requiring the production of documents and other writings by service of subpoenas duces tecum.

(a) *Nature of the Misconduct*

Better known to the public through the media of newspapers, radio and television are outward acts of racial disturbance in the form of trespass ("sit-ins"), picketing and boycotting. Neither known nor understood, however, are the underlying forces prompting these acts of unlawfulness—a subject to be hereinafter reported.

The great majority of trespassers and pickets are young persons, while those participating in a boycott are mostly adults. In every instance, however, whether it be trespassing, picketing or boycotting, the desired effect is to compel a proprietor to act against his will. And that is without regard to the proprietor's right to conduct business with whomever he may wish. The trespassers, pickets and boycotters always act in groups.

By far the greater number of such acts are preceded by a written demand. When the demand is not met, the proprietor is subjected to economic penalties produced by acts of trespass, picketing, or boycott, singly or in combination.

These acts not only cause litigation and harm to proprietors, but also stir up substantial, and at times grave, community unrest with the attendant danger of serious bodily harm to innocent persons.

This litigation, relatively recent in origin, has occurred mainly in the cities of Alexandria, Hopewell, Petersburg, Portsmouth and Lynchburg where the acts have been ostensibly arranged and sponsored by organized groups usually referred to as "improvement associations."

(b) *Organizational Pattern and Activities*

All local improvement associations have been organized in Virginia since the beginning of 1960; and a number of officials and governing figures of these associations have been found to have past criminal records.

To accomplish association purposes, selected speakers at prearranged meetings by harangue and exhortation arouse the audience to the point where they express their willingness to participate in a planned picketing, trespass or boycott. The audience is not advised that such conduct may carry with it criminal penalties. Yet the individuals who make up the audience are the principal ones who suffer fine and imprisonment because of the misconduct to which they are incited, the sponsors remaining untouched.

Each of the improvement associations have representation on the governing body of its parent organization "Virginia Christian Leadership Conference," an association having its headquarters in the City of Petersburg. Virginia Christian Leadership Conference has representation on the governing body of its parent organization "Southern Christian Leadership Conference," an association having its headquarters in Atlanta, Georgia. Southern Christian Leadership Conference has representation on the governing body of its parent organization "Congress of Racial Equality," an association having its headquarters in the City of New York.

Also closely affiliated with Southern Christian Leadership Conference is "Southern Conference Educational Fund, Inc." of New Orleans, Louisiana, the two organizations having interlocking directorates.

It should be mentioned that several southern states have "Conferences" comparable to Virginia Christian Leadership Conference which are in like manner associated with Southern Christian Leadership Conference.

(c) *Outside Influences*

The investigation of the misconduct mentioned was initially confined to matters directly within the scope of the Committee's authority, i.e., litigation which had caused or resulted from offenses against the administration of justice. However, as the principal investigation progressed the Committee considered it advisable to determine also the underlying forces influencing such misconduct.

Further investigation has caused a clear finding that the underlying moving forces which have nurtured and brought about the litigation give rise to the most serious questions. Support for this conclusion is shown by the following facts disclosed by the Committee's investigations.

Southern Conference Educational Fund, Inc. has as its Field Secretary, Carl Braden, now serving a prison term for contempt.

Leonard W. Holt, a lawyer of Norfolk, and a Field Secretary of C.O.R.E., has been regularly and systematically employed by local improvement associations as counsel for participants charged with violation of the Virginia trespass laws. In no known instance have such participants sought out Holt as their counsel, he having been selected for them by

the sponsoring improvement association. Such participants have not been asked to contribute to the compensation paid Holt for his services, nor have they had any say in or control of their cases. Holt's compensation has been paid by the sponsoring organizations.

In February, 1961, Holt appeared before an investigating committee of the Legislature of Florida as counsel for Carl Braden. On instructions from Holt, Braden refused to answer the questions propounded him.

On April 21, 1961, Holt was a featured speaker at a public meeting held in New York City for the purpose of rallying support of a movement to abolish the House Un-American Activities Committee. Also present as featured speakers on that program were Carl Braden and Frank Wilkinson.

Holt's law firm in Norfolk, such firm being composed of Joseph A. Jordan, Jr., E. A. Dawley, Jr. and Holt, has recently brought a proceeding against this Committee in the United States District Court for the Eastern District of Virginia, seeking to enjoin the Committee from in any way interrogating or examining into the affairs of the members of the firm or their clients. The Committee has moved that the proceeding be dismissed. In that proceeding a brief has been tendered, amicus curiae, by The National Lawyers' Guild in behalf of Holt and his partners.

