

**The Uses of Law**  
for the advancement of  
**Community Relations**

*Significance and Value of the Approach  
Role of the Jewish Community Relations Agencies*

A Report  
of the  
**Special Committee on Reassessment**  
of the  
**National Community Relations  
Advisory Council**

June, 1955

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LEO SROLE

# The Uses of Law for the advancement of Community Relations

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Special Committee on Reassessment  
National Community Relations Advisory Council  
9 East 38th Street, New York 16, N.Y.

Prepared by WALTER A. LURIE, PH.D. and SAMUEL SPIEGLER

### NOTE

The statement presented on pages 47-60 represents the consensus of the signers, with such appended qualifications as some of them have offered. The statement is issued in the name of the Special Committee on Reassessment and of those invited participants who have joined with it. It is not intended to convey and should not be construed to represent the view of the NCRAC, its Executive Committee or its Plenum, or any of its member organizations, national or local. The statement is presented to all of these for their guidance and consideration. The names of those signing the statement are given on pages 60-61.

# *Introduction*

This is a report of a meeting of the Special Committee on Reassessment of the National Community Relations Advisory Council on the topic: "The Advancement of Community Relations Objectives Through Law and Legislation: The Significance and Value of This Approach; The Role of the Jewish Community Relations Agencies."

The meeting was held on Thursday, December 9, Friday, December 10, and Saturday evening, December 11, at the Ritz-Carlton Hotel, Atlantic City, New Jersey. Culminating months of preparation, the meeting considered basic questions of program-evaluation and policy guidance for the work of Jewish organizations in this area of their activities. The purpose of the present document is to set forth, in the perspective of the major presentations with which the meeting opened and of some of the factual material assembled as part of the preparation for the meeting, the conclusions and recommendations developed by the Special Committee on Reassessment and the distinguished guests who participated.

## *The Reassessment Process*

The NCRAC Special Committee on Reassessment was appointed in January, 1952 as an outgrowth of the study of the Jewish community relations agencies made by Professor Robert M. MacIver of Columbia University. The Ninth Plenary Session of the NCRAC, meeting in November, 1951, in its action on the report of the Committee on Evaluative Studies, unanimously adopted the following statement with regard to the reassessment process:

To facilitate the process of program planning, we believe that it is important and desirable continually to study the long range needs, directions, and methods of community relations work. This process should be the responsibility of a special NCRAC committee with the competence, authority and resources required for such study. We regard it as desirable that this committee should associate with itself in its discussions persons of experience and competence who need not be identified with any of the community relations agencies. We recommend that persons so coopted shall have no vote on the committee.

However this process may be organized, it will require the continuous participation of the heads of the scientific research departments. Research activities of the agencies and research services for the field as a whole should be encouraged and extended.

The Committee has held two conferences. On January 31-February 2, 1953, the Committee met to consider the following topic: *The Community Relations Values of Inter-Religious Activities*. The Chairman of the Com-

mittee at that time was Bernard H. Trager, now Chairman of the NCRAC. On December 12-14, 1953, a second meeting was held, on *Overt Forms of Anti-Semitism: Their Significance for the Jewish Community Relations Program; How Communities Can Best Deal With Them*. The object of each meeting was to formulate a thorough and well-documented policy statement regarding the aspect of community relations work under consideration. In addition to the members of this Committee, a number of social scientists and Jewish scholars participated in the meetings.

The statements that emanated from these meetings have been welcomed as clarifying many of the thorny problems in these areas of work. Each final statement represented the consensus of the signers with such qualifications as were offered, and was issued in the name of the NCRAC Special Committee on Reassessment and of those invited participants who joined with it.

### *Preparatory Steps*

In preparation for this meeting, a paper was prepared by Will Maslow, Director of the Commission on Law and Social Action of the American Jewish Congress. This paper was circulated well in advance of the meeting among the members of the Committee and the invited participants, and a number of illuminating comments upon Mr. Maslow's paper were received in advance of the meeting and made available to all the participants. Further background material distributed in advance of the meeting was contained in an annotated bibliography prepared by Mr. Milton J. Schubin of the *Columbia Law Review*, working with Dr. Walter A. Lurie, Program Analyst of the NCRAC. Isaiah M. Minkoff, Executive Director of the NCRAC, and other members of the staff of the NCRAC also participated in the preparation of background material for the meeting. This material, circulated in advance, raised specifically the questions discussed at the meeting.

A number of distinguished social scientists and scholars in the area under study, including non-Jews as well as Jews, not members of the Committee, were invited to participate in the Committee's deliberations. They have been given the same opportunity to associate themselves with the statement of conclusions and recommendations as have the members of the Committee. Their names are therefore appended to the statement, as are those of the members of the Committee. Every participant was given the privilege of submitting a statement in his own name to clarify his views or to supplement or dissent in part from the consensus. Several of the participants have done so.

Invitations were extended to persons affiliated with a number of organizations not members of the NCRAC, engaged in the use of law and legislation for the advancement of community relations objectives. These included the American Civil Liberties Union, the Canadian Jewish Congress, the National Association for the Advancement of Colored People, the National Conference

of Christians and Jews, the National Council of Jewish Women, the American Jewish Committee, and the Anti-Defamation League of B'nai B'rith. The invitations were accepted by persons affiliated with all except the last two, and our deliberations were greatly enhanced by the participation of a group of such broad collective experience.

At the meeting itself, following the initial presentations, three half-day sessions were given over to concurrent workshop discussions in which small, face-to-face groups of interested and well-informed persons initially formulated the various sections of the report. A large number of participants took special responsibility as chairmen, discussants and consultants of the various workshops. The chairmen of the workshops met with the members of the Editing Subcommittee to formulate an integrated report of the discussion, which was presented to the action session on Monday by Emanuel Muravchik, Chairman of the Editing Subcommittee.

The report so outlined was discussed and edited carefully by the Editing Subcommittee in the sessions following the meeting. In addition to Mr. Muravchik, the members of the Subcommittee were: Harry I. Barron, Saul Bernstein, Roxane Brody, Maurice B. Fagan, Isaac Franck, Rabbi Jay Kaufman, Leo Pfeffer, Robert E. Segal, Albert Vorspan, and Seymour Weisman. The statement as finally prepared by this working committee was circulated among all the participants in the meeting for their suggestions and comments, and to ascertain which participants would be willing to associate themselves with the final document. It was not feasible, of course, to circulate among the full group the suggestions of those participants who still wished to set forth in greater detail their own views in relation to the statement in its final form; therefore, while these are presented as individual statements only, it cannot be assumed that other participants would be unwilling to join in them.

The statement which follows is the outcome of all these many hours of thorough consideration by highly qualified persons.

### *Participants*

The members of the subcommittee deserve the heartfelt appreciation of all the members of the group for their earnest and painstaking work in developing a statement which so thoroughly reflects the consensus of the many different participants. The initial work in drafting the statement was carried on, as indicated, in a number of working sessions. The participants in the meeting were:

HARRY I. BARRON, Cleveland, Ohio

SAUL BERNSTEIN, Union of Orthodox Jewish Congregations of America

MORTIMER BRENNER, Brooklyn, N.Y.

\*ISIDOR CHEIN, New York University

LOUIS J. COHEN, Newark, N.J.

- \*WILLIAM COHEN, Detroit, Mich.
- NATHAN L. EDELSTEIN, Philadelphia, Pa.
- \*MRS. ELSIE ELFENBEIN, New York City
- MAURICE B. FAGAN, Philadelphia, Pa.
- \*ISAAC FRANCK, Washington, D.C.
- \*M. DELOTT GARBER, Hartford, Conn.
- \*HERBERT GARFINKEL, Dartmouth College
- PAUL L. GOLDMAN, New York City
- \*DONALD J. HAGER, American Jewish Congress
- \*SIDNEY HOLLANDER, Baltimore, Md.
- \*PHINEAS INDRITZ, Washington, D.C.
- \*BORIS M. JOFFE, Detroit, Mich.
- REUBEN KAMINSKY, Jewish War Veterans
- \*IRVING KANE, Cleveland, Ohio
- BENJAMIN G. KAYFETZ, Canadian Jewish Congress, Toronto
- M. J. KLINGER, American Jewish Congress
- \*HAROLD A. LETT, Newark, N.J., New Jersey Department of Education,  
Division Against Discrimination
- RABBI EUGENE J. LIPMAN, Union of American Hebrew Congregations
- \*WILL MASLOW, American Jewish Congress
- \*EMANUEL MURAVCHIK, Jewish Labor Committee
- DAVID PETEGORSKY, American Jewish Congress
- \*LEO PFEFFER, American Jewish Congress
- SHAD POLIER, American Jewish Congress
- CHARLES POSNER, Cincinnati, Ohio
- ALLYN B. ROBINSON, National Conference of Christians and Jews
- \*ARNOLD W. ROSE, University of Minnesota
- SAMUEL ROTHSTEIN, United Synagogue of America
- MRS. BERTHA L. ROSENTHAL, Women's League of the United Synagogue  
of America
- \*PHILIP SCHIFF, Chevy Chase, Md.
- \*WALTER SHINE, Washington, D.C.
- ROBERT E. SEGAL, Boston, Mass.
- \*JACOB SEIDENBERG, President's Committee on Government Contracts
- \*HENRY SPITZ, New York State Commission Against Discrimination
- BERNARD H. TRAGER, Bridgeport, Conn.
- DAVID L. ULLMAN, Philadelphia, Pa.
- ALBERT VORSPAN, Union of American Hebrew Congregations
- LEWIS H. WEINSTEIN, Boston, Mass.
- \*HERMAN L. WEISMAN, New York City
- \*SEYMOUR S. WEISMAN, Jewish War Veterans

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\* Participated as chairman, speaker, or consultant.

The final statement as presented on pages 47-60 represents the consensus of the signers with such qualifications as they have offered. It is issued in the name of the NCRAC Special Committee on Reassessment and of those invited participants who have joined with it. It is not intended to represent the views of the Executive Committee or Plenary Session of the National Community Relations Advisory Council or of any of its member organizations, to all of which this report is now presented.

The member organizations of the NCRAC jointly through the NCRAC Legislative Information Committee will continually review the questions in this vital area and make such recommendations to the Executive Committee and Plenary Session of the NCRAC regarding program activities and policies in the field as changing circumstances, new problems, and research and more powerful insights may suggest. The Special Committee on Reassessment will meanwhile be turning its attention to other equally broad and challenging policy questions within the whole field of community relations work.

IRVING KANE, *Chairman*  
NCRAC Special Committee on Reassessment

# Welcome and Opening Statement

BERNARD H. TRAGER, Bridgeport, *Chairman*, NCRAC

IT IS A GREAT PLEASURE and a source of considerable gratification to be able to welcome so able and distinguished a group to this meeting of the NCRAC Special Committee on Reassessment. With the participation of so many knowledgeable people, we cannot fail to develop, in the course of our discussion, new insights upon which to base recommendations which will clarify the relationship of law and legislation to the community relations program.

The work of the Special Committee on Reassessment is a very interesting and important aspect of the total work of the NCRAC, but it is not the whole of the NCRAC's responsibility. Significant as it is for its own sake, I believe that it is even more important for us to observe that it is an integrated part of the total operation of the NCRAC. If we had only a reassessment process divorced from joint planning of activities, it would be like one of the creatures of H. G. Wells' imagination in the *War Between the Worlds*, the invading Martian who was all head but had practically no hands to carry out his ideas. On the other hand, while much thought and planning has to go into the joint program process, it would in the long run become sterile without the continual infusion of new ideas from the more leisurely and more intensive examination of basic assumptions in which we engage through the reassessment process.

At each meeting of the Committee on Reassessment, it is possible for us to concentrate on some area of work which is the responsibility of one of the standing committees of the NCRAC. At this time it is the turn of the Committee on Legislative Information, and I am sure that you have all noticed in your program that Mr. Herman Weisman, the chairman of that committee, will be here to participate with the rest of us at this meeting. This symbolizes to me the complete interpenetration of the work of the standing committees and the Special Committee on Reassessment.

It now gives me a great deal of pleasure to call on the chairman of the Committee, to introduce the topic of discussion, one whose interest in its work, as you know, began when he was Chairman of the NCRAC, Irving Kane.

# *The Questions Before the Conference*

IRVING KANE, Cleveland,  
*Chairman, Special Committee on Reassessment*

**T**HE QUESTIONS STATED in the agenda are so challenging, and the discussion promises to be so full of meat, that I will speak only very briefly in a general introductory way and then let the entire group get down to work.

At the last meeting of this Committee, which dealt with overt forms of anti-Semitism, I reviewed at some length in my opening statement the charge to the Committee on Reassessment and the pattern and plan of the meeting. When Bernard Trager was Chairman of this Committee, he discharged a similar task at the very first meeting, which dealt with the community relations values of interreligious activities. Therefore, I feel that it may not be necessary to spend so much time on this subject today. The reassessment process is no longer a novelty, and in any case there is an explanation of its work in the syllabus.

I think it may be sufficient to say merely that we have all gathered together here, members of the Committee and invited participants, Jews and non-Jews, social scientists and other experts, both members and non-members of the NCRAC, in order to pool our thinking about the advancement of community relations objectives through law and legislation. Will Maslow has prepared a clear and forceful paper, which has been distributed in advance of the meeting, and he will summarize it briefly for us in a little while. A great deal of factual information has been assembled for you in the syllabus, and this was sent to you in advance of the meeting. Dr. Isidor Chein, of New York University, will make a brief presentation this afternoon.

## *Statement of Conclusions*

Three full sessions have been reserved for us all to talk out what we have on our minds and to raise questions for discussion by others in small face-to-face workshops. On Friday afternoon, we will reassemble as a group and the chairman of each of these workshops will report to us all. Saturday evening, after sundown, the Editing Subcommittee will meet to frame a report highlighting the main points which will have come from our discussion. As you know, Rabbi Arthur J. S. Rosenbaum, to whom we are indebted for an excellent job as chairman of this subcommittee, has left the field of community relations work to

return to the pulpit, and I have asked Emanuel Muravchik to chair the Editing Subcommittee for this meeting. On Saturday night, we shall again reassemble as a group and attempt to determine to what extent there is consensus on the main points.

Upon adjournment of the conference our consensus will be referred, with the notes on the entire discussion, again to the Editing Subcommittee to formulate, in the next few weeks, a final report of this conference. The recommendations contained in their report will be submitted to each of us. You will each have an opportunity at that time to indicate whether or not you are willing to associate yourself with the final recommendations as a signer of the report, and you may also, if you wish, submit a supplementary statement in your own name which we shall be happy to reproduce as part of the final report of the meeting:

I shall not of course summarize the content of Mr. Maslow's paper, which you have all seen and which he will present to you in any case, nor of Dr. Chein's remarks, because he will give them to you himself in just a few moments. I would like to spend just a very few minutes commenting on the factual material gathered in the syllabus.

### *Questions to Be Dealt With*

You have in your hands a document designed to help advance the discussion at this meeting as effectively as possible. You will note that it begins with definitions of the key terms in the subject of discussion. These are not stated dogmatically, and if you wish to challenge or amend them you may do so in the workshops, but at least we have stated explicitly what we had in mind at the beginning of the exploration of the topic. In the syllabus you have also summary reports of the work of national community agencies in the area of our present concern, with particular emphasis naturally on the work of Jewish agencies, but also other material to present a fuller picture. You have a highly selected annotated bibliography, with a number of items chosen to throw light on the nature of law and its uses and limitations as a community relations instrumentality, and a number of other items which deal with the place of legal and legislative information activities in the work of the Jewish community relations agencies. Also in the syllabus is a summary of significant cases and decisions involving community relations questions.

The syllabus raises very explicitly and in great detail a number of the key questions which were in the minds of those who planned this meeting, and which are now before us to see to what extent we collectively have the information to attempt to frame answers to them, and

to what extent there is consensus in the pooled judgments of this group.

I hope that you have looked through this material very carefully. If you have not done so as yet, I suggest that you take the very first spare moment—even during the break for dinner—to acquaint yourself with the fascinating and relevant information contained in this document.

The very starting point of the syllabus gives much food for thought. (I shall read a bit) :

The current interest of Jewish community relations agencies in the use of law for the advancement of human rights is a double concern. One line of consideration involves questions of the efficacy of law and legislation for the advancement of community relations objectives generally, and the determination of the most effective methods for using these instrumentalities in the community relations programs. Another set of questions involves the determination of the most effective relationship of voluntary organizations, and particularly of Jewish organizations, to the instrumentalities of governmental power.

### *Historical Context*

As you all know, we Jews have had extremely varied experiences in our relationship to the governments under which we have lived. Jews have lived in lands of tyranny and oppression, as well as in lands of democracy and freedom. In lands of oppression, we learned that there was a very specific meaning of governmental power. It existed to enforce restrictions, not merely upon the Jews, but upon all peoples and groups, except for the tiny dominant minority. State power was the instrument through which the oppressed population was kept down, divided, deprived of civil and economic rights. Sometimes the power of the state was used directly or indirectly to stir up one group against another, and the Jews were often the victims of force and violence traceable to the agents of governments.

In lands of democracy and freedom, government assumes an altogether different role. It is the instrumentality through which the popular will is expressed. It advances and protects individual liberty and group expression. In this country and in other democratic lands, Jews can take their place as individual citizens and participating members in the functions of government.

As a heritage of the centuries in which so many peoples, Jews and non-Jews alike, came to look with distrust upon the institutions of government as the coercive arm of oppression, a baleful distrust of the law has arisen. Even in the more recent times of democratic living

this distrust has not been wholly dissipated. I believe that much of the opposition shown by so many groups in the population to legislation for promoting civil rights and to governmental action for expanding opportunities for all is a throw-back to the older period, in which the most that could be asked of governmental power was that it not interfere with people's management of their own daily lives.

Thus there are still hampering holdovers of older limitations, both in the persisting defects of democracy as shown in those imperfections which constitute barriers to full equality of opportunity today, and in our memory as Jews of the long centuries in which we were sometimes persecuted and at best tolerated, but never fully accepted as citizens. Because of this ancient and poignant story, Jews have seen the need for organizations dedicated to the advancement of fuller equality for all, since we understand how all especially demarcated groups suffer when barriers are placed against the opportunities and rights of any.

To my way of thinking, this is the context in which we approach the questions before us. Our task, in the much too brief time which we have, is to consider the questions raised in the syllabus in the context to which I have alluded, and to try to arrive at general conclusions. In the course of our deliberations, we shall necessarily have to talk about specific governmental instrumentalities and specific legislative needs, FEPC and housing and segregation in the schools and civil liberties and many others. But I want to stress that our concern here is not to plan specific action along any of these lines. As Mr. Trager pointed out, the NCRAC as a whole is responsible for that. The joint program planning process, which continues throughout the year, is the means for developing specific action plans. Our job, in the Committee on Reassessment, is to guide and enhance the joint planning process to the extent that we can, clarifying the whole significance and value of a particular approach—this time the legal and legislative approach—to the advancement of community relations, and to arrive at general conclusions regarding the most effective way that the organized Jewish groups can utilize these instrumentalities. To these problems let us now address ourselves.

# *The Uses of Law in the Struggle for Equality*

WILL MASLOW, *Director, Commission on Law and Social Action,  
American Jewish Congress*

THE RECENT decisions of the United States Supreme Court in the public school segregation cases may have transformed *Plessy v. Ferguson* into an historical relic but one mischievous doctrine announced in that 1896 case still exerts its baleful influence. The Supreme Court of that day was but reflecting the prevailing attitudes not only of laymen but of America's most eminent psychologists when it proclaimed as self-evident axioms that "social prejudices" could not be overcome by legislation, which was "powerless to eradicate racial instincts," and that the attempt to invoke the law for that purpose would only aggravate racial tensions.

The generation nurtured on the rigid "folkways" and "mores" of William Graham Sumner accepted this doctrine of the United States Supreme Court and soon it was absorbed into our popular culture. The doctrine persists. A scant ten years ago when the New York State Legislature was considering an FEPC bill, a group of liberals, headed by Oswald Garrison Villard, one-time editor of *The Nation*, could still oppose such legislation on the ground that "It is impossible to destroy prejudice and discrimination by law." As late as 1948, four of every ten persons in a nation-wide stratified sample questioned in a Gallup poll believed that "People can't be forced to change deep-rooted prejudices by passing laws."

What is particularly ironic is that while Northern opinion was rejecting legislation as an instrument of social change, Southern legislators were busy enacting one jimcrow law after another, all consciously designed to buttress the white supremacy system and to perpetuate regional attitudes of prejudice and hostility towards the Negro. Northern legislators may have been skeptical about the efficacy of civil rights legislation but their views obviously were not shared by Congressmen from the South who have so bitterly opposed the enactment of any federal civil rights law that none has been enacted since 1875.

This Northern skepticism arises out of an outmoded notion that law is simply an extension of the policeman's club and that punishment alone is too crude an instrument to deal with deeply-rooted prejudices

and patterns of behavior. Law, these skeptics proclaim, can only affect outward behavior; to attempt to do so without disturbing its root cause—prejudice—is to treat the symptoms and not the virus that will continue to produce them.

But our conception of the role of law in a multi-group society needs to be revised drastically. Allport, Chein, MacIver, Merton, Myrdal, Saenger, Jahoda and other social scientists have broadened our understanding of the causes of discrimination and of prejudice. We know, for example, that prejudice will not result in discrimination if the standards of the community or of the smaller groups to which one belongs frown upon such behavior. Conversely, we know that non-prejudiced persons will often conform to discriminatory community patterns because of inertia, the mere desire to conform or local pressure. We are beginning to understand that law tends to make certain conduct unrespectable and thus discourages it. We also realize that changing one's patterns of behavior will in time modify attitudes and do so more effectively than a frontal assault on the attitudes themselves. Integrated public housing, for example, will do more to break down Negro-white feelings of hostility, distrust and aversion than sermons, Brotherhood weeks and sessions with one's analyst.

### *Law More Effective Than Education*

Law used to be contrasted with education as an instrument of social change and almost always given an inferior role. But we now know that in certain situations the absolute fiat of government is more effective than education in bringing about social change. Suppose the Commission appointed by President Truman to eliminate discrimination and segregation in the armed forces had decided to avoid any semblance of coercion and instead had resorted to a massive campaign of orientation and indoctrination to persuade white troops to "accept" Negroes. Would those efforts have accomplished in a generation what has been done in a few years by military command, so that today segregation has practically disappeared from our armed services?

Of course such results are possible only in hierarchical groups accustomed to give and obey commands without argument. But even in less rigidly ordered situations, in the factory and in the school, we have learned that we need not await a change in basic attitudes before instituting a radical innovation in group relations. We know that the innovation can be started without prior consent, provided that adherence is made mandatory and efforts are made concomitantly by education and persuasion to induce acceptance. Had these principles been realized and acted upon by the public school authorities in Delaware, Milford

would not today be a symbol of governmental lack of planning, indecisiveness, weakness and retreat.

By and large, there is no longer any controversy among group relations agencies about these truths or the effectiveness of the law in their area. Gordon Allport was not making a challenging remark but merely stating the obvious when in his recent treatise, *The Nature of Prejudice*, he observed: "Legislative action is one of the major methods of reducing not only discrimination, but private prejudice as well." As these truths sink into popular consciousness, there will be ever-increasing opportunities for using law, i.e., the pressure and prestige of government, to effectuate social change. It is our task at this conference to consider the situations in which law is most effective, the best ways to invoke it and how we use its varying forms: statutory commands, court decrees or orders of government agencies.

### *Law Not a Recent Innovation*

The use of law and legislation in this area is not a recent innovation. During Reconstruction days, the United States adopted in the short space of seven years three constitutional amendments and five comprehensive civil rights laws, all designed to prevent the South from dragging the newly-freed Negroes back to slavery. Writers who should know better have sometimes described this effort as a classic demonstration of the failure of law to improve race relations. To speak of the Fourteenth Amendment as a failure is to deny our subsequent history. The Fourteenth Amendment is our charter of freedom, our pledge of equality and the chief barrier against government discrimination. Almost all of the advances made in the last two decades were possible only because of that Amendment.

But even the lesser statutes were not a failure because some inevitable taint or weakness made their enforcement impossible. Indeed at first they were enforced to the hilt. As Morroe Berger has reminded us, in the five years from 1871 to 1876 federal courts in the South handled 3,541 prosecutions under these civil rights acts, about 20% of which resulted in convictions. These statutes failed because the North in 1877 changed its mind about protecting the freedman, withdrew federal troops from the South and concentrated instead on the industrial exploitation of that region. The two statutes of that period that survived judicial emasculation are still capable of enforcement and one of them was invoked recently as a ground for federal intervention against malcontents who sought to defeat the Supreme Court decision in the public school segregation cases.

Today we are in the midst of a second great effort to influence group

relations through legal and legislative means. That effort whose initial victory was President Roosevelt's executive order of 1941 establishing a Committee on Fair Employment Practice, has not yet lost its impetus. Its philosophy and program were spelled out in the historic 1947 report of the President's Committee on Civil Rights which concluded with no less than twenty pages of detailed legislative recommendations. It was given strong support by President Truman, who in a notable address explained the new role of government, no longer to be merely a neutral umpire but to promote affirmative governmental efforts to achieve equality.

### *Fruits of the Legal Technique*

What has been the fruit of these thirteen years? If no federal fair employment practices law has been enacted (largely because the antiquated rules of the Senate make it possible for the intransigent Southern bloc to filibuster and thus stave off legislation), the FEPC idea has nevertheless made headway in the states. Since 1945, when the first enforceable FEPC law was enacted in New York, similar statutes have been adopted in New Jersey, Wisconsin, Massachusetts, Rhode Island, Connecticut, Washington, Oregon, New Mexico, and Colorado and in more than thirty cities, including such large centers of population as Cleveland, Minneapolis, Philadelphia, Pittsburgh and Youngstown.

To combat discriminatory practices by colleges and professional schools, fair educational practice acts have been enacted in New York and Massachusetts and (in effect) in New Jersey.

Dead-letter public accommodation statutes have been revitalized by entrusting their enforcement to existing civil rights commissions. Thus, in New York, New Jersey, Connecticut, Massachusetts, and Rhode Island, the task of preventing racial or religious discrimination by places catering to the public is now the responsibility of a government commission.

Housing discrimination and segregation have been more difficult problems to attack; even so in the last decade laws have been enacted in nine states forbidding discrimination in public or quasi-public housing projects.

The most striking victories of the decade have, however, been won in the courts, particularly in the United States Supreme Court. In test cases brought by the NAACP, Jehovah's Witnesses and the Japanese-American Citizens League, the Supreme Court outlawed governmental segregation at every educational level, from grade school to post-graduate institutions, and in interstate transportation as well, invalidated

the white primary, forbade the judicial enforcement of restrictive covenants, barred trade unions from collective bargaining that resulted in discrimination against minority groups, protected the rights of Negroes and Latin-Americans to serve on juries, asserted federal jurisdiction to invalidate coerced confessions and to punish police brutality against minority groups, prevented efforts to hold Negroes in peonage, crippled state laws forbidding alien Japanese to own agricultural land or to engage in commercial fishing and protected the rights of minority religious groups to distribute leaflets, have access to public meeting places, preach without licenses and resist compulsory school rituals.

### *Law on the Books and Law in Action*

"Law on the books" is often quite different, however, from "law in action." Have these statutes and decisions actually changed behavior patterns? Have our civil rights lawyers been able to collect on the judgments they have won in the courts?

The NAACP victories in the Texas law school and Oklahoma cases resulted shortly thereafter in the admission of hundreds of Negroes to the professional schools of the South. The partial victory won by the Japanese-American Citizens League in the *Oyama* case resulted in an announcement by the California Attorney General that he could no longer enforce the anti-Japanese land laws of his state. Mrs. McCollum's success in her suit against a local board of education led immediately to the abandonment or modification of released time practices throughout the country. The decision rendering unenforceable racially restricted covenants did not of course smash all the fences enclosing Negro ghettos but it did make it possible for many a white landlord in a marginal area to sell his property to Negroes and thus speeded the process of integration in housing. The decision was also applicable to covenants aimed at Jews, illustrating the principle that one minority's legal victories inure to the benefit of other groups.

Not all litigation produces results as speedy or as certain. The fight to declare segregation in public education in and of itself unconstitutional took nineteen years and required the bringing of five major suits to the United States Supreme Court, but can there be any doubt that public school segregation has received a mortal wound or that the long and arduous effort was worth it?

### *Difficulties of Appraising Gains*

Although it is more difficult to appraise the direct benefits of recent civil rights laws, they too have had their effect. New job opportunities have opened up for Negroes by FEPC agencies in every jurisdiction

in which an FEPC law operates, including jobs as sales clerks and office employees. The task is of course just begun and trade union resistance complicates the problem but the outlook for further gains on an increasingly expanding scale is promising.

Whether Jews have profited in any substantial measure from FEPC laws cannot be answered with certainty one way or another. Jews are of course not listed as such in the census reports and no other comprehensive or authoritative statistical information is available. Jewish discrimination in any event is rarely a matter of total exclusion but rather of quotas or token employment or segregation in certain departments. That more positive results have not been apparent is partly the fault of FEPC commissions, which have tended to concentrate on the more pressing (and easier to handle) problems of Negro discrimination. It is much more our fault in not devising programs to learn the facts about the ever-changing Jewish job market and to stimulate the flow of complaints to governmental agencies. It is a sad commentary upon our programs that the Chicago Bureau on Jewish Employment Problems has handled more cases of discrimination against Jews than all of the 10 state and the 30 municipal FEPC agencies put together. The type of remedial action necessary for Jewish agencies is not as glamorous as a lawsuit and far more complex than issuing a press release but, unless we give thought to these problems, FEPC commissions will continue to function almost exclusively for the benefit of the Negro community.

Nevertheless, despite the difficulties of enforcing an FEPC law so that Jews also benefit thereby, will anyone contend that endeavoring to persuade employers voluntarily to abandon discriminatory practices or general educational efforts to change them contains any potential comparable to an FEPC law?

Even a law so difficult to enforce as the New York fair educational practices act has achieved readily apparent gains. An unpublished study by the New York Department of Education in 1953 shows that 47% of the sophomore class of the nine medical schools in the state were Jews; Columbia's percentage was 35 and Cornell's 28. Authoritative statistics on the percentage of Jews enrolled before the New York law went into effect do not exist but our best estimate is that Jewish enrollment in these schools has doubled in the six years of the law's operation.

### *Unanticipated Benefits*

The New York fair educational practices act is a classic example of a law that has achieved results in a fashion not contemplated by its

sponsors. Those who drafted the Quinn-Olliffe law of 1948 anticipated that only a few students turned down by medical schools would file formal complaints. The statute provided therefore that the Department of Education could initiate complaints and hearings on its own initiative wherever it suspected discrimination. Very few complaints have in fact been filed by students or organizations acting on their behalf and no self-initiated investigations whatsoever have been undertaken by the administrators of the statute. Instead one research study after another has been conducted and published by the State Department of Education and by Jewish agencies, so that medical school admissions committees have been making their selections under constant scrutiny or at least fear of scrutiny. That scrutiny, plus the establishment of two new state medical schools, may explain the marked increase in Jewish students.

Studies, not quite so precise, indicate, although they do not prove, comparable improvements in the admission practices of colleges.

### *Indirect Gains*

The legislative technique also promises indirect gains. Even the campaign to enact civil rights legislation is beneficial, not only in educating the community about the evils of job bias but also in causing those who have uncritically accepted stereotypes about the capabilities of minority groups to re-examine their practices. It is also true that the mere existence of such statutes on the books tends to stiffen the resistance of employers when employees, trade unions or customers press for job and hiring patterns that have now become illegal. The existence of such laws also removes the warning label "Controversial!" from the issue of job discrimination and school administrators become free to include favorable material on the problem in the school curriculum.

Even if the legislation were to achieve nothing but drive discriminatory practice underground, it would still serve a useful function. It is much more difficult for a personnel manager to discriminate against Jews when he has no ready means of determining whether an applicant is a Jew. Underground practices are rarely as effective as those committed openly.

Prosecutions of hotel owners under equal public accommodation statutes have not been as effective. Because of the difficulty of getting a unanimous verdict from a jury and the nominal fines provided by such statutes, judgments against one defendant have not acted as deterrents for the rest of the industry. Resort owners, after calculating the risks, have preferred to take the chances of prosecution, regarding

the occasional small judgment or fine as a license fee, and have continued discrimination. It was these considerations that led the American Jewish Congress to press instead for administrative enforcement of these statutes. The result was the Freeman Law in New Jersey, followed by similar statutes in four neighboring states.

### *Alternatives to Legal Action*

Obviously one cannot evaluate a course of action without considering the alternatives. An action agency may have other techniques at its disposal besides appeal to the courts or the legislature. It may rely solely on the impact of mobilized public opinion and seek to focus that opinion upon its goal. It may resort to economic boycott, if its constituency is large and disciplined enough and its adversary susceptible to consumer pressure. It may forego controversy and contention and attempt through negotiation and persuasion to influence a course of action, particularly if its negotiators have position and influence. Or it may abandon any hopes of quick or easy victories and plan long-term campaigns aimed at the gradual change of attitudes. Which course an agency will follow will be determined by the problems it deals with, the goals it sets for itself, the legal context and most often by its institutional personality. Time does not permit the comparative evaluations that are required but we can examine certain situations.

Certain problems are susceptible only of a legal solution. We can debate, if we wish, the relative advantages or disadvantages of seeking to curb anti-Semitic rabble-rousers by group libel legislation. But when we consider a change in the immigration practices of the United States, we inescapably think of legislation. Immigration policy is fixed by statute and can only be changed by a later statute. Similarly restrictive Southern registration, literacy and poll tax laws present barriers to Negro suffrage that can only be razed by repeal or judicial invalidation of these laws. Educational campaigns may slowly change public opinion and thus ease the task of persuading legislators to act but the final battles must still be fought in our legislative assemblies.

Other situations in which at first blush law seems definitely not indicated, may nevertheless provide opportunities for the non-coercive use of government power. We have been beset in recent years by gang fights between Jewish and non-Jewish boys, particularly where religious differences are accentuated by differences in socio-economic levels. While police action is of course necessary to prevent bloodshed and to prosecute delinquents, a nightstick can hardly solve the underlying causes of this tension. Other agencies and other techniques are required to deal with the child who has been "carefully taught to hate all the

people his relatives hate." But government can be induced to assume some responsibility for abating the underlying tensions and inter-group hostility through municipal commissions on group relations that can initiate various ameliorative measures, including systematic efforts in the public schools to prevent the development of hostility towards minority groups.

Sometimes a legislative solution is blocked by constitutional difficulties. Many newspapers throughout the country continue to affix race tags to individuals named in crime stories. In New York City, particularly, the tabloid press goes out of its way to describe a person arrested as a Negro or a Puerto Rican. The constitutional guarantee of freedom of press will, however, probably invalidate any statute forbidding such practices. Here, then, is a situation in which negotiation, protest, perhaps even boycott, are the indicated techniques, and not a new law.

Even where a legal approach is indicated, we have not exhausted the choice open to us. We may either seek to enforce existing law or to create new law. We may address ourselves to the courts (or administrative agencies) or apply to the legislature. Each approach requires different skills and the evaluation of different factors. Let us begin first with litigation.