In providing leaders who will return to Virginia and actively engage in promoting acts of trespass, picketing and boycott, thus causing litigation and social unrest, a well-defined program is followed.

Applications in standard form are prepared by the Southern Christian Leadership Conference in Atlanta. These forms are then sent to the headquarters of Virginia Christian Leadership Conference in Petersburg. From there they are sent on to officers of local improvement associations. These forms, in addition to calling for the name of the applicant, require statements concerning his age, his educational background, his interest in racial matters, and his willingness to participate in the program. The officers have the applications completed by those of their selection, send the applications with their recommendations to Virginia Christian Leadership Conference which, in turn, expresses its approval or disapproval and forwards the applications to Southern Christian Leadership Conference. If the application is accepted by that Conference, the applicant is then offered training either in Highlander Folk School in eastern Tennessee or in Dorchester Training School situated at McIntosh, Georgia. The brochure describing the subjects taught includes "Social Protest; Understanding Politics; Use of the Boycott; How to Picket; The Nature of Prejudice." All expenses of such training are borne by Southern Christian Leadership Conference.

Highlander Folk School, becoming overcrowded and fearing closure by the State of Tennessee, in 1961 has transferred a substantial portion of its "faculty" to Dorchester Training School where the same instruction is given. It is to be noted that the President of the Virginia Christian Leadership Conference in early 1961 not only received training at Highlander Folk School, but also instructed in the subjects "Use of the Boycott," "How to Picket," and "The Nature of Prejudice."

The brochure of Southern Christian Leadership Conference, after reciting the subjects taught in its "Leadership Training Program" says:

"Interested persons, who have a general knowledge of reading and writing, are trained intensively in the skills of adult education using

subject matter relevant to the social struggle. They return to their individual communities as instructors and set up a Citizenship School that the 'grass-roots' people may be trained for full participation in civic life. Periodically, the instructors return to the training center for refresher courses to keep them abreast of significant changes and to further develop their skills."

A substantial number of persons so trained have returned to Virginia and are serving as local instructors.

We conclude this section of the report by reciting that Carl Braden, Frank Wilkinson, Southern Conference Educational Fund, Inc., Highlander Folk School, The National Lawyers' Guild, and not less than 50% of the officers and directors of Congress of Racial Equality have been cited one or more times by the House Un-American Activities Committee or by the Internal Securities Subcommittee of the Senate Judiciary Committee or by both.

(d) *Offenses Committed*

Eliminating reference to offenses committed by the misled and unwitting participants, the Committee considers that the local improvement associations, the Virginia Christian Leadership Conference, Congress of Racial Equality, and their respective officials and governing bodies, have been guilty of the following crimes:

(i) Conspiring to trespass after having been forbidden to do so (§ 18.1-15.1 of the Code of Virginia);

(ii) Instigating trespass by others (§ 18.1-173.1 of the Code of Virginia);

(iii) Aiding and abetting the commission of misdemeanors, such aiders and abettors being guilty as principals (*Hodge v. Winchester*, 153 Va. 904, 908);

(iv) Common law offense of conspiracy to boycott *Crump v. Commonwealth*, 84 Va. 940, 6 S. E. 620);

(v) Violation of Virginia Anti-Trust laws (§§ 59-20 through 59-40 of the Code of Virginia); and

(vi) Engaging in the unauthorized practice of law (§ 54-44 of the Code of Virginia, and *N.A.A.C.P., et al. v. Harrison, et al.*, 202 Va. 142, 116 S. E. 2d 55).

The Committee also considers that the lawyers representing the unwitting participants, having worked directly and in concert with the organizations previously named, are guilty of the following crimes:

(i) All offenses recited in items (i) through (v) above; and

(ii) Violations of Canons of Professional Ethics, particularly canons 28, 32, 35 and 47 (*N.A.A.C.P., et al. v. Harrison, et al.*, supra).

OTHER MATTERS INVESTIGATED

Investigations made by this Committee since the adjournment of the last session of the General Assembly have not been limited to the matters earlier stated in this report. Considerable work has been done in looking into the extent to which collection agencies, so-called "tax experts," and other lay groups have been engaged in the unauthorized practice of law. Where information showing such improper conduct has been obtained,

the Committee has reported its findings to appropriate district committees of Virginia State Bar and action has been, or is being, taken to enjoin further unauthorized practice.