### *Litigation and the Jewish Agencies*

With the example of the NAACP and its magnificent record of victory after victory in the United States Supreme Court constantly before them, why have Jewish agencies made so little use of litigation as a device for the protection of the Jewish community? The lesser emphasis placed on litigation by the Jewish agencies is based upon a different legal situation. The discrimination attacked by the NAACP has largely been governmental action—the acts of school boards, of jury commissioners, of state legislatures. The anti-Semitism that vexes the Jew in the United States, however, is that of private groups, of personnel managers, resort owners, admission committees or rattle-brainers, almost entirely non-governmental and hence not subject to the majestic prohibitions of the Fifth or Fourteenth Amendments. Although they may be "private governments" in the power they wield to deny employment or educational opportunities, their acts do not fall within the accepted categories of legal wrongs. Before these private groups can be sued, new laws have to be created making their conduct unlawful.

In the comparatively rare situation in which state action is involved as, for example, in discrimination against Jews by civil service ad-

ministrators, another type of difficulty hampers recourse to the courts. Anti-Negro discrimination in Southern states until recently has been not only blunt and obvious but often avowed if not boasted of. Anti-Semitic acts by government officers, on the other hand, are not considered respectable by our society and so are concealed. This difficulty of proving what is suspected discourages litigation. Hence, litigation by Negro agencies tends to become suits in which questions of law predominate; litigation by Jewish groups, suits in which questions of fact predominate. The latter rarely reach the appellate stage and have little precedent value.

A third barrier has been the reluctance of certain Jewish communities, particularly where they constitute a tiny proportion of the entire population, to emphasize their differences with their Christian neighbors. These communities, overly sensitive to what they regard as their high visibility, have often been more concerned about adverse public opinion than about a denial of their basic rights.

### *Church-State Issues*

In one particular area, however, that of religious liberty and the separation of church and state, the situation in recent years has begun to change. Indeed the litigation program of my agency in this area now bulks larger than that of the more conventional civil rights work. Released time practices in the public schools have been challenged. Jews denied unemployment compensation because they refused jobs requiring work on Saturday have been protected. Jewish storekeepers arrested for violations of anachronistic Sunday blue laws have been defended. Jewish foster-parents seeking to adopt non-Jewish children have been represented in the courts. Distribution of the New Testament in the public schools has been enjoined.

This litigation has been extensive and has enjoyed the support of the entire Jewish community for a number of reasons. First, the crucial issues involved were readily apparent. At stake was the basic question of the nature of the Jewish position in the United States. Were they a group to be tolerated perhaps while affirming that this was a Christian nation? Or was the true meaning of the First Amendment that the State was not concerned with the religion of its citizens and would neither favor nor hinder any denomination in the exercise of its religious views?

Second, the problems involved affected Jews more directly than the problems of segregation or lynching or suffrage.

Third, Jewish litigants found it easier to resort to law because the entire American tradition of religious freedom was on their side.

In their suits, they had merely to ask that the majority forget the passing error of its ways and return to a former state when the Constitution gave no encouragement to the "two and seventy jarring sects."

Fourth, this was an area in which non-legal techniques seemed particularly inappropriate. The problem involved seemed to be rooted in a governmental policy rather than in popular attitudes. That policy could not be corrected except by a resort to the courts or the legislatures.

Finally this litigation was possible because it could be successful without waiting until a small minority persuaded a vast majority of the correctness of its views. Of course in the last analysis the courts will, despite the official morality enshrined on the statute books, find ways to circumvent a law that runs counter to the deeply-held views of all of the people. But sometimes federal courts will disregard the majority view in one community, state or region to enforce a national sentiment. A Gallup poll in 1944 in Texas would certainly have revealed an overwhelming majority of white Southerners opposed to allowing Negroes to vote in the Democratic primary. Nevertheless, the United States Supreme Court, truly reflecting the more enlightened view of the country as a whole, struck down the white primary device by which Negroes were disenfranchised.

Indeed it has not even been necessary for the Jewish community to arrive at a solid and sustained position on any issue. Suits could be started by any Jewish agency determined enough to do so, without waiting for the Jewish people as a whole to follow its point of view, although litigation in a particular community opposed by its leaders is rarely instituted by Jewish agencies, national or local.

### *Boomerang Effects?*

The fear has sometimes been expressed that too vigorous an effort to protect one's rights will result in boomerang reactions that will exacerbate tensions. Undoubtedly suits challenging such practices as Bible reading in public schools or current anti-Communist legislation may be misunderstood and our litigation must be accompanied by educational efforts to explain our motives and purposes. But whenever we grow too timid we should give thought to the experiences in the Southern colleges compelled by the NAACP to open their doors to Negroes. Not a single important "incident" has arisen in any of these schools in the last five years. On the contrary, the Negro students were welcomed by their classmates who again demonstrated that we cannot judge the underlying attitudes of the South by the rantings of its public officers.

A mere desire to reestablish a legal principle or create a new one

is not, however, sufficient excuse to go to law. We must remember that the Dred Scott decision, a legal disaster for the Negro, resulted from a test case brought by friends of the Negro and required a civil war to reverse it. Tactical questions of the utmost delicacy must be borne in mind: the time when the suit will be brought, the proper choice of court and venue, the selection of plaintiffs, the breadth or narrowness of the issues to be litigated. An adoption case could be won in Mississippi that would be lost in Massachusetts and a segregation case lost in Mississippi that could be won in Massachusetts.

The problem of timing is of course related to the social climate. If a choice is available, we should postpone litigation when popular passions are aflame, for judges share in and are influenced by those passions. This "Age of Suspicion" is certainly not the one to vindicate basic civil liberty principles, even in a tribunal as detached as the United States Supreme Court. But such considerations require subtlety of approach. The Supreme Court is now likely to be vigilant in the protection of witnesses accused of contempt or perjury before a Congressional committee. And perhaps because that court or certain members of it feel a sense of guilt for their civil liberties stands, they are likely to take liberal positions in civil rights matters. We must not forget that the same court that upheld the deportation of former members of the Communist Party also handed down the historic decision on May 17, 1954 in *Brown v. Board of Education*.

### *Litigation and the Behavioral Sciences*

We have been considering to this point the conventional role of law in group relations. Recent findings of our social psychologists point the way to a fruitful union of the legal and the behavioral sciences and a new comprehension of the effectiveness of legal action.

Forty years ago, Louis Brandeis created a judicial sensation by filing a new type of brief with the Supreme Court, a heavily documented sociological analysis. This "Brandeis brief" persuaded the court that a state law forbidding women to work more than ten hours a day was reasonable. Such briefs have since become commonplace. The sociological approach initiated by Brandeis is today being supplemented by the psychological.

What is the essence of this new approach and what new insights have the social psychologists been able to offer to the lawyers and the courts? First, they have provided new understanding of the harmful psychological consequences of discriminatory practices. Second, they have been able to predict the effect of a court decree upon these practices. And finally, they are able to offer the courts sound advice on the

nature of the legal remedy a court of equity can shape to curb these practices. Let us consider these new developments.

The NAACP struggled for sixteen years to convince the United States Supreme Court that segregation in and of itself was a form of inequality forbidden by the Fourteenth Amendment. As long as the argument revolved about the size of classes, the length of school terms, the salaries of teachers, the physical condition of the school plant or the distance required to travel to school, little headway was made in convincing the court. But when the psychologists began to argue about the injury to pupil morale caused by governmentally imposed segregation, the sense of inferiority occasioned thereby and the hampering of the learning process, the Court pricked up its ears. When the final decision was handed down in the public school segregation cases, it rested not on conceptual legal principles or the legislative history of the Fourteenth Amendment or even on the sociological demonstration that in practice segregation results in inferior schools but on the psychological finding of thwarted intellectual development.

Similarly, in the Gideons case in New Jersey, involving the distribution by local school authorities of the New Testament to children who filed written requests for it, the plaintiff was not content to rely on the constitutional argument that such a distribution was a forbidden aid to religion but in addition offered the testimony of educators and psychologists about the harmful psychological effects of such practices on Jewish children and on group relations within the school.

### *Convincing the Supreme Court*

More than an understanding of the psychic trauma produced by segregation, however, was required before the Supreme Court would outlaw it. The Court had also to be convinced that its decree would be effective in bringing about at least a gradual elimination of segregation practices. This conviction was based, one can speculate, upon the successful experience in integrating Negro students in Southern colleges, on the success of the Truman-Eisenhower program to wipe out segregation in the armed forces and on an acceptance of the new doctrine that law shapes attitudes as much as it reflects them.

The Supreme Court now faces the third step in its historic undertaking: to shape its decree to bring about the quickest and the most orderly introduction of Negro school children into the all-white schools of 17 states. In the argument on this issue, the lawyers will make little use of legal precedents or legal principles. What the court will rely on will be the advice of those who, fortified by the findings and conclusions of social science, can offer it the most persuasive demonstration

of the effectiveness of various forms of legal decree. Whether the transition shall be instantaneous or gradual, uniform or varying, in one lump or piecemeal, these are the questions on which lawyers must turn to the social scientists for advice.

The resources of the behavioral sciences are also available in the trial court where new methods of proving facts, notably the new techniques of content analysis and opinion polling, have been put to appropriate use.

In the *Daily News* case, in which the Federal Communications Commission was asked to deny an FM radio license to a newspaper often guilty of racist practices, we offered in evidence for the first time a "content analysis" of a newspaper. Isolated editorials and columns culled from the newspaper were not relied upon exclusively to show bias; instead a systematic effort was made to count and measure all newspaper items relating to minority groups and to classify them as "favorable" or "unfavorable" in their effect upon the general reading public. The content analysis sought in other words to determine whether there was a deliberate policy of representing minority groups in an unfavorable light. Regardless of the methodological shortcomings of this analysis, it represented a pioneer effort, an effort that has been acclaimed and will no doubt be used by the bar.

In a recent rape case in Florida, NAACP lawyers offered an opinion poll to show that the district was prejudiced against the Negro defendant and thus argued for a change of venue to other parts of the state.

### *Administrative Agencies*

Not all litigation takes place in the courts. Important victories can be won in the administrative agencies. The New York FEPC law reads that only "aggrieved persons" can file complaints and thus stir to action a slow-moving bureaucracy. But who is "aggrieved" when an employment application asks questions about religion and there is no evidence that any individual has actually been rejected? A test complaint filed by my organization resulted in the decision that it was such an "aggrieved person" and could file complaints. Other test cases before the FEPC commissions have clarified the jurisdiction of such agencies and broadened the scope of such laws.

### *Indirect Gains of Litigation*

Litigation can also be an educational device. A lawsuit is after all nothing but a combat under carefully defined rules and newspapers are attracted by such combats. Jewish groups had not been able to get much newspaper coverage about their complaints of a Jewish quota in

the medical schools but when Rabbi Stephen Wise brought suit to cancel the tax exemption of his alma mater, Columbia University, because of the "numerus clausus" in its medical school, his action commanded nation-wide attention. The commencement of that suit resulted in an investigation by the New York City Council and ultimately in the first fair educational practices law in this country. I am sure that I reveal no secrets when I tell you that Dr. Wise had no desire to deprive the University of its exemption and by informal arrangement with it the suit was never pressed.

Even an unsuccessful lawsuit often results in positive gains. The suit to compel Metropolitan Life Insurance Company to admit Negroes to its Stuyvesant Town housing project in New York was lost by a 4 to 3 vote in the highest court in New York state, but the resulting ferment in public opinion led at the very next session of the New York legislature to the enactment of a state law barring future discrimination in private housing projects receiving certain forms of governmental assistance. A subsequent New York City ordinance capped the campaign by provisions directly applicable to Stuyvesant Town.

The effort to persuade the Federal Communications Commission to revoke the radio licenses of George A. Richards, who instructed his news commentators to slant radio broadcasts against Jews, did not succeed (after Richards' death in the midst of the litigation) but the ensuing publicity sensitized the entire broadcasting industry to its obligations and the dangers involved in not fulfilling them.

Of course some lawsuits are lost without any crumbs of consolation. The joint effort of the Jewish agencies to declare illegal released time practices in New York City public schools not only failed but, worse, gave the United States Supreme Court an opportunity to retreat from its sweeping gloss on the establishment clause of the First Amendment announced in the prior released time case. (This litigation had been reluctantly undertaken, with full awareness of the risks involved, to head off a similar action by a professional atheist with a long record of such irresponsible and unsuccessful suits.)

### *Other Resources in Law*

There are other ways of utilizing existing law besides litigation with all its attendant risks. Too frequently we neglect to make the simple requests that will set in operation executive or administrative machinery without formal proceedings. In California, where a popular referendum in 1945 had resulted in a two-to-one defeat for an FEPC proposition, fair employment groups shifted their ground and induced the state public employment service to refuse to accept discriminatory

orders. An informal complaint to the Collector of Internal Revenue led to an examination of the tax exemption granted to an anti-Semitic propagandist masquerading as an educational foundation. A legal memorandum sent to a state commissioner of education resulted in directives forbidding religious services in public schools. Lawsuits are not the only way of reminding public officers of the law they administer and occasionally pressing for new interpretations designed to meet new evils.

Nor do we need to rush to sue whenever our rights have been violated. An agency that has established a record of militant recourse to the courts will often find it possible to negotiate with government officials whenever official policy is not already fixed by statute. We get more respectful attention from public officers who realize that we have weapons more potent at our disposal than a press release or a letter to the editor. A recent example in New York City is illustrative. The New York City Commissioner of Investigations dealt for weeks with a group of agencies that objected to the proposed use of a blanket questionnaire to test the loyalty of civil service employees and finally abandoned the project. The possibility of a lawsuit was constantly a factor during the negotiations.

### *Briefs Amicus*

A word must be said about the brief *amicus curiae*, i.e., as a friend of the court. These briefs are useful not only in indicating to the court the public interest in a private dispute but also (through the accompanying press release) of teaching the general community about the issues at stake. But too many agencies conceive of the brief *amicus* as the only method of participating in litigation. These agencies must realize that many courts regard the agency filing such a brief as only a "nochshlepper" or a kibbitzer. To shape events, these agencies must take a hand in initiating or sponsoring litigation. And finally it need hardly be said that any lawyer who is concerned about his reputation before an appellate court will take pains to ensure that he not only has something to say in his brief but that it is not already stated in the brief of one of the parties.

### *Indirect Gains from Legislative Campaigns*

One of the greatest gains of a legislative campaign, surprisingly enough, does not depend upon its success or failure. That gain is the extraordinary opportunity to educate a community about an evil. Indeed the group benefiting most by the proposed legislation itself is educated

in the process and usually emerges with heightened solidarity and a collective will.

Another valuable by-product of a legislative campaign is the necessity of organizing a coalition of like-minded forces so that they work in concert. As a result of the effort to defeat the McCarran-Walter bill, for example, Jewish and Protestant agencies not only learned respect for each other but perfected those habits of cooperation that are essential in a multigroup society like ours. Once organized, these coalitions frequently take on new tasks.

### *Choosing Between Conflicting Interests*

In fixing our legislative goals, we must occasionally choose between competing if not conflicting interests and ever bear in mind our central commitment to American democracy upon which our security ultimately depends. In Missouri several years ago the Jewish community, vexed by Gerald L. K. Smith's Christian Nationalist Party, was asked to support legislation that would have barred it from the ballot. The community wisely decided that such a measure was a violation of the basic tenets of our democratic society. The statute finally enacted with the support of Missouri Jews required a minimum and reasonable number of signatures on a nominating petition. This statute, which prevents the ballot from being cluttered and the voter from being confused, had the incidental effect of denying Smith's splinter group electoral privileges. It is sometimes possible to eat one's cake and still have it.

The conflict between the apparent immediate interests of a minority group and its long time goals cannot always be so neatly resolved. Jewish groups, along with others, have condemned legislative investigations that were not intended to collect information or otherwise exercise a function reserved to the legislature by the Constitution but solely to "expose" individuals to public scorn and thus economic reprisal. Such an investigation is not less improper, because it is intended as a means of punishing unpopular—indeed even un-American and loathsome—opinions, whether it is an investigation of Communists or Fascists or anti-Semites. Thus, I cannot regard with favor the contemplated investigation of Conde McGinley by the House Committee on Un-American Activities. McGinley will survive that investigation but if we support the inquiry we will be admitting that we have one rule for investigations we like and another for those we dislike.

Similarly with such problems as group libel legislation there are risks in such laws, risks that we may be creating precedents by means of which the state can punish the expression of opinion. If the day ever

arises when anti-Semitic propaganda is disseminated in this country on such a scale and under such auspices that it is a menace rather than an irritation, then perhaps we may have to run these risks but until then I believe we should not push group libel legislation. If that opinion is contrary to the one I expressed several years ago, it means simply that I believe I was wrong then, as I believe we were equally wrong in exaggerating the dangers of the public exhibition of the film, *Oliver Twist*.

### *New Legislative Goals*

Flexibility is, of course, desirable in other situations. Efforts begun in 1944 to enact a federal fair employment practice law with enforcement powers have all failed nor is there any likelihood in the foreseeable future that Southern Senators will forego the filibuster they can easily mount and allow the Senate to vote on such a measure. In this quandary to continue to press for an FEPC law with sanctions without exploring the possibilities of a so-called voluntary FEPC does not seem sound social engineering. It is true that an FEPC commission without power to enforce its directives is not as effective as one that can enlist the aid of the courts but a voluntary commission that is not sham, i.e., one armed with subpoena powers and empowered to hold hearings and issue recommendations, can still assist in uncovering and perhaps reducing discrimination. Here the task of Jewish agencies is first to convince their allies, principally the NAACP and the CIO, and then to begin quiet explorations with Congressional leaders and the administration. Similarly in some of the states where the biennial campaigns for a state FEPC law have not only continued to fail but have actually lost ground, the same type of reconsideration of legislative strategy must take place. In some of these states, better organization of FEPC proponents is the solution. In others they are too weak even to evoke widespread popular support. In the latter areas, thought must be given to alternatives: local option laws facilitating the enactment of FEPC ordinances, FEPC commissions without power to issue binding orders or even temporary investigating commissions to study and publicize the incidence of discrimination in the state.

The FEPC experience commands us to broaden our goals. Not that we should abandon the attempt to outlaw discriminatory practices but rather that we should lend our aid in moves to democratize our state legislatures. Rural areas are over-represented in most state law-making bodies because of the failure to reapportion legislative districts equitably. There as in so many other areas we must realize that to fight against racism we must also fight to extend the borders of democracy.

Jewish agencies are slowly beginning to realize that great truth. It was to be expected that they would have been involved in the effort to induce our country to ratify the Genocide Convention and to sign a UN Convention on Human Rights but it required more comprehension for Jewish groups to join in the fight to defeat the Bricker Amendment, designed to limit the President's treaty-making powers and make UN treaties impossible.

Jewish organizations are now beginning to recognize that the chief threat to their security in the United States comes from efforts that have the effect, if not always the purpose, of evading basic constitutional guarantees, the main bulwark not only of Jews but of all Americans. Thus NCRAC agencies alert to the menace of our Congressional inquiries recently published a list of principles that they believe ought to govern the procedure of Congressional investigating committees. Some of the NCRAC agencies have taken public positions on wire-tapping and other measures enacted in the name of internal security. This new development must be encouraged and accelerated.

### *Fixing Objectives*

We must recognize that for some problems, such as racial and religious discrimination by private landlords, it is visionary at this time to talk of comprehensive legislation. No legislature in the country is ready to compel "lily white" neighborhoods to admit Negro householders. Indeed even the announcement of support for a comprehensive fair housing practices act will in most states be regarded as indicative of political immaturity that will foreclose consideration of less ambitious goals. There as in other situations experience indicates that the proposed bill should fix its objectives at a higher figure than one is likely to obtain so as to leave some room for bargaining but not so high that it will frighten off possible purchasers. For years we will have to rely on the slow forces of persuasion and example to induce home owners in "good" neighborhoods that their world, financial and social, will not tumble down if a Negro moves into that block. Meanwhile, we can nibble away at the edges of the problem, forbidding discrimination by governmentally insured apartment houses, punishing conspiracies by neighborhood improvement associations, and—most important—demonstrating by interracial public housing that the two races can live together amicably.

Every legislative campaign need not eventuate in a binding statute. Occasionally a legislative investigation is called for to prepare the ground for future legislation. In housing, particularly, the public needs information, not about the existence of slums in which Negroes

and Puerto Ricans are penned, but rather about the social costs to the entire community of the crime, disease, juvenile delinquency and neighborhood blight that are the inevitable concomitants of slums. A legislative investigation is a particularly effective way of uncovering and, through public hearing, dramatizing the need for government action. From such investigations will come the recommendations for measures to increase public housing, prevent overcrowding, facilitate mortgage financing and break down racial ghettos. The Pecora investigation in the 1930's, for example, exposed the fraudulent and monopolistic practices of Wall Street and led quickly to the creation of the Securities and Exchange Commission.

### *Pursuit of Principle*

Some legislative goals deserve the effort required, regardless of the chances of victory. Jewish agencies pressing for the abolition of the national origins system do not delude themselves that success will shortly crown their efforts. But they realize that they are hammering away at a national disgrace that disfigures our immigration laws and that ultimately America will scrap these racist concepts. On the other hand, the drive to induce the United States to ratify the Genocide Convention can only be justified in symbolic values, not in any possible use that can be made in this country of the Convention. The symbolic value, I hasten to point out, is not the condemnation of genocide but the reaffirmation that this country does not stand aloof from the effort to promote human rights through international treaty.

The question is sometimes asked by laymen as to what dictates the choice between the legislative or the litigation approach. Lawyers would find the question an unreal one, for the situations are never exactly alike and the ultimate criterion, the chances of success, can never be measured with exactitude. Generally speaking it is easier to sue than to press for legislation, for one has firmer control of the campaign and one can generally define the issue in one's own terms.

### *Problem of Enforcement*

Almost as much of a problem as enacting a law is to see that it is used by those whom it seeks to benefit. We can press for legislative devices that will simplify enforcement: supervision of the law by an administrative agency instead of a prosecuting attorney, empowering administrative action without the necessity of a formal complaint by an aggrieved individual, allowing those agencies chartered to effectuate the principles of the act a share in its enforcement and avoiding rigidities and formalities ranging from technical rules of evidence to

too short periods of limitation. But beyond all these devices we must guard against the sloth that seems to set in after a successful campaign, when everyone sits back and expects that either the law will enforce itself or that the government will do it.

We must not allow state-wide committees to dissolve after they have been successful in putting a statute on the books; rather reorganize them for the equally important tasks of ensuring proper administration of the new law. These committees (or new ones organized for similar purposes) must fight for adequate budgets, good appointments and proper enforcement policies. Conferences must be held from time to time to take stock of the new law, to fight for necessary amendments and—most important—to remind administrators that they have a constituency to which they are responsible.

Sometimes the task of the legally-oriented agency is purely informative but nevertheless important. It is of little profit to win a judgment admitting Negroes to a housing project unless they are informed how they can take advantage of the decision, how and where to apply, and what the minimal qualifications are. Such simple educational projects will not expose us to the charge that we fight in Washington for non-segregated housing while apartments in integrated federal projects in New York City are vacant because no Negroes apply. The Jewish agency that succeeds in having a law enacted allowing Jews to vote by absentee ballot when Election Day falls on a Jewish holiday has not finished the job until every Jew in the community learns of his new privileges. And so a legal action agency must also assume the burden of maintaining an adequate reporting service for its constituency, informing it of new laws and decisions, appraising trends and constantly alerting the community to the opportunities of invoking legal action.

### *Prospects for the Future*

What are the prospects for the law or legislative technique in the near future? That Jewish agencies will make ever-increasing use of the lawsuit and the legislative campaign to defend religious liberties seems clear. In the area of civil liberties, once deemed outside the jurisdiction of Jewish organizations, legislative positions are likely to be taken more readily and on an ever-widening front. Here, too, it is safe to predict some of these agencies will emulate the American Civil Liberties Union and initiate test litigation. In the field of civil rights, the prognosis is a mixed one. The growing resources and influence of the NAACP makes it likely that the occasions for direct Jewish participation in cases involving Negro discrimination will continue to diminish. The energies thus released might well be devoted to programs designed

to make more effective existing state civil rights commissions and to press for protective laws in states lacking them.

Law is a many-splendored thing of infinite resource. In Roscoe Pound's phrase, it can make habits instead of waiting for them to grow. It is the best weapon we have to achieve the goal that Alexander Pekelis once described as "full equality in a free society."

# *A Social Scientist's View*

ISIDOR CHEIN, *Professor of Psychology, New York University*

WILL MASLOW's paper so admirably covers the case that when I finished reading it, I wondered what there was left for me to say; and, to tell you the truth, I am still wondering what I am doing here.

To be sure, one finds some overstatements here and there in Maslow's paper. For instance, in speaking of the legislative campaign he properly recognizes an "extraordinary opportunity to educate a community about an evil." But he goes on to say, "Indeed the group benefiting most by the proposed legislation itself is educated in the process and usually emerges with heightened solidarity and a collective will." This is, I must say, a rather overfacile translation of an opportunity into an outcome. But I can no more say that the outcome is usually not so than I think Maslow is justified in saying that it is so. The fact of the matter is that we do not know. In any event, I do not think that it makes much difference since the real issue is how to use the legislative campaign to assuredly make it so. The important thing is that it is not so long ago that most of us would have thought of the legislative campaign simply in terms of securing the desired legislation and measured our success or failure accordingly, whereas today we see more clearly the broader opportunities that are involved.

## *Good Failures and Poor Successes*

I use the instance as a paradigm of the problems that confront us. We need to know how to so conduct a legislative campaign as to reap a maximum of indirect benefits in addition to achieving the primary goal; and here, I must confess, the social scientists have little to offer as against the accumulated experience and wisdom of the practitioners. But I want to call your attention to the fact that once we have become sophisticated enough to recognize that a given action (conducting a legislative campaign in the present instance) may have many simultaneous consequences, life in general becomes far more complicated for us. For, once we have recognized the possibilities of a good failure (i.e., one in which we have reaped a rich harvest of indirect benefits) and of a poor success (with no indirect benefits and perhaps some indirect evils), we can no longer be single-minded in preparing for some action like a legislative campaign. Indeed, we may have to face the problem of balancing the good failure against the poor success and

sometimes even plan to do things in such a way as knowingly to increase the risk of failure. Or, even the less likely possibility of undertaking to work for undesirable legislative goals (expecting that these goals will not be attained) for the sake of indirect benefits. This is the penalty of sophistication, that it makes evident the ever-greater need for more sophistication. The point is that we never know enough about the consequences of our actions, or inactions, and never will. We can only act as intelligently as we know how at any given moment and, beyond that, with or without the collaboration of the social scientist, adopt the scientific attitude of remaining constantly on the alert for our oversights and errors so that we may ever arrive at better knowledge.

### *Relevant Studies Needed*

There are also other questions that can be raised in connection with Maslow's paper, questions that I am ill-equipped to answer. Take something like fair practices laws. Assuredly, they have helped minority-group members, perhaps considerable numbers of them, to get into occupational, educational, and other positions that would otherwise have been denied to them; and perhaps this is sufficient justification for the approach. But can we say that these instances represent substantial breaches in the restrictive walls that have engirded the discriminated-against minority groups? Are the great masses of these minority-group members now actually subject to the same, or nearly the same, degrees of freedom of occupational, etc., choice as are so-called majority-group members? I know of no dependable studies that establish the facts. Or, supposing that the restrictions have been substantially reduced, are enough of the minority-group members aware of and willing to test the changed state of affairs for it to make a difference in the life of the *average* minority-group member? Available evidence, at least as far as occupations go, suggests that minority-group members stay away in droves from the doors that have supposedly been opened to them. Are there significant differences in occupational opportunities and occupational employment patterns between comparable localities that have or do not have FEP laws? Again, the relevant studies have not been done.

I think it all too easy, without in any sense implying that we ought to stop doing what we are doing, to elaborate on the proposition about how little we know of what we are really accomplishing. Perhaps it is enough to know that of all of the techniques available in the field of community relations, the approach through legislation and its adjuncts produces the most tangible results. There is evidence enough that some

good is accomplished; what is in doubt is exactly how much good and whether we understand the instrument well enough to be sure that we are using it to its full advantage.

And there is no reason to believe that we might unwittingly be doing some harm with the method. Or am I being too hasty in appealing to one of the foundation stones of modern science, the canon of insufficient reason?

### *Boomerang Fears Unjustified*

Some of you may perhaps recall the fear expressed by Kurt Lewin in the early days of the application of the law and social action approach that this approach might seriously boomerang unless we discovered special techniques to relieve the pressures that he predicted would be generated by it. Lewin's argument may be summarized as follows: Law is essentially repressive and, while it may under certain circumstances be sufficiently potent to control behavior, such control can only be achieved at the cost of increasing the total tension level of our society. But the greater the tension level, the greater the likelihood of violent eruptions and, for reasons that I will not elaborate, the greater the likelihood that minority groups will become the victims of these eruptions. Hence, Lewin argued, the more effective the legal approach, the more dangerous it must be.

This is a far more sophisticated argument than the argument that you cannot legislate against prejudice, and it may be worthwhile, even at this late date, to re-examine it. For the moment let me say that the flaw in Lewin's argument is that his major premise is wrong. The way the legal approach works in the field of community relations, it is not primarily repressive. My reasons for this assertion will become apparent as I go along.

But even apart from Lewin's argument, I think that there is ample reason to examine the form of the process by which the legal approach does work. If there are too many questions to which we do not know the answers because the relevant studies have not been done, we can still pause to set the legal approach in the perspective of what we do know of the determinants of human behavior—and perhaps we might acquire some wisdom in doing so.

Obviously, I cannot recite the whole Torah while standing on one foot. Like an illustrious predecessor, however, I can, albeit much less elegantly, attempt a one-sentence summary and suggest that a great deal of additional study would be needed in order to understand the summary.

## *What Makes People Behave as They Do?*

My one-sentence summary of what we know of the determinants of human behavior is a slightly modified verbalization of a well-known Lewinian equation: the actions of people are determined by two sets of interacting factors, their wants on the one hand and the situations in which they find themselves on the other. I realize that it would be unreasonable of me to suggest that we disband at this point so that you may devote yourselves to the study necessary for extracting the meaning of the formula, and that we correspondingly resume our meeting some years from now. I will, therefore, content myself with the barest amount of elaboration needful for my present purpose.

First of all, let me note that there is no one-to-one relationship between what people do and what they want. Indeed, the same want may express itself in diametrically opposed ways depending on the situation. For instance, while it is well known that people in possession of wholesome food will often eat it when they want it, it is also true that there are situations in which, without being bereft of their reason, they will not eat it precisely because they want it and because they want to live. I think of polar explorers found dead of starvation with food in their possession. Obviously, they did not eat the food, not because they were not hungry, but because they knew that the situation was such that they could not readily replace it and that their need would grow even more acute. That they did not eat it at the last may be explained in terms of some deceptive properties of the hunger mechanism which I need not go into now. A strictly analogous and more familiar situation is embodied in the adage that you cannot have your cake and eat it too.

Secondly, I want to call your attention to the term in the formula which specifies that wants and situations interact. One aspect of this interaction is that the situation may increase the salience of certain wants and lessen the salience of others. It can do so by emphasizing or de-emphasizing the conditions to which the wants apply, making it more or less obvious that certain wants are not being satisfied, and by other means. Another aspect of this interaction is that the situation may contribute to the generation of wants. Thus, if you want something hard enough and the situation is such that you need to satisfy some other condition in order to satisfy this want, a need is generated to satisfy the situationally prescribed condition. If most of us want money, it is mainly because money is a necessary condition for satisfying many of our other wants. Similarly, if a person wants to be approved of, he learns to want to satisfy conditions that are necessary for his winning approval.

## *The Situational Factors*

Thirdly, I would like to elaborate briefly upon some aspects of situations in which behavior takes place. Behavioral situations contain more or less of the goal objects a person needs to satisfy his wants, and more or less of what I call "noxious," the objects he wants to avoid. They contain supports, those situational features which make possible or facilitate the attainment of goals and the avoidance of noxious, and constraints, those situational features which make it impossible or difficult to achieve goals or to avoid noxious. And they contain directional influences which impel the individual in one direction rather than another. Paramount among these directional influences is the normative structure of society and of various social sub-groups that is manifested through control of the availability of goal objects, the avoidability of noxious, the provision of supports and the introduction of constraints. I should also add that many aspects of behavioral situations have no immediate consequences for behavior if they are not perceived. Finally, before returning to the use of law in community relations, I want to mention that attitudes represent one of the regulating systems that coordinate the individual and his behavioral environment. This function is evident in what I have found to be the most useful way of defining an attitude. With some minor simplifications, the definition runs as follows: An attitude is a disposition to (1) perceive the individual members of a class of objects as sufficiently characterized by the attributes of the class, to (2) respond to them with a characteristic feeling tone, and (3) to entertain a characteristic action orientation toward them. Each of the three terms in the definition, you will note, has one pole in the individual and one pole in the object and hence in the environment. Insofar as attitudes are themselves stable (which they tend to be) they help to stabilize the relationship of the individual to his environment.

This, then, is the framework within which I propose to examine the uses of law.

### *Laws as Factors in Shaping of Behavior*

Basically, legal measures operate through the fact that they are among the factors that shape behavioral situations, but, even so, since behavior depends on both wants and situations, we need to pay some attention to the role of wants in the situations in which legal influences are introduced.

Obviously, the situation is different if the sole effect of a legal process on a behavioral situation is to eliminate goal objects and sup-

ports and to introduce noxiants and constraints than if its effect is also to create and buttress supports and to make certain goal objects more readily available. It was first of these alternatives that Lewin contemplated in arriving in his dire prediction.

But Lewin overlooked two things. First, that prejudices represent wants which are generated from more basic wants and that, depending on the situation, the latter can be better satisfied by non-prejudiced and non-discriminatory than by prejudiced and discriminatory behaviors. Thus, one of the principal roots of prejudice and discrimination is the strong need to conform. In the prejudiced discriminatory environment conformity demands prejudiced and discriminatory behaviors; in the unprejudiced anti-discriminatory environments, it demands unprejudiced and non-discriminatory behaviors. The need to conform has no investment in prejudice and discrimination as such. Similar points may be made with regard to the other principal roots of prejudice. Hence, insofar as legal change may contribute to changing the environment, it need not impose any frustration at all. I shall return to this point.

### *Ideals Shared by All*

Secondly, Lewin overlooked the fact that there are wants which are supported by appeals to legal process in the field of community relations. We do have the ideals of brotherhood and equality and these are important elements in the situation. These ideals are by no means unique to people of good will. One of the mechanisms by which the bigot manages to sustain his prejudices and discriminatory practices is that he perceptually segregates the objects of his bigotry and, as a rule without conscious thought, excludes them from the domain that is governed by these ideals. When something happens that breaks down the perceptual segregation, the individual is thrown into a state of conflict.

Let me illustrate this. While I was in military service and long before I had heard of incident control, I arrived at a simple formula for coping with the many anti-Negro bigots with whom I was stationed. Having decided that there is no point in arguing with a bigot, I nonetheless felt a need to dissociate myself from the many anti-Negro remarks I heard about me. Hence, when somebody made an anti-Negro remark, I would say in a calm matter-of-fact manner, "As far as I am concerned, Negroes are also human beings." The effect was invariably phenomenal. Guilt feelings, apologies, efforts at self-justification, and so on would simply pour out of the erstwhile unmitigated bigot. Now I am not recommending this as a standard incident control formula. I suspect that its remarkable potency was in part conditioned by my

own characteristics and in part by my relationship to these boys. The point that I am making is that its effect was to at least momentarily reduce the artificial perceptual segregation that was taking place and hence to bring to bear upon Negroes the ideas of brotherhood and equality that even these bigots shared with me.