Litigation is presently pending in the Hustings Court of the City of Richmond to determine whether interrogatories propounded by the Committee must be answered. The answers sought should disclose the extent to which contributors and recipients of funds are complying with the tax laws of the Commonwealth. All evidence has been given and briefs filed in this proceeding, and the Committee awaits only the decision of the Hustings Court.

It will be recalled that facts found as a result of investigations made by this Committee resulted in suits being brought in the Chancery Court of the City of Richmond by the Virginia State Bar against Brotherhood of Railroad Trainmen and against National Association for the Advancement of Colored People and its affiliates. By these suits injunctions are sought to prevent further acts constituting authorized practice of law. Thorough and detailed work has been done in each of these cases, and it is anticipated that in December of 1961 a final decree will be entered in the suit against Brotherhood of Railroad Trainmen.

The Committee's staff is currently engaged in investigating a variety of other matters which, though presently only suspect, may be found to clearly show offenses against the administration of justice. These investigations are to be continued and intensified.

CONCLUSIONS

We limit this portion of our report to conclusions reached as a result of investigations made respecting the recent and alarming growth of acts of trespass, picketing and boycott.

The Committee has found that the vast majority of persons punished for acts of trespass and boycott fail to understand their conduct is criminal until too late. These wrongdoers are the victims of unpunished instigators who warp their minds by praising only the objectives sought. These practices, in addition to their criminal nature, present an ever increasing danger and threat and must be prevented.

Adversaries of the Committee often assert in litigation and elsewhere that the Committee exists only for the purpose of preventing the advancement of the colored race. Nothing could be further from the truth. The duty of this Committee is to investigate and report on offenses against the administration of justice. The Committee considers that all persons, regardless of race or objectives sought, must be held to equal standards of lawful conduct. It is the act, not the race, of the offender with which this Committee is concerned, and its investigations have been so conducted.

RECOMMENDATIONS

1. The Committee considers that § 18.1-421 of the Code of Virginia is too narrowly worded in that it makes unlawful only changes in government which are advocated by force or violence. Accordingly, the Committee recommends that such Section be amended in the manner recited in item 1 of the Appendix.

2. Although as we have mentioned conspiracy to boycott is a common law crime in Virginia, and although the present Anti-Trust laws of the Commonwealth make certain wilful boycotts unlawful, the Committee

does not consider it advisable that the applicability of these laws be left uncertain. Accordingly, the Committee recommends that a new criminal statute be enacted which will clearly and effectively protect the citizens of Virginia against the boycotting activities which have been described in this report.

The suggested form of such enactment is set out in item 2 of the Appendix. This suggested form is similar to that found in § 134.01 of the laws of Wisconsin, which statute has there proven effective.

3. By the provisions of § 8-66 of the Code of Virginia, the only statute which authorizes actions by or against an unincorporated association or order, it is provided that process may be served only on an "officer" or "trustee" of the association or order. Because it is often difficult to find an officer or trustee, particularly where the association or order has its principal place of business outside the Commonwealth, the Committee considers it advisable that § 8-66 of the Code be amended to make amenable to service of process others than officers and trustees so far as concerns local associations or orders; that a new Section to be known as § 8-66.1 be enacted to provide a means for service of process against foreign unincorporated associations and orders; and that § 8-47 of the Code be amended so that unincorporated associations and orders may be proceeded against where the cause of action arose in like manner as may be corporations.

The recommended form of such enactments are set out in item 3 of the Appendix.

Item 4 of the Appendix sets forth legislation to place full responsibility upon the chairman for calling of meetings of the committee.

Respectfully submitted,

JOSEPH C. HUTCHESON, Chairman
FRANCIS B. GOULDMAN, Vice-Chairman
CURRY CARTER
WILLIAM F. STONE
RUSSELL M. CARNEAL
LYMAN C. HARRELL, JR.
JAMES M. THOMSON

APPENDIX

Item 1.

A BILL to amend and reenact § 18.1-421 of the Code of Virginia, relating to advocacy of change in government by unlawful means.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-421 of the Code of Virginia be amended and reenacted as follows:

§ 18.1-421. It shall be unlawful for any person, group, or organization to advocate any change, by *fraud*, force, *violence, or other unlawful means in the government of the Commonwealth of Virginia or any of its subdivisions or in the government of the United States of America.

It shall be unlawful for any person to join, assist or otherwise contribute to any group or organization which, to the knowledge of such person, advocates or has as its purpose, aim or objective, any change, by *fraud*, force, * violence, or other unlawful means in the government of the Commonwealth of Virginia or any of its subdivisions or in the government of the United States of America.