One aspect of the effective use of law in the promotion of improved intergroup relations is precisely the fact that it makes it more difficult to maintain the artificial perceptual segregation of minority groups beyond the pale of democratic ideals. It puts the bigot in effect in the position of having to argue that the minority-group members really are not people and hence not entitled to brotherhood and equality rather than leaving him free to discreetly ignore the issue; or it puts him in the position of having to fly in the face of a manifest reality and maintain there exists a formula for both preserving his bigotry and still keeping the targets of prejudice and discrimination under the mantle of brotherhood and equality. I am, of course, not contending that the good side of the bigot comes to the fore in these circumstances. I am claiming that, even in the bigot, there is a side that is enlisted in support of the law. And, of course, the less bigoted the individual the more he is constrained by his own ideal needs to conform to and to support the law. The law operates to make certain needs more salient than they would otherwise be.

### *Example of Purely Repressive Law*

Contrast this situation with a purely repressive law like prohibition. In the latter case, there was no set of ideals in the vast majority of the populace that was enlisted on the side of the law. It did not divide anyone against himself, and, at best, left the vast majority of the populace indifferent or more or less frustrated. From a somewhat broader point of view, I might add that in the case of the prohibition law, there was only a trifling proportion of the populace that felt some sense of mission in seeing to it, not merely that they themselves conformed to the law, but that the law should be generally observed. Not even the law enforcement officials felt this way because none of their personal needs and ideals were entangled in it. The situation might be different in this respect if some practical means could be found to formulate a prohibition law aimed solely at excessive rather than at any use of alcohol. Moreover, there was no significant element of the population that stood to gain from the enforcement of the prohibition amendment in a more material sense than the satisfaction of their ideal needs. In the case of the intergroup relations laws, by contrast, everyone, as I have already indicated, has (via his *ideal* needs) some investment in

observing the law and many in more actively supporting it; and the minority groups themselves have an even more material investment in seeing to it that the law is obeyed. This kind of law has many eager and militant civilian watchdogs.

The situation is somewhat different in the use of the law in some of the other fields of Jewish community relations than it is in connection with intergroup relations. In connection with the church-state issue as it expresses itself in the problems of religion in the public schools and the discriminatory effects of the Sunday blue laws, there are two sets of ideals involved one of which (the wrong one from our point of view) is apt to be the more potent. These are the ideals of Christendom and the ideals of religious freedom. To persons reared in one faith, the requirements of another faith are remarkably unreal. Hence, to the average Christian, even if he can separate himself from proselytizing ideals or recognize their impropriety in certain contexts, it is difficult to realize that expressions of Christianity represent an imposition on non-Christians and, hence, that they can constitute an infringement upon religious freedom. And, if he becomes so enlightened as to more or less abstractly perceive the problem and agree to the pursuit of a neutral religion, it is all the less real to him that Jews should still perceive therein a threat to religious freedom.

### *Impact of Law on Behavior*

It follows that in these areas of appeal to the law, we are much more on our own. Even so, if we were successfully to achieve all of our aims in these areas, the situation would hardly be comparable to that envisioned by Lewin in the argument I have quoted—and I doubt that Lewin himself would have thought of applying it here. The repressive elements, if indeed any at all may be said to be involved, are quite minor. In general, I would venture the guess that the motivational investment of the average Christian in maintaining or increasing religious observance in the public schools and in seeing to it that Saturday Sabbath observers keep their business establishments closed on Sundays must be quite shallow and superficial.

I fear that I must press on to my discussion of the impact of the use of the law on the behavioral situation. I should like to introduce this discussion with a rather lengthy quotation from an as yet unpublished monograph by Wilner, Walkley, and Cook. These investigators carried out a follow-up on the bi-racial housing study of Deutsch and Collins with which most of you are probably familiar. They used four low-income housing projects far from metropolitan New York,

two in small cities with relatively small project populations and at a moderate income level, and two in large cities with large project populations at a low income level. Unlike the Deutsch and Collins projects, the proportion of Negro families was small, being 10 per cent in each project. Two of the projects, one small and one large, were integrated, with Negroes and whites living in the same buildings, and in two, Negroes and whites lived in separate buildings.

### *Summary of the Findings*

If I may briefly summarize some of the findings which held for *each* of the four projects, they are as follows: More of those white residents living relatively near to Negroes than of those living relatively far from them develop, as a result of these living arrangements, contacts with Negroes, favorable characterizations of and feelings toward the Negroes living in the project, favorable attitudes toward Negroes in general, favorable reactions to the idea of Negroes and whites living in the same community, and perceptions of the informal social climate of the project as favorable to interracial association. These effects are found both in those initially more favorably disposed toward Negroes and those less favorably disposed. Finally, the effects of contact and of the perceived social climate are additive, again both for those initially more favorably and those less favorably disposed. This means that when contact is relatively intimate and the perceived social climate favorable, attitudes are most favorable; when contact is superficial and the perceived climate unfavorable, attitudes are least favorable; and when contact is intimate but the perceived social climate unfavorable or vice versa, the attitudes are intermediate.

Perhaps I should emphasize that all of these effects are directly attributable to living in the project. They are not attributable to initial differences in attitude between those living relatively near and those living relatively far from Negroes. Nor are they attributable to differences in move-out rates such that people with unfavorable attitudes living nearer to Negroes might be more inclined to move out of the project than similarly disposed individuals living farther away. Such a difference in move-out rates, if it existed, could account for some of the observed differences between the "nears" and the "fars"; but the very absence of different move-out patterns between the "nears" and the "fars" is an illuminating finding in its own right.

I want to remind you that the existence of these bi-racial projects and the assignment of tenants to "near" or "far" apartments is externally

imposed on the tenants who have no choice in the matter. This then comes within the definition of the use of law adopted for this conference.

### *Interpretation of the Findings*

The section of the Wilner, Walkley, and Cook study that I want to quote directly gives the authors' reconstruction of the processes that take place in these projects and that bring about the findings I have summarized above. This is how they describe it:

"Nearness of residence to Negroes increases the likelihood that a white resident will have at least casual contacts with Negroes; it does so directly through the increased probability of, so to speak, rubbing shoulders, and it does so indirectly by increasing the probability of being drawn into it by white friends who are themselves readier for contact. Nearness also increases the likelihood that he will observe interracial association of Negroes and whites as a normal part of the social processes of his community and, hence, perceive a social climate favorable to such intermingling. If either of these likelihoods materializes, but especially when both do, the individual's attitudes (i.e., his beliefs, feelings, and policy orientations) adjust themselves to the new state of affairs so that the individual can take another step toward somewhat less casual contact and/or appreciation of the normalcy of Negro-white association. This, in turn, may lead to a new readjustment of attitudes which, in its turn, may lead to a new forward step, and so on until some stable equilibrium of intimacy and favorable attitude is reached. The point at which the process stabilizes depends on the characteristics, interests and values of the particular individuals involved, and possibly on whether the social atmosphere which sanctions contact begins to differentiate as particular levels of intimacy are reached.

"In general, contact—under the favorable conditions prevailing in the housing project—may be assumed to provide concrete experiences which test the white resident's pre-existing stereotypes, and encourage the development of friendly relations and of feelings appropriate to such relations. The perception, by a white resident, of the normalcy of association between Negro and white people on an equal status basis may be assumed (a) on the one hand to require a re-adjustment of prior attitudes to the fact that Negroes are apparently the kind of people with whom it is proper for whites to associate, and (b) on the other hand, to eliminate the fear of censure, loss of status, or other undesirable consequences that association with Negroes might bring about in a prejudiced environment. Presumably, the same processes take place for the Negro residents.

"Lastly, we may assume that when the white person becomes less hostile to, suspicious or derogatory of Negroes, this fact is perceived by his Negro neighbors so that he becomes more possible as a friend to them. Similarly, to the extent that a Negro becomes less suspicious of and hostile to whites, he also changes in an objective sense—so that he becomes more possible as a friend to his white neighbors. These processes, in turn, set up the conditions for further movement toward harmonious and cordial relations."

### *Evaluation of the Process*

Now let us review this process within the framework of psychological theory that I have suggested. What has the use of law accomplished?

It has, first of all, created a situation in which certain goal objects (good housing) are more readily available in the unsegregated environment and capitalized on the fact that certain noxians (bad housing) are unavoidable in the segregated environment. It has introduced many supports for non-hostile interracial association (by bringing the races together, providing common shopping facilities, and so on) and for re-structuring the perceptions of one another by the members of the different racial groups (transforming strangers into familiars, making possible reality tests of preconceptions and so on). It has normalized interracial association, thereby eliminating one of the major constraints to such association by removing the fear that it might lower one's status in the eyes of one's neighbors, and so on. It has, through the consistency and firmness with which the interracial policy is administered, directed the tenants to get along with one another. And it has made all of this clearly perceptible. In the process, it has changed the people.

I think that, in fact, one can generalize the scheme into a set of specifications for the most effective use of law and related programs of social action in the field of community relations:

1. Develop the program in such a manner as to bring to bear the existing ideals of people from which the program will draw support and widespread unofficial "policing."

2. Use the law to help create situations in which the more basic motivations of people will require of them that they act in a "good" rather than a "bad" way from the viewpoint of community relations, and to eliminate situations in which the opposite holds true.

3. Arrange conditions that will motivate those whom the law is intended to benefit to take advantage of these benefits. I have already mentioned that a great many minority-group members stay away from many of the occupational opportunities that have been opened to them.

The minority-group members, like every one else looking for a job, looks where he expects most readily to find one; he is not looking to test hypothetical new opportunities, and even less is he looking for a cause. Ways need to be found to encourage individuals and supports created to help them to exploit their rights to the utmost.

4. Arrange things so that rewards are more readily obtained in connection with "good" actions and punishments in connection with "bad" actions. I should mention, in passing, that the manipulation of rewards is a more effective instrument of control than the manipulation of punishment. Also, that here is an area where broader programs of social action can make a vital difference in the effective use of the law. I am not thinking so much of the boycotting, ostracism, etc., of the "bad" behavers as of the kind of recognition given to the "good" behavers.

5. Provide supports for "good" behavers and constraints for "bad" ones.

6. Make the directional influences forceful and vigorous and make sure that they all point in the same direction.

To the extent that these specifications can be met the use of law in community relations will be effective; to the extent that they cannot, it will not.

I very much doubt that I have brought you any new wisdom. I can but hope that I have not totally wasted your time and that, in examining the topic in a somewhat different light, I may have succeeded in contributing some measure of perspective and stimulation.

# *Statement of Conclusions and Recommendations*

**L**AW plays a significant role in shaping social relationships. Informal social relationships are of course weighty factors in every aspect of community life. It must also be recognized that intergroup relations in the United States are both reflected in, and influenced by, the legal framework within which we live; and it is this framework and its influences with which this statement is concerned.

By "law," we mean the exertion of governmental power, whether in the form of a statute, a judgment of a court, or an order or act of an administrative agency or official. We regard the law as acting not only through its coercive powers but also through the moral force that it exercises as the embodiment of the community's standards. It may advance or retard the acceptance and practice of equality of rights and opportunities, with a force going far beyond the sanctions imposed by law itself.

In this nation, founded upon democratic principles, the instrumentalities of the law are accessible to the people for promoting the general welfare. In contrast to repressive nations, where the power of the law is used to enforce the mandates of an authoritarian government, our system of government permits us to look to the law with confidence as an expression of the popular will, and hence laws once enacted tend to be accepted by individuals as guides for conduct.

In recent years, developments on the world scene have emphasized the need to close the gaps that still exist between our practices and our democratic ideals. Continuing efforts to promote good intergroup relations have helped to foster a climate of opinion that rejects discrimination and group hostility. This climate facilitates use of the law as an instrument for promoting equality. For these reasons, while political and economic changes are constantly occurring, the general situation today is one that gives added potency to the law as an instrument for improving intergroup relations.

## *The Law and Community Relations Objectives*

The overall objectives of Jewish community relations are to protect and promote equal opportunities and good intergroup relations and to create conditions that contribute to the vitality of Jewish living.

These objectives can be realized only in a society in which no person is subjected to discrimination, or his security endangered, because of his religion, race, or origin. Jewish organizations devoted to community relations activities have directed their energies toward the full realization of such a society. The programs in which they engage are concerned in large part with developing favorable intergroup attitudes and relationships, equality under the law, equality of opportunity, religious liberty, separation of church and state, and defense against intergroup defamation and violence.

Increasingly in recent years, Jewish and other community relations organizations have developed programs to use the law for the advancement of community relations objectives. This increasing use of the law by Jewish community relations agencies may be seen in such activities as the following: conducting litigation, filing briefs as friends of the court, offering testimony on proposed legislation, drafting model bills, preparing legal memoranda and circulating general educational material to inform the community on the state of the law and its uses. Among the issues that have been dealt with through legal instrumentalities have been segregation and other forms of discrimination in employment, education, housing and places of public accommodation; religious liberty and church-state relationships, particularly those involving religion in the public schools; safeguarding civil liberties and basic freedoms; and the liberalization of American immigration policy. This activity has contributed to significant modifications in the body of American law and in the interpretation and administration of existing law, changes that have had a powerful and constructive impact upon American life.

### *Uses of the Law*

In the light of the accumulated evidence regarding the concrete benefits of legal techniques, Jewish organizations have felt justified in making extensive use of them. Whether or not a final, conclusive judgment is reached on the whole broad question of the value of the law for the advancement of community relations objectives, there is need, from time to time, to examine the basic assumptions regarding the efficacy of the law for the advancement of community relations objectives generally and those of the Jewish community in particular. Differences of emphasis and of judgment have also arisen about the uses of law for the promotion of equality, including questions as to the conditions for its most effective application, the proper areas of action for Jewish organizations, and the best procedures for evaluation, planning and coordination of agency activities. Our present concern is with these questions.

The uses of the law with which we are chiefly concerned can be roughly divided into two categories:

1. *Litigation*, to enforce existing law or to give it new interpretations. Organizations may engage in this activity either by starting lawsuits, intervening in suits started by others, or filing briefs as "a friend of the court." Such action, designed to bring about enforcement of law, may be supplemented by *cooperation with governmental agencies*, through interpretation, referral and preliminary processing of complaints, and assistance in evaluation of cases, and by cooperation in educational activities.

2. *Educational campaigns regarding legislation*, involving testimony before legislative committees, analysis and interpretation of proposed legislation to members and to the public generally, conduct and interpretation of basic research, and general educational activities designed to demonstrate the need for civil rights and other broad categories of legislation.

Any or all of these activities may be carried on at federal, state or municipal levels.

*Upon exploring these topics in the light of scientific analysis and practical experience, the Special Committee on Reassessment of the NCRAC and the invited participants in this conference set forth the following conclusions and recommendations for the guidance of Jewish communities and organizations in their use of the law for the advancement of community relations objectives.*

## The Law as an Instrument of Social Change

We believe that legislation and legal rulings defining and broadening human rights have had a potent and highly beneficial effect. Law tends to become recognized as the community standard or norm. Conduct in opposition to the law, therefore, tends to be regarded as unrespectable and inimical to public welfare. The American people generally are not opposed to legal enactments intended to advance the principles of equality, as expressed in the Declaration of Independence and protected in the Constitution of the United States.

In our country, most people are law-abiding, and their behavior tends to conform to the community standards embodied in the law regardless of their own attitudes. There is evidence that persons who are not themselves prejudiced often act in accordance with established patterns of discriminatory behavior, particularly when such patterns have the sanction of law and therefore the appearance of official ap-

proval. On the other hand, when the law clearly frowns upon discrimination, the non-prejudiced are able to practice equality and even the prejudiced tend to conform. The evidence suggests that when a person stops discriminating, even if only in order to conform to our laws, his change in conduct itself requires him to adopt new attitudes that justify his actual behavior, and thus he tends to reject bias. A reduction in prejudice is more likely to be brought about in this way than through generalized attempts to persuade or to inform, or other direct efforts to modify attitudes. It is this observation that has warranted increased reliance on law as an instrument of social change.

It is true that some measure of resistance is usually made to an effort to alter intergroup relations by law. If the opposition is sufficiently strong and active, the proposed change ordinarily is not adopted. But universal or overwhelming *prior* acceptance of civil rights measures or assent to them is not to be expected. It would be self-defeating for proponents of constructive measures to delay legislative or legal action until overwhelming acceptance can be achieved.

### *Law and Education*

At one time, law was contrasted with education as an instrument of social change, law almost always being given an inferior role.

*We believe now not only that law and education are compatible approaches to the promotion of equality, but that they complement each other in several respects and should be so utilized.*

Education can directly support legal objectives. A concrete proposal for legislative change, a suit in a court, an invocation of an administrative ruling, all need the support of popular opinion.

At the same time, any such action provides a most effective focus for public education and interpretation. Recent studies have shown that educational procedures are more likely to have value when linked with pursuit of particular social goals than when they are aimed directly or solely at prejudiced attitudes.

Legal action also has indirect educational effects. When new legislation is under consideration, public figures and legislative bodies are often compelled by aroused public interest and popular demand to give support to proposals on which they would otherwise be silent. The enactment of a law stating the community's standards also provides a new basis for action by civic groups. They may proceed in such diverse matters as calling upon newspapers to eliminate discriminatory advertisements or seeking to strengthen the emphasis on equality in the public schools. Prior to the passage of a law, such proposed changes may be rejected as controversial; the sanction of law provides the

necessary conditions for facilitating community education and improvement.

We are not persuaded by the argument that the application of legal controls to community relations problems is likely to have a boomerang or regressive effect because of seriously heightened social tensions. The weight of evidence from the social sciences and practical experience is that the danger of such a boomerang effect is much less than was formerly feared, since the use of law to advance community relations objectives is not and need not be primarily repressive in nature.

*We conclude that law, particularly when combined with educational efforts directed at specific objectives, is a valid and important instrument for progress toward the ideals of freedom and equality of rights and opportunities.*

## Resources in Existing Law

### *Litigation and Enforcement*

The purpose of litigation and of enforcement is to make the best use of the resources within existing law. The most obviously applicable resources are those supplied by legislation designed specifically to enforce civil rights, such as the fair employment practices and fair educational opportunities laws of recent years. Even in the absence of new legislation designed specifically to promote civil rights, existing law provides varied resources which can aid in the solution of a very wide range of community relations problems if sufficient ingenuity be applied in seeking a suitable procedure.

The fundamental guarantees of basic rights in the United States Constitution—particularly the guarantees of freedom of expression and religion in the First Amendment and of "equal protection" in the Fourteenth Amendment—are clearly primary resources. Others include:

the guarantees of rights in state constitutions and city charters; state and local civil rights laws, some dating from the nineteenth century, that may have fallen into disuse, but may be reactivated and applied to present day problems;

general provisions of criminal codes, such as those dealing with public disturbances, which may be invoked in appropriate situations; and

franchise and licensing provisions, which may contain safeguards of public welfare.

In addition, new interpretations and rulings may be secured from

the heads of various official agencies, such as civil service commissions, public employment services, state tourist agencies, and education departments. Community relations can also be advanced through training programs for police in intergroup understanding or the provision of health and recreational services on a non-discriminatory basis.

*We recommend that appropriate use be made of all these resources, each in accordance with the needs of the particular situation.*

A varied range of *sanctions* is available under existing law to enforce adherence. At one extreme are the penal sanctions applied by statutes making it a crime to commit certain discriminatory or other proscribed acts. Experience indicates that severe penalties in such laws make the laws difficult to enforce. Under most constitutional clauses and statutes, an injured person can institute lawsuits for damages, injunctions, declaratory judgments or other civil sanctions. These may be used either as supplements or as alternatives to criminal prosecutions. An entirely different enforcement procedure is available to administrative commissions. They may issue cease and desist orders or compel affirmative remedial action. Moreover, particularly where they have the power to receive complaints, hold hearings, and make self-initiated investigations, they may by conciliation settle issues brought to their attention, without resort to formal proceedings.

Sanctions of a coercive nature do not exhaust the list of resources available through government. Effective *positive incentives* to compliance with nondiscrimination policies may be provided through conditional grants-in-aid, awards of government contracts, and, in some situations, tax exemption or reduction. *In general, we recommend recourse to the application of positive incentives whenever possible.*

### *Legislation*

When existing law is inadequate, an alternative to litigation must be sought. In that situation, educational campaigns for new legislation may be undertaken. The direct benefits of new laws are obvious. The indirect benefits of educational legislative activity are also important. An educational campaign may advance community relations objectives whether or not it achieves specific legislative results. For example, an educational campaign regarding a specific proposal focuses attention on community relations issues and fosters greater public understanding, both of the social principles involved and of the legislative process. It commonly causes voluntary reduction of discrimination, both by those who find reinforcement in the campaign for their democratic ideals and by those who seek to forestall legislation by some voluntary

action. The participating groups acquire increased confidence and morale and develop wholesome relationships among themselves that are helpful in other issues. Finally, the groups develop working relationships with legislators and familiarize them with current thinking on community relations problems.

Benefits may also be obtained from legislatures in the form of investigations by legislative committees. Public hearings by such groups are a valuable means for determining facts and advancing public knowledge regarding community relations needs. Ordinarily, these benefits are derived from open hearings devoted to the exploration of some social issue or problem. The abuses that have occurred, however, in the course of some legislative investigations, which have in effect assumed the nature of trials of individuals without the protection of a court of law, require that they be subject to appropriate safeguards.

### *Comparative Values of Litigation and Legislation*

In some situations, the choice is evident between litigation and a program of education regarding the need for legislation to obtain a desired objective. Litigation rests upon existing law. Where no existing law is applicable to the desired objectives further resources must come from new legislation. For example, in states that have no fair employment practices laws, the approach through litigation and enforcement is likely to be limited to a few marginal gains. The campaign against discrimination in employment must therefore take the form primarily of a program to persuade the public of the need for enactment of appropriate legislation. On the other hand, in a state that has a sound FEPC law, continued discrimination in employment must be dealt with by obtaining better enforcement.

There are some situations, however, that require a choice between the two approaches. Existing law may be unclear; it then becomes necessary to decide whether clarifying legislation or court action looking toward a favorable judicial ruling is to be preferred. The existing law may be clear in principle but difficult to enforce; then the choice is between the enactment of effective sanctions and an effort to use those that are in effect. Finally, even where the law is clear, we must sometimes make a choice between devoting resources to a program of public interpretation concerning possible legislation and devoting the same resources to a program of litigation.

*We recommend that while the choice must be determined in each instance by the given conditions and circumstances, such factors as the following must be kept in mind:*

*In general, educational campaigns regarding legislation demand a greater expenditure of effort and resources than do court actions. Sometimes compliance may result from the mere notice of intention to initiate litigation. Moreover, while control of litigation rests with a court and contact may be maintained at all times, a specific legislative proposal may change radically while passing through the complex legislative process. A successful program in connection with proposed or pending legislation involves reaching and persuading great numbers of people. It would appear that litigation offers greater likelihood of success when the desired objectives do not have broad prior public acceptance. Thus litigative techniques have been found more suitable, in general, than legislation on questions of church-state relationships. On the other hand, legislation can usually accomplish broader changes than litigation. Moreover, a lawsuit may result in an adverse decision while a program designed to interpret the need for some particular legislation ordinarily does no harm if unsuccessful and may achieve some gains.*

## Conditions Affecting the Use of Law

Among the conditions that community relations agencies must take into consideration in order to make effective use of the instrumentalities of law and legislation are: (1) the climate of opinion and factors affecting it; (2) timing, tactics and preparation; (3) the extent of support by broad community groups; (4) conflicting interests; and (5) the likelihood of success.

1. The general social situation, whether favorable or unfavorable to a proposed measure, may change abruptly at any time. The climate of opinion is sensitive to the results of elections, changes in economic conditions, and other national and international developments. Although these elements are outside the scope of community relations activities, they do directly affect advancement of community relations objectives.

2. Legal activities that are poorly planned or unwisely timed can retard the accomplishment of desired objectives. Proper timing and strategy, in turn, may be negated by inadequate analysis, research and preparation. It is encouraging that the findings of basic research in the social sciences are now used regularly in briefs and legislative testimony, as in the recent cases on segregation in public schools. *We recommend that such use be continued and expanded.*

3. The support of diverse groups in the population is most helpful, in fact, almost essential, in pursuing community relations objectives. This support can be obtained more easily in a new situation when there is a well-established pattern of cooperation on specific objectives among interested groups in the community. *We therefore recommend activities to create good day-by-day relationships with all groups in the community.*

4. It is especially important to recognize that legal action to attain one community relations objective may conflict with another. For example, there may be conflict, in some situations, between the need to curb dissemination of anti-Semitic and racist propaganda and the right to freedom of speech. *We recommend that Jewish community relations agencies, no matter how urgent the need to meet some current problem, give serious consideration to insure that the invocation of legal procedures will not result in curtailment of the basic constitutional liberties of any person or group.* Because conflicts of this nature are not yet clearly understood by the Jewish community as a whole, *we recommend that Jewish agencies recognize that they have a special responsibility for educating the Jewish community regarding these problems.*

5. The likelihood of success is an obvious consideration in starting any activity, but it is not necessarily decisive. When a matter of principle is at stake, it is sometimes necessary to act even though there is little chance of immediate success. Moreover, as already noted, public discussion of a legislative proposal that is defeated may produce desirable educational effects.

*We recommend that decisions on whether and how to act, both in pursuit of our objectives and in opposition to harmful or regressive measures, should be made on a case-by-case basis, taking into consideration the factors described above.*

## Problems Requiring Research and Exploration

While the foregoing conclusions are based on experience and the evidence from the social sciences that has so far accumulated, further investigation is still required on many problems of great importance. We recommend that Jewish organizations encourage basic social science research into the conditions that enhance the use of law, the effect of changes in social practice upon attitudes, and a number of more specific questions. Studies of methodology, administrative research, and research on the problems of practitioners are also required.

*We specifically recommend research on the following:*

1. *What is the carry-over of attitudes and behavior from one area of social life to another?*

A person's willingness to accept members of other groups in one area of social life appears not necessarily to carry over to others. Thus, a person who accepts Negroes as fellow employees on the job may still reject them as neighbors, just as the person does whose employer hires no Negroes. This indicates the necessity of continuing simultaneous attack on *all* discriminatory barriers. At the same time, studies should be made of the conditions (if any) under which change in one social sphere does carry over to another, the extent of any such carryover, and the likelihood that it is affected by non-discriminatory patterns in school, in housing, or on the job, or by social group membership—that is age, sex, religion, and economic and educational level. The effect of cumulative or delayed impacts and the extent to which they occur also should be investigated.

2. *Under what conditions does action provide maximum benefits?*

Legal programs for community relations objectives have been aimed at what we believe to be an underlying cause of prejudice: the discriminatory conduct that generates and provides support for biased attitudes. We assume that it has been proved that the legal attack is effective; but comparative research is still needed to reveal why effects are achieved in one situation or in one community, but not in another.

3. *Under what conditions does legal action increase resistance and possibly tensions?*

The enactment of legislation against discrimination is usually accompanied by some measure of resistance. Does this resistance cause intergroup tension. Under what conditions do different types of legal and social action (litigation, legislation, police action, public hearings) have different potentials for causing tension? What are the possible consequences of legal actions that disturb the prestige and status relationships of various groups in a community? What reaction may be expected from persons who are faced with the enactment of laws that affect their status and social prestige? On the assumption that their resistance would be reduced if their status could be supported, what alternative means remain of supporting their status?

## Responsibility of the Jewish Community

The first responsibility of Jewish community relations agencies is to deal with *matters directly affecting Jews*. Experience shows, however, not only that discrimination against any one group threatens the

rights of all but also that the rights of all are equally affected by legal measures taken in defense of any one. Accordingly:

*We recommend that Jewish community relations agencies engage in activities designed to prevent discrimination against any group, as an appropriate part of their long range program to contribute to Jewish security in the United States.*

Preservation of the fundamental democratic rights of freedom of expression, association and assembly is essential to the security of Jews as it is to that of all Americans. While primary responsibility for activity in the area of civil liberties resides with general, non-sectarian organizations dedicated to these purposes, *we recommend that Jewish community relations agencies give support to measures designed to preserve civil liberties.*

While Jews as Americans have a concern and responsibility for the full range of our country's domestic and foreign policy, there is a difference of opinion regarding the extent to which Jewish community relations agencies as such should act on broad programs for the public welfare.

*We conclude, however, that when shortages or lack of facilities tend to intensify discrimination, as in employment, housing or education, measures to expand opportunities and facilities are a proper concern of Jewish agencies.*

When a social welfare bill is pending, there is sometimes a question whether Jewish agencies should support inclusion of a provision to insure that it is administered without segregation or other forms of discrimination. In general, we favor inclusion. We recognize, however, that insistence on such provisions may sometimes prevent the passage of needed welfare legislation.

*We recommend that the decision to insist or not to insist on such provisions be made on a case-by-case basis in the light of the relative values involved.*

Questions of community responsibility also arise when legislative or administrative procedural obstacles jeopardize attainment of substantive goals. Thus, the Senate filibuster, which can be used against any Congressional measure, is of special concern to us because it has frequently blocked civil rights measures. Similar considerations apply to such matters as the arbitrary power of the House Rules Committee to bottle up legislative proposals, to the systems of apportioning seats in some state legislatures that reduce the representation of urban areas,

and to administrative regulations hampering desirable action by some governmental agencies.

*We recommend that Jewish agencies support efforts to remove procedural barriers that serve to block enactment of legislation embodying desirable community relations objectives.*

Experience has shown very clearly that the placing of a law on the statute books does not automatically achieve the goal sought. Legislation is not in itself a solution to community relations problems; it is no more than a means through which a solution may more readily be sought. The responsibility of Jewish community relations agencies therefore does not end when a law is passed.

*We recommend that there be full support of measures designed to secure effective implementation of the law, including appropriations, appointments, and effective administrative procedures and action.*

## Role of Jewish Community Relations Agencies

*We believe that every action to improve community relationships requires a balanced program of education, research, and social action.* There is room and need for the special facilities, contributions, and approaches of many different types of community relations agencies, national and local.

The complexity of the problems in using the law to advance community objectives places a strain on the limited resources of the Jewish community. *We therefore believe it is important to conduct continuing joint planning to deal with questions of priority, strategy, and timing, and to determine the most effective use of the resources available to all the agencies.*

*We recommend that all Jewish community relations agencies, national and local, participate in the joint formulation of policy and the joint planning of activities in relation to particular measures for the advancement of their objectives.* In that way, duplication and confusion can be avoided and initiation of deliberately chosen activities can take the place of hurried reaction to emergencies.

### *Implementation*

With regard to the implementation of program, as many agencies as possible should participate in the work of general education and interpretation. Each agency, in accordance with its structure and functions, should interpret program to its constituent members and branches for the purpose of informed social action. Each should, in addition,

work with the special groups in the population, such as religious bodies, veterans organizations, and labor unions, with which the agency has a special affinity or to which it has special access.

Technical services such as bill drafting, preparation of briefs, preparation of testimony, factual research, and legal analysis and reporting, need not be duplicated, and we recommend that they should not be duplicated. It is the responsibility of a national agency to maintain specialized staff and facilities for such technical services, and to act as a central resource and consultant, upon the basis of policies and plans jointly agreed upon. Community agencies should participate in similar activities for matters affecting their own localities.

Maintaining contacts with government officials cannot be exclusively a national agency responsibility. Each community agency should maintain such contacts in its own locality. There should be continuing clearance and interconsultation among the agencies.

Jewish community relations agencies, as non-profit educational, civic, and religious organizations, do not devote a substantial part of their resources to legislative activities and do not engage in political activity. To do so would require an alteration in their charters, structures, functions, and tax status. No such changes have been proposed or are contemplated. It should be noted, however, that one agency, the Jewish War Veterans of the United States, as a veterans' organization, has a distinctive tax status, which includes tax exemption under a provision of the Internal Revenue Code allowing it to engage in legislative activities.

### *National-Local Relationships*

National and local community relations agencies play complementary roles with regard to the advancement of community relations objectives through law and legislation.\* We recommend that national agencies, in the area of law and legislation specifically, should: (1) recognize the local community relations council (CRC) as the central body with primary responsibility for planning and conducting legal programs and educational legislative campaigns in its locality; (2) encourage their constituents to conduct activities through and with the approval of the CRC; (3) place their facilities and resources and their technical services at the disposal of the CRC. We recommend that local community relations councils should: (1) give full recognition to the constituents of national agencies as channels through which the implementation of local programs for the use of the law can be facili-

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\* This paragraph parallels, and is based upon, the general statement of national-local agency relations adopted by the Executive Committee of the National Community Relations Advisory Council in April, 1953, and subsequently endorsed by the Plenary Session of the NCRAC.

tated; (2) avail themselves of the services of the national agencies; and (3) recognize that no national agency need or should be asked to compromise its fundamental philosophy.

## List of Signers

- IRVING KANE, Cleveland, Ohio; *Chairman*, NCRAC Special Committee on Reassessment
- RABBI MORRIS ADLER, Detroit, Mich.
- ALBERT E. ARENT, Washington, D.C.
- JOSEPH F. BARR, Jewish War Veterans of the U.S.A.
- HARRY I. BARRON, Cleveland, Ohio
- DANIEL BELL, Jewish Labor Committee
- SAUL BERNSTEIN, Union of Orthodox Jewish Congregations of America
- MORROE BERGER, Princeton University, Princeton, N.J.
- \*MORTIMER BRENNER, Brooklyn, N.Y.
- ROXANE BRODY, United Synagogue of America
- \*ISIDOR CHEIN, New York University, New York City
- LOUIS J. COHEN, Newark, N.J.
- WILLIAM COHEN, Detroit, Mich.
- DAN DODSON, New York University, New York City
- \*MRS. ELSIE ELFENBEIN, New York City
- MAURICE B. FAGAN, Philadelphia, Pa.
- LOUIS FEINMARK, New Haven, Conn.
- ISAAC FRANCK, Washington, D.C.
- MORTON J. GABA, Norfolk, Va.
- M. DELOTT GARBER, Hartford, Conn.
- \*HERBERT GARFINKEL, Dartmouth College, Hanover, N.H.
- \*VICTOR B. GELLER, Yeshiva University, New York City
- JOHN GUNTHER, Americans for Democratic Action, Washington, D.C.
- SIDNEY HOLLANDER, Baltimore, Md.; *Vice-Chairman*, NCRAC
- JACKSON HOLTZ, Jewish War Veterans of the U.S.A.
- \*PHINEAS INDRITZ, Washington, D.C.
- OSCAR JANOWSKY, City College, New York City
- RABBI HENRY E. KAGAN, Mt. Vernon, N.Y.
- HORACE M. KALLEN, New School for Social Research, New York City
- REUBEN KAMINSKY, Jewish War Veterans of the U.S.A.
- MAX KAMPELMAN, Washington, D.C.
- RABBI JAY KAUFMAN, Union of American Hebrew Congregations
- \*JULIAN A. KISER, Indianapolis, Ind.; *Secretary*, NCRAC
- M. J. KLINGER, American Jewish Congress

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\* See supplementary statement, pp. 61-69.