Violation of this section is hereby declared to be a felony, punishable, upon conviction, by a fine of not less than one thousand nor more than five thousand dollars or by confinement in the penitentiary for not less than two years nor more than five years, or by both such fine and imprisonment.

Nothing herein shall be construed to limit or prohibit the advocacy, orally or otherwise, of any change, by peaceful means, in the government of the Commonwealth or any of its subdivisions or in the government of the United States.

Item 2.

A BILL to amend the Code of Virginia by adding a section numbered 59-21.1, relating to wilful boycotting and other injuries in business.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 59-21.1 as follows:

§ 59-21.1. Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be punished by a fine of not more than one thousand dollars or by confinement in jail not exceeding twelve months, or by both such fine and imprisonment.

A BILL to amend and reenact §§ 8-47 and 8-66 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8-66.1, relating to process, and suits by and against unincorporated associations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8-47 and 8-66 of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a section numbered 8-66.1, the amended and new sections being as follows:

§ 8-47. Process against the defendant to answer in any action, suit or motion brought under § 8-39, shall not be executed in any other county or city than that wherein the action, suit or motion is brought, unless it be:

(1) An action against a corporation, *unincorporated association or order*;

(2) An action upon a bond taken by an officer under authority of some statute;

(3) An action to recover damages for a wrong; or

(4) An action against two or more defendants on one of whom such process has been executed in the county or city in which the action is brought;

Or unless it be otherwise specially provided.

§ 8-66. All unincorporated associations or orders may sue and be sued under the name by which they are commonly known and called, or under which they do business, and judgments and executions against any such association or order shall bind its real and personal property in like manner as if it were incorporated. Process against such association or order *or notice to it* may be served on any officer or trustee, *director, staff member or agent* of such association or order.

§ 8-66.1. *If an unincorporated association or order has its principal office outside Virginia and transacts business or affairs in this State, process or notice may be served on any officer, trustee, director, staff member, or agent of such association or order in the city or county in which he may be found or on the clerk of the State Corporation Commission, who shall be deemed by virtue of such transaction of business or affairs in this State to have been appointed agent of such association or order upon whom may be made service of process or notice. Service, when duly made, shall constitute sufficient foundation for a personal judgment against such association or order. If service may not be had as aforesaid, then on affidavit of that fact an order of publication may be awarded as provided by § 8-71 and § 8-72.*

Item 4.

A BILL to amend and reenact § 30-42 of the Code of Virginia, which was enacted as Chapter 373 of the Acts of Assembly of 1958, relating to the Committee on Offenses Against the Administration of Justice.

Be it enacted by the General Assembly of Virginia:

1. That § 30-42 of the Code of Virginia, which was enacted as Chapter 373 of the Acts of Assembly of 1958, be amended and reenacted as follows:

§ 30-42. (a) There is hereby created a joint committee of the General Assembly to be known as the Committee on Offenses Against the Administration of Justice, hereinafter sometimes referred to as joint committee. Such joint committee shall investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being observed, administered and enforced and shall specifically direct its attention to the observance and to the methods and means of administration and enforcement of those laws, whether statutory or common law, relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto.

(b) The joint committee is further authorized to investigate and determine the extent and manner in which the laws of the Commonwealth relating to State income and other taxes are being observed by, and administered and enforced with respect to, persons, corporations, organizations, associations and other individuals and groups who or which seek to promote or support litigation to which they are not parties contrary to the statutes and common law pertaining to champerty, maintenance, barratry, running and capping and other offenses of like nature.

(c) The joint committee shall be composed of seven members to be selected from the respective House of Delegates and Senate Committees for Courts of Justice as follows: Four of the members shall be appointed by the Speaker of the House of Delegates from the membership of such House Committee and three of the members shall be appointed by the President of the Senate from the membership of such Senate Committee. Members shall serve on the Committee during the effective period of this chapter; the presiding officer of each House to have the power to fill vacancies occurring on the Committee.

(d) The joint committee shall meet at least once in each three month period and oftener on call of the chairman*. The members of the Committee shall receive the salary and expenses for each day spent in the performance of their duties allowed under §§ 14-29.1 and 14-5 of the Code of Virginia, respectively, such salary and expenses, together with any other expenses incurred by the Committee, to be paid from the contingent fund of the General Assembly.

(e) The definitions contained in Title 1 of the Code of Virginia shall apply to the provisions of this chapter.