- MILTON KONVITZ, Cornell University, Ithaca, N.Y.  
 HAROLD A. LETT, Division Against Discrimination, Newark, N.J.  
 SEYMOUR LIPSET, Jewish Labor Committee; Columbia University  
 \*JAMES LIPSIG, Jewish Labor Committee  
 HERMAN LONG, Fisk University, Nashville, Tenn.  
 \*R. M. MACIVER, Columbia University, New York City  
 \*PATRICK MURPHY MALIN, American Civil Liberties Union,  
 New York City  
 WILL MASLOW, American Jewish Congress  
 EMANUEL MURAVCHIK, Jewish Labor Committee  
 ISAAC PACTH, Los Angeles, Calif.; *Vice-Chairman*, NCRAC  
 DAVID PETEGORSKY, American Jewish Congress  
 JUSTINE WISE POLIER, American Jewish Congress  
 SHAD POLIER, American Jewish Congress  
 \*ALAN REITMAN, American Civil Liberties Union, New York City  
 MRS. LEON ROSENTHAL, United Synagogue of America  
 SAMUEL ROTHSTEIN, United Synagogue of America  
 ARNOLD ROSE, University of Minnesota, Minneapolis, Minn.  
 RABBI ARTHUR J. S. ROSENBAUM, Philadelphia, Pa.  
 PHILIP SCHIFF, Washington, D.C.  
 RABBI BERNARD E. SEGAL, United Synagogue of America  
 ROBERT E. SEGAL, Boston, Mass.  
 JOSEPH SHAPIRO, Union of American Hebrew Congregations  
 S. WALTER SHINE, Washington, D.C.  
 LEO SROLE, Cornell University; New York City  
 \*DAVID TANNENBAUM, Los Angeles, Calif.  
 BERNARD H. TRAGER, Bridgeport, Conn.; *Chairman*, NCRAC  
 DAVID L. ULLMAN, Philadelphia, Pa.; *Treasurer*, NCRAC  
 ALBERT VORSPAN, Union of American Hebrew Congregations  
 LEWIS H. WEINSTEIN, Boston, Mass.; *Vice-Chairman*, NCRAC  
 HERMAN L. WEISMAN, American Jewish Congress; *Chairman*,  
 NCRAC Committee on Legal and Legislative Information  
 SEYMOUR WEISMAN, Jewish War Veterans  
 ROY WILKINS, National Association for the Advancement of Colored  
 People, New York City

## Supplementary Statements

### *Statement by Mortimer Brenner*

I am in accord with all of the conclusions and recommendations contained in the Statement, with the exception of the conclusions expressed in the second paragraph of the section dealing with "The Law

\* See supplementary statement, pp. 61-69.

as an Instrument of Social Change." I am fully conscious of the fact that non-discriminatory practices, even though not voluntary but compelled by force of law, may have a potent effect on the reduction of prejudice and that this fact does warrant increased reliance on law as an instrument of social change. However, I am also conscious of the fact that "generalized attempts to persuade or to inform and other direct efforts to modify attitudes" have also had strong effects in reducing prejudice and are often essential preliminaries to the passage and enforcement of laws prohibiting discrimination. I feel quite certain that there is not sufficient evidence to justify a general conclusion as to whether one method or the other is more likely to bring about a reduction in prejudice, and that in any particular situation the many factors peculiar to that situation would have to be taken into account before it could be determined (and I think as a probability rather than as a certainty) which of the two methods should be followed or, if both methods are followed simultaneously (as would often be the case), what degree of emphasis should be placed on each.

### *Statement by Dr. Isidor Chein*

I am happy to sign, without qualifications, the statement on the use of law in furthering community relations objectives. May I, however, submit the following addition. There are at least three lines of activity in connection with existing laws that should be singled out for special attention:

First, continuing educational efforts should be made to familiarize people with their rights and obligations under the law. All too often, even those who are most affected are ignorant, not merely with respect to the specific provisions of the law, but even with respect to the very existence of the law. This educational responsibility should be shared by all agencies and organizations interested in the furtherance of community relations objectives, by the schools, and by the specific agencies that may be set up under the law to administer and enforce it.

Second, strong and consistent efforts should be made to discover and make known those who comply, not only with the letter of the law, but with its spirit, and programs should be developed to encourage people to give these wholehearted compliers special support by way of business, financial contributions, and so forth. Reward is likely to be a much more effective method of insuring compliance than punishment.

Third, we need to develop much more know-how with regard to methods of inducing those whose civil rights are at stake to take advantage of their rights under the law. All too often, from the view-

point of the protection of civil rights, but understandably from the viewpoint of the individuals involved, minority group members are concerned with such matters as getting a job, being admitted into some school, etc., rather than with the furtherance of a cause. They thus tend to gravitate to fields and to make applications to firms, etc., in which they expect not to encounter discrimination. The most serious consequences are less in the direction of failing to uncover violations of the law than in the direction of failing to generate pressures to change. I think that we need to experiment with ways of providing necessary financial and moral supports to individuals so that they can be sustained in their efforts to break down existing social barriers. There is more involved than creating the conditions under which individuals will be motivated to try. A person who manages, for instance, to get a job in a firm where there is a great deal of anti-minority-group prejudice may find himself in a situation in which it is difficult to work. A person who buys a house and finds himself surrounded by prejudiced and hostile neighbors is in a situation in which it may be difficult for him to live. Such individuals need encouragement and support and we need to devote thought and experimentation to finding ways and means of giving it to them. It is true that we can always count on a few hardy pioneers who are sufficiently motivated to try to break through any kind of barrier. But we would be able to make much more rapid progress if we could help many more ordinary people to do likewise.

### *Statement by Mrs. Elsie Elfenbein*

I have read the statement of Conclusions and Recommendations of the Special Committee on Reassessment and find that I am in agreement with the substance of the report and would be willing to sign it, exclusive of the final portion which is headed, "The Role of the Jewish Community Relations Agencies." I do not wish to participate in signing this part because I did not participate in the discussion on these recommendations and do not feel that I can voice support of recommendations on national-local relationships of this nature.

### *Statement by Herbert Garfinkel*

1. I believe that a reassessment of our community relations activities must probe more deeply into the tax-exemption problem. Should the policies of our agencies be tied to the limits of fund-raising requirements? Is it possible or, if possible, desirable that a Jewish organization be developed with an explicitly legislative campaign function? Could the funds be raised to sustain the lobbying activities of such an organi-

zation? Would more legislation favorable to Jewish community needs ensue to justify such an organization? Should such an organization be entirely Jewish or should it be a more broadly based civil rights political grouping? I believe the answers which have heretofore been explicitly or implicitly provided to these questions are in need of reassessment at the present time.

2. The successful passage of legislation favorable to Jewish community relations requires considerable knowledge and experience in the political-legislative process. The obstacles to obtaining favorable action in our national and state legislatures is a fitting subject for research which might well be sponsored by our Jewish organizations. Mentioned in the report is the important obstacle of filibusters in the U.S. Senate. Another fairly obvious (and perhaps even more important) one forestalling state F.E.P.C. law enactment is the present overrepresentation of rural districts in state legislatures. This type of research should receive more emphasis by our agencies in reassessing their role in utilizing law for community relations objectives.

### *Statement by Victor B. Geller*

I think that there should be some emphasis on the role of CRCs in the area of unfair legislation such as the Blue Laws which hamper religious practice in an unfair and arbitrary manner. These causes, including perhaps most notably the Joint Committee for a Fair Sabbath Law, are too often the concern of limited and interested parties. They are deserving of broader understanding and discussion by the Jewish communities. The CRCs, it seems to me, should include this more prominently in their programs.

### *Statement by Phineas Indritz*

In general, I concur in the conclusions. However, in response to your invitation to express any comments, suggestions, or even dissent, I would like to offer the following thoughts:

1. The sentence which recommends the use of certain so-called positive incentives of a financial nature\* is in a context where no recommendation is made as to the use of any other community relations resource. This makes for an unwarranted emphasis upon financial-type techniques which I think is largely misplaced. These techniques have rarely been effective, to date. Whether they may in the future prove more helpful than before, or than other methods, is problematical. In any event, to urge their use while abstaining from recommending

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\* Page 52.

the other, non-financial, techniques, fails to make proper evaluation of the tools of enforcement.

2. One of the great problems facing the liberal today is how far he should press for nonsegregation clauses in seeking enactment of legislation. On the one hand, the legislation may, even without a non-discrimination clause, provide substantial benefits to those whom the nondiscrimination clause is intended to protect from discrimination. On the other hand, the passage of the legislation without such a clause would tend to intensify and entrench the patterns of segregation and other forms of discrimination and to provide important governmental support which facilitates the staving off of modifications and changes that might otherwise occur in those patterns. It is unfortunate that this problem is heaviest upon us in seeking legislation with social welfare objectives, e.g., aid to education, housing, hospitals, etc. Indeed, the tactic of proposing nonsegregation clauses was used a couple of years ago by Senators who wanted to kill a housing bill and who, it was generally known, had no interest in promoting civil rights. It seems to me that any full scale attack on racial discrimination should give serious consideration to attempting to obtain nonsegregation provisions as a condition to legislation of primary concern to the South other than social-welfare type bills. Would the Southern Senators really filibuster such bills as cotton, peanuts, tobacco, etc., grants, in the face of a determined effort to combine nonsegregation with the use of federal funds?

3. The statement that research, briefs, legal analysis, preparation of bills, etc., need not and should not be duplicated, may have a superficial appeal. However, I am convinced that our greatest problem on this point is not duplication, but rather lack of enough of these services. Coordination may sometimes be needed, but I do not think that the areas of struggle against discrimination, intermingling of church and state, violations of civil liberties, etc., can be neatly carved out and precisely allocated. Occasionally duplication is itself helpful. What should be stressed, therefore, is not that duplication may sometimes exist, but the lack of enough competent aid and the need for co-operation wherever possible.

### *Statement by Julian A. Kiser*

I do not concur with the recommendation that "measures to expand opportunities and facilities," in such areas as employment, housing or education, "are a proper concern of Jewish agencies." Although there is likely to be full agreement among the agencies and their constituents as to the *objectives* of such measures, the *methods* proposed

to attain these objectives ordinarily raise questions involving basic differences in economic and political philosophies. The injection into our deliberations of such highly controversial issues as governmental *vs.* private investment, federal *vs.* state regulation, or federal aid programs and the collateral questions of control which they raise, is bound to lead to sharp divisions of opinion within the Jewish community concerning our programs and might well result in the dissipation of our energies in unfruitful controversies which could jeopardize the more important parts of our work.

Secondly, I believe the statement that technical services, such as preparation of briefs, testimony, etc., need not and should not be duplicated, should be qualified to indicate that this presupposes complete agreement among agencies not only on underlying policy and strategy, but also on the more subtle aspects of attitude, emphasis and approach. If legitimate differences should exist on any of these questions, in my opinion it would be proper for more than one agency to prepare the relevant materials reflecting its viewpoint.

### *Statement by James Lipsig*

In general, I concur in the statement of conclusions and recommendations. I believe, however, that somewhat more emphasis should be placed upon the value even of litigation as a springboard for a mass educational campaign. After all, one of our basic objectives is to advance public thinking and to correct public prejudices. A victory in court without correlative change in public opinion would be of limited value.

### *Statement by Professor Robert M. MacIver*

I regard this report as a good, clear, effective statement that keeps the role of law to its proper functions and does not ask it to do things that may be prejudicial to any fundamental liberties.

### *Statement by Patrick Murphy Malin and Alan Reitman*

We agree heartily with the content of the conclusions and recommendations, especially the contribution to increased understanding of civil liberties principles contained in the recommendation that "Jewish community relations agencies, no matter how urgent the need to meet some current problem, do not support legal procedures that deny the basic constitutional liberties of any person or group." With respect to its application to Jewish community relations organizations, this involves special knowledge of the Jewish community field which neither

we, nor the American Civil Liberties Union, possess. The scope of the Union's activity is confined to its special interest, civil liberties, and the Union limits its comment to this subject.

### *Statement by David Tannenbaum*

Jewish agencies should be most reluctant to take a position for or against proposals in the field of governmental economic policy. Opinions as to the desirability of most such proposals vary widely, even among Jews, and partisan activity in that field by Jewish groups, whose main purpose is to combat discrimination, will reduce the scope of their popular support and impair their effectiveness in fulfilling that purpose. Aside from matters clearly and directly affecting inter-group harmony and equality, political and economic controversy should be the concern of the individual and not of the group.

### *Statement by Roy Wilkins*

The NAACP believes that legal and legislative measures have given and continue to give great impetus to the development of sound community interrelationships. Without the specific objective of a court action or a particular legislative provision, there would be much less force to procedures of an educational nature. It is difficult to think of situations in which actual damage has been done by the application of legal and legislative provisions. The one category of danger to which people should be alert is that of campaigns ostensibly directed towards the achievement of community relations objectives but actually stimulated by left-wing groups for ulterior purposes. An example of this was the California FEPC referendum which resulted in something of a setback to the cause of fair employment practices.

Legal and legislative measures also tend to rally latent public opinion which all along wanted to do the "right" thing, but which dared not buck the current mores. With the sanction of a court decision or of a legislative act, these segments of the population swing over.

Even if the specific enactment or ruling sought is not achieved, the general effect of a campaign is likely to be positive because of the associated educational effect, and historically successful actions have often followed years of insufficient action. In other cases the problem itself has been eliminated directly even without the achievement of the specific measure itself.

*Two persons who did not sign the Statement of Conclusions and Recommendations submitted explanatory notes. These are given below:*

*Statement by Sam Elson  
St. Louis, Mo.*

I believe there is a fundamental distinction between the role of legislation in regulating relationships between government and citizens and the role of legislation in regulating relationships between citizens, *inter sese*. In the former field I would use legislation to the hilt in order to achieve non-discrimination and other community relations objectives. In the latter field I am opposed to the use of legislation unless it can be demonstrated that the failure to regulate leaves untouched an area which presents the equivalent of a "clear and present danger." I would make exceptions in the latter field for complete business monopolies, such as utilities or other businesses "affected by a public interest," and, generally, for certain types of places of public accommodation. The Statement of Conclusions and Recommendations in its zeal for education (?) through coercion fails to take full account of the fact that legislation in the latter field will inevitably infringe on what I believe are and should remain to be private rights, *no matter how unwisely those rights are used.*

*Statement by Allyn P. Robinson  
National Conference of Christians and Jews*

It has been a real privilege to serve as a consultant for the three reassessment conferences that have been held by NCRAC. My reaction to all three of them has been positive and I have been happy to have had a small part in them.

I have not signed any of the statements that have grown out of these conferences primarily because it seemed to me that as someone from outside it was presumptuous for me to share officially in recommendations to the members of NCRAC. I would, however, like to add a brief comment to the present report on "The Advancement of Community Relations Objectives through Law and Legislation."

In general I think this is an excellent report and, even though my own organization confines itself to an educational approach, I heartily concur in it personally and I believe that many of my NCCJ colleagues would also.

The practical suggestions I find particularly good, but I do take issue with some of the generalizations in the introductory pages. I think the sentence, "A reduction in prejudice is more likely to be brought about in this way [that is, through changes in law] than through generalized attempts to persuade or to inform, or other direct efforts to modify attitudes," says too much. I agree that the necessity to conform to law does bring change in behavior and therefore, in many cases no doubt, some change in attitudes. I do feel, however, that we cannot rely upon law alone to change attitudes and, while "generalized attempts to persuade or to inform" may at times be ineffective, that direct efforts to modify attitudes on the part of skilled leaders who understand good group process and other educational techniques are not only useful, but an extremely important part of the picture.

I have some distrust of some of the other generalizations, such as the generalized treatment of the potential boomerang effect of the application of legal controls. I think that the fact that the major portion of the document brings these matters down to specifics and emphasizes the need for each local situation to be judged as an individual case provides a needed balance.

I hope very much that the report can be widely shared not only among the agencies of NCRAC, but with other leadership interested in similar intergroup goals.

# *Annotated Bibliography\**

A condensed and edited version of the Bibliography included in the Syllabus† prepared for the Committee on Reassessment by Milton J. Schubin of the *Columbia Law Review* and Walter A. Lurie, Ph.D., Program Analyst of the NCRAC.

The current interest of Jewish community relations agencies in the uses of law for the advancement of human rights is a double concern. One line of consideration involves questions of the efficacy of law and legislation for the advancement of community relations objectives generally, and the determination of the most effective methods for using these instrumentalities in the community relations program. Another set of questions involves the determination of the most effective relationship of voluntary organizations, and particularly of Jewish organizations, to the instrumentalities of governmental power.

## *Development of Approaches to Community Relations Programming*

After the close of World War II, the pressures of overt and organized anti-Semitism were greatly reduced. The thinking of Jewish community relations agencies was directed more and more to methods of long-range prevention.

Two apparently divergent points of view regarding the long-range advancement of community relations objectives appeared in the programs of community relations agencies.

According to one point of view, prejudice and misunderstanding represent the basic and underlying problems, and favorable change must be brought about in the hearts and minds of men before progress can be made in expanding equality of opportunity. According to the other point of view, changes in social practices and relationships are the basic factors in promoting equality of opportunity, and only such changes as those which can be enforced by law are really effective in bringing about fundamental improvement in intergroup relationships.

One major approach to long-range prevention was therefore directed towards establishing and maintaining a democratic climate of opinion, through such methods as expansion of public relations and interpretative activities, the use of mass media, work with specialized groups, and local community organization procedures. Another major approach was a greater degree of reliance upon law and legislation in the struggle for better intergroup relationships.

Much impetus was given to this second approach by the late Alexander Pekelis, who articulated its basic concepts with great clarity and force. The American Jewish Congress created a Commission on Law and Social Action as one of its principal operating departments. Operating divisions in this area were also created by other national agencies. In cooperation with other groups in the general population, broad educational campaigns were initiated for federal, state, and municipal fair employment practices laws, fair educational practices laws, and laws in other areas of community relations concern. Major court actions were undertaken against restrictive covenants, on behalf of religious

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\* This bibliography is meant to be selective, rather than exhaustive. The materials cited are for the most part easily available and of a non-technical nature.

† See Mr. Kane's statement on "The Questions Before the Conference" for observations regarding other portions of the Syllabus.

liberty, in defense of rights of naturalized citizens, etc. Activities were also undertaken in relation to such administrative bodies as the Federal Communications Commission and the President's Committee on Government Contracts.

It has sometimes been contended that the two divergent points of view are necessarily contradictory, and that one approach or the other should be followed exclusively. Extreme proponents of one or the other of these approaches have at times condemned activities along the opposite line as either dangerous or wasteful.

Thanks in part to a third major trend in modern community relations programs, an increased emphasis upon efforts to understand to deal with problems of prejudice and discrimination by means of research in the social sciences, it is now recognized that there is no basic incompatibility between the first two approaches. The purpose of the present meeting is to clarify these questions, to the extent possible, in the light of the established findings of the social sciences and the general experience of practitioners.

### *Activities of National Organizations*

In preparation for this meeting relevant information and views were requested from the following organizations: American Civil Liberties Union, American Jewish Committee, American Jewish Congress, Anti-Defamation League of B'nai B'rith, Jewish Labor Committee, Jewish War Veterans of the U.S., National Association for the Advancement of Colored People, National Council of Jewish Women, and the three congregational bodies affiliated with the NCRAC. Those replying were: American Civil Liberties Union, American Jewish Committee, American Jewish Congress, Jewish Labor Committee, Jewish War Veterans of the U.S., National Association for the Advancement of Colored People, National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogue of America.

On the basis of this information, the agencies which report employment of specialized personnel for entry into litigation and for educational activities regarding legislative questions include: The American Civil Liberties Union, American Jewish Committee, American Jewish Congress, Jewish War Veterans, National Association for the Advancement of Colored People, and National Council of Jewish Women. While the Anti-Defamation League of B'nai B'rith did not supply the requested information, it is a matter of common knowledge that the ADL does maintain specialized staff and program in this area of community relations activity. The religious organizations maintain an interest in this area of work, but do not employ specialized personnel.

#### *American Civil Liberties Union*

The American Civil Liberties Union is dedicated to the preservation and advancement of freedom of inquiry and communication, justice in due process and fair trial, and equality before the law, as set forth in the Bill of Rights and generally in the Constitution of the United States. Since these civil liberties and civil rights are defined in legal instruments applicable in a court of law, from its inception the American Civil Liberties Union has emphasized the importance of incorporating civil liberties principles into law and has been concerned with the work of legislative bodies. Throughout the years the main emphasis of its program has been to develop a recognition in the courts of the principles of the Bill of Rights.

While the nature of its own program requires the American Civil Liberties

Union to concentrate upon legal and legislative measures for the advancement of civil liberties, it recognizes that this work must be carried on within the framework of a broader community relations program directed towards the improvement of the climate of opinion and of community relations generally.

#### *American Jewish Committee*

One of the tools in the American Jewish Committee's program of combatting prejudice is initiating and supporting legal measures against discrimination and segregation—in employment, education, housing, and public accommodations and services.

The American Jewish Committee associates itself with the views expressed by Dr. Morroe Berger in the chapter on "Law and the Control of Prejudice and Discrimination" in his book, *Equality by Statute*. In this chapter, Dr. Berger cites sociological and psychological research to establish the efficacy of law for community relations purposes, and concludes that "law can reduce discrimination and influence attitudes."

#### *American Jewish Congress*

The American Jewish Congress has submitted a comprehensive report of briefs filed, bills drafted and testimony given by the American Jewish Congress. The Congress associates itself with the views of Will Maslow in his paper prepared for this Conference. Mr. Maslow says in part: "Law used to be contrasted with education as an instrument of social change and almost always given an inferior role. But we now know that in certain situations the absolute fiat of government is more effective than education in bringing about social change. . . . By and large, there is no longer any controversy among group relations agencies about . . . the effectiveness of the law."

#### *Jewish Labor Committee*

The JLC has given great emphasis in its program to educational work in behalf of establishing equal opportunities by law. A particularly large amount of time has been given to support of the concept of equal *employment* opportunities enforced by law. The role of the JLC has been primarily to interpret this to the leadership and membership of the labor unions and to secure the official support and active participation of organized labor for these objectives. The JLC has not engaged in litigation.

#### *Jewish War Veterans*

The Jewish War Veterans of the United States conducts a number of activities in the general area of legislative campaigns and contacts with administrative bodies, nationally through its legislative representative in Washington, and at state and municipal levels through posts and departments. As a veterans group, the Jewish War Veterans does not endanger its tax exemption by direct participation in legislative activities. It has no specialized staff for the preparation of briefs *amicus* or the filing of legal actions and does not in general engage in activities of this sort.

#### *National Association for the Advancement of Colored People*

The National Association for the Advancement of Colored People has placed heavy emphasis in its program on the instrumentalities of law, legislative action, and political persuasion.

Because many of the practices which deprive Negroes of their full rights are unconstitutional or counter to existing law, particularly great stress in program has been placed upon resort to the law. Over thirty years ago, the NAACP began entering into court cases designed to clarify fundamental civil rights, such as the right to the franchise, and to due process of law and fair trial.

#### *National Council of Jewish Women*

As part of its public affairs program, the National Council of Jewish Women prepares study and discussion material in such fields as public education, immigration, civil liberties, United Nations activities, housing, civil rights and contemporary Jewish problems. This material is designed primarily for the use of the Council's Sections, but is also made available for other groups. The Council maintains a representative in Washington and publishes current legislative information relating to the subjects above listed. Local sections maintain close working relationships with other community groups, particularly women's organizations, for the promotion of community projects and the development of social action.

The *Union of American Hebrew Congregations*, the *Union of Orthodox Jewish Congregations* and the *United Synagogue of America* assist their member congregations in their programs of social action. As religious organizations, they do not employ specialized personnel for litigation and related activities.

Other organizations not specifically approached for detailed information also engage in activities in the area of social action.

*Labor* organizations and veterans organizations maintain very comprehensive programs, with primary emphasis on matters of immediate concern to their own movements, but these, of course, involve many questions of community relations import.

A number of Christian *religious bodies* also engage in extensive programs of social action. Information collected by the Joint Commission on Social Action of the Union of American Hebrew Congregations and the Central Conference of American Rabbis indicates activities in this area by the National Catholic Welfare Conference, the Division of Christian Life and Work of the National Council of Churches, the Council for Social Action of the Congregational Christian Churches, the Board of Social and Economic Relations of the General Conference of the Methodist Church, the Lutheran Board of Social Missions, the Council on Social Program of the American Baptist Conference, the Department of Social Education and Action of the General Assembly of the Presbyterian Church, the Friends Committee on National Legislation, the Unitarian Fellows for Social Justice, and the Department of Social Welfare of the Disciples of Christ.

Of these, the only agency directly active in the sphere of legislation is the *Friends Committee on National Legislation*, established to "try to influence legislation in ways which are in keeping with the religious principles and convictions of the Society of Friends." The Friends Committee on National Legislation maintains a staff of ten persons, two of whom are executives. A Washington newsletter containing information on new developments in legislation in Washington is published regularly.

#### *Community Agency Activities*

NCRAC community member agencies engage in educational campaigns regarding the necessity of civil rights legislation and have collaborated with the

national agencies in litigation designed to uphold community relations principles. They maintain continuing contacts with local and state administrative agencies and cooperate with them in interpreting existing civil rights legislation and in maintaining effective implementation of such legislation.

Communities presenting detailed summaries of their activities included: Boston, Cleveland, Connecticut, Detroit, Indiana, Indianapolis, Kansas City, Minnesota, Philadelphia, Pittsburgh, St. Louis and Washington.

## Bibliography

### A. *The Nature of Law—Its Uses and Limitations as a Community Relations Instrumentality.*

#### 1. U.S. Supreme Court—Rulings in various cases

*Plessy v. Ferguson*—163 U.S. 538, at 551, decided 1896.

This was the case in which the United States Supreme Court had ruled that the Constitution did not prohibit separate but equal public facilities for white and colored. The social philosophy on which the decision rested is made clear in the following excerpt from the majority opinion:

Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane.

This doctrine stood until it was successfully challenged in the school segregation cases decided in 1954.

*Brown v. Bd. of Education, Topeka (Kansas)* 74 U.S. 686

*Briggs, Jr. v. Elliott (South Carolina)*

*Davis v. County School Bd. of Prince Edward County (Virginia)*

*Gebhart v. Belton (Delaware)*

In each of the four cases the plaintiffs, Negro children, were denied admission to state public schools attended by white children under state laws requiring or permitting segregation according to race. There were findings below that the Negro and white schools involved had been equalized, or were being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.

In an opinion by Chief Justice Warren, the Supreme Court unanimously held that the plaintiffs, by reason of the segregation complained of, were deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. The court based this result on current psychological knowledge, citing such authorities as Myrdal, Clark, Deutsch, Chein, etc. It quoted with approval this excerpt from the Kansas court's opinion:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanc-

tion of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

In view of the complex problems presented by the formulation of the decrees, the cases were restored to the docket for argument by the parties.

*Bolling v. Sharpe*, May 17, 1954—74 U.S. 693

The decision in *Brown v. Board of Education* was based on the equal protection clause of the Fourteenth Amendment which applies only to the states. The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause. However, the Court recognized that discrimination may be so unjustifiable as to be violative of *due process*. "Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause."

2. Stephenson, Gilbert T. *Race Distinctions in American Law*.  
D. Appleton & Co., N.Y. 1910.

A continuance of the kind of thinking that characterized the Plessy vs. Ferguson decision is embodied in this book of 1910. The provision of separate but equal facilities is defended by Mr. Stephenson of South Carolina on the grounds that minority groups would receive no facilities or consideration at all if separate facilities were not provided for them:

A further review of race distinctions now legally recognized would only more fully substantiate the conclusion that, with race feeling as it is, if such distinctions were not recognized and enforced, the stronger race would naturally appropriate the best for itself and leave the weaker race to fare as it could. . . . The result, therefore, of the honest enforcement of race distinctions would be to the advantage of the weaker race.

3. Dicey, A. V. *Law and Public Opinion in England*. MacMillan & Co., London. 1914.

Professor Dicey of Oxford in this book faces directly up to the question of interdependence of law and public opinion. Citing precedents in British law, Professor Dicey takes the position that: "Laws foster or create public opinion. . . . Law and opinion, indeed, are here so intermixed that it is difficult to say whether opinion has done most to produce legislation or laws to create a state of legislative opinion."

4. Dickinson, John. *Legislation and the Effectiveness of Law*.  
37 Reports of the Penn. Bar Association. 1931.

Mr. Dickinson deals analytically with the question of setting of standards of conduct by governmental action. In his opinion:

"There are other forces besides the force of mere numbers, for example the force of economic power and social position, and above all the shifting forces of ideas and opinions, which, either accidentally or as a result of manipulation, may convert a majority of resistance today into a majority of acquiescence tomorrow, or vice versa. The influence of these forces frequently makes possible in the course of time the effective enforcement of a law which was at variance with majority practice when it was adopted; and it is this possibility, and this possibility alone, which enables law to be an instrument of social improvement and progress.

From what I have said it follows that some resistance to law is to be expected as a frequent and natural occurrence. Too often it seems to be assumed as a result of our dislike for some particular statute that if a law arouses resistance it is ipso facto a failure and that the measure of non-enforcement resulting from resistance to a law is a conclusive argument that the law has no place on the statute books. To take such a view is to succumb once more to the fallacy of oversimplification. . . . If we grasp the fact that no law can probably be expected to meet with full and complete enforcement, but that enforcement is always a matter of degree, the whole problem of enforcement is set in a somewhat different light from that in which it is commonly viewed in public discussion.

## 5. Congressional Record, etc. Comments in Debates and Hearings on Fair Employment Practices Bills (1945-1948)

The philosophy of the limited role of law and legislation in correcting social inequality was stated with great force by a number of speakers and participants in the debate on various FEPC bills.

In the 79th Congress, Representative Clark Fisher of Texas argued that the bill would be unenforceable, and that attempts to enforce it would result in "strikes, riots, and violence," and thus "intensify racial prejudice and discrimination, and be manifestly unfair to the American Negro."

Senator Wiley of Wisconsin opposed a FEPC bill for the following reasons:

- 1) "It would not create fair employment practices but rather would stimulate unfair practices" . . .
- 2) "It would create prejudice instead of evading it";
- 3) "This bill is one more example of the worship of legislation as a panacea";
- 4) It would "create a super-Gestapo in every corner of our land . . . would be a dangerous instrument for statism . . . substitutes for the humane and kindly spirit of men, the fear and the compulsion of law."

Honorable Fielding L. Wright, Governor of Mississippi, testified before the committee of the 80th Congress considering an FEPC bill:

Whenever we in this country start trying to control every phase of human endeavor and human relationships by legislation . . . then we will have insured the doom of democracy, for we will have played directly into the hands of those who believe in the theory of strict regimentation and the totalitarian way of life.

Mr. Harry Bengé Crozier, of the Texas Employment Commission, commenting on the same bill:

Our task in Texas is to give the Negro a fairer chance in industry and to do away with prejudice against Texans of Mexican descent. The program, as we view it, is one that calls for education, more education and again education, and one that can be scuttled beyond redemption and probably would be, by any attempt at legislative or administrative coercion.

Dr. R. H. Hutcheson, Tennessee State Commissioner of Health, commented on the same bill:

Until 75 or 80% of the people of an area . . . are ready for a bill, it cannot be enforced in the spirit. You can enforce it with armed force if necessary, but unless it can be enforced with the good wishes of the majority, it will serve to retard social gains of the minority.

Also in the course of the public discussion of various FEPC proposals, a group of well-known liberals (C. C. Burlingham, George W. Alger, Bernard Flexner, Elinore M. Herrick, Oswald Garrison Villard and Whitney North Seymour) wrote a letter published in the New York Times of February 13, 1945, opposing FEPC legislation at that time pending in the New York State Legislature. The basis for opposition was that "what is really needed is a better public sentiment, a sentiment which this bill will not help but will hinder. . . . To create a permanent board with power to build a bureaucracy with local offices throughout the State and staffs of lawyers, secretaries, stenographers, messengers, subpoena servers and the rest would be wasteful folly. . . . It is as impossible to destroy prejudice and discrimination by law as it is to control opinion and morals. . . . It is far wiser to rely on the force of slow but steadily growing public opinion guided and developed under the leadership of fair-minded men and women of every race, color, creed and national origin."

## 6. President's Committee on Civil Rights. *To Secure These Rights.* Simon and Schuster, New York, 1947.

On December 5, 1946, President Truman issued an Executive Order creating the President's Committee on Civil Rights. The committee was to prepare a report which would contain "recommendations with respect to the adoption or establishment by legislation or otherwise of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."

The monumental report which was submitted in October, 1947, accepted in full the "vicious circle" theory, that prejudice causes discrimination which in turn causes prejudice. The Committee cited a number of specific studies by social scientists showing that elimination of patterns of discrimination has the direct effect of reducing prejudice.

The Committee took a firm stand on the question of the federal government's responsibility, stating that "the national government of the United States must take the lead of safeguarding all of the civil rights of Americans."

The report deals extensively with the problems of sanctions.

A second major report issued a few months later was that of the President's Commission on Higher Education, in December of 1947. This group set out from premises similar to those of the President's Committee on Civil Rights, as shown in the following paragraph (page 27):

Where assurance of good conduct in other fields of public concern has not been forthcoming from citizen groups, the passage of laws to enforce good conduct has been the corrective method of a democratic society. Extension of

this method into the educational field with respect to discriminatory practices is, therefore, not only a defensible measure; it is also in the light of the resistances, timidities, and varying practices of today the logical next step.

7. Pound, Roscoe. *The Task of Law*. Franklin and Marshall College Press, 1944.

The former dean of Harvard Law School, in this book and in other articles, analyzed the limitations of law as a means of controlling social behavior. On page 73 of "The Task of Law," Dr. Pound states:

Three important limitations of law as an agency of social control have to be borne in mind in determining what interests the legal order may secure and how it may secure them. These limitations grow out of (1) the necessity which the law is under, as a practical matter, of dealing with acts, of dealing with the outside, not the inside, of men and things; (2) the limitations inherent in the legal sanctions—the limitations upon coercion of the human will by force; and (3) the necessity which the law is under of relying upon some external agency to put its machinery in motion, since legal precepts do not enforce themselves.

These points are discussed and controverted by Morroe Berger on pages 170 through 193 of *Equality by Statute*.

8. Berger, Morroe. *Equality by Statute*. Columbia University Press, New York, 1952.

This thorough and well documented study of legal controls of group discrimination surveys the problem historically and analytically. Its chapters deal with the following topics: (1) Civil Rights Today and During the Reconstruction Era; (2) The Supreme Court, 1868-1937: Buttressing the Caste Order; (3) The Supreme Court, 1937-1950: Undermining the Caste Order; (4) The New York State Law Against Discrimination: Operation and Administration; (5) Law and the Control of Prejudice and Discrimination.

Professor Robert M. MacIver, in a foreword, makes the following comments:

The whole sphere of opinion must be held inviolate by law, if the primary condition of democracy is to be fulfilled. But it does not follow that the behavior prompted by opinion or belief should not be regulated for the public good. The distinction is elementary. In a democracy we do not punish a man because he is opposed to income taxes, or to free school education, or to vaccination, or to minimum wages, but the laws of a democracy insist that he obey the laws that make provisions for these things.

On the same principle there should be no laws against ethnic or racial prejudice. . . . In his private relationships he can discriminate as he pleases. But when he runs a factory or a hotel it is different, for now his activity is invested with a public interest! . . . If we clearly understood the flagrant evils, domestic and international, that anti-group discrimination inflicts upon us, we would no longer look with suspicion on the new laws and the new court decisions that seek to diminish it.

Dr. Berger makes an extensive review of the attempts following the Civil War to bring about full status for Negroes by federal legislation and subsequent court interpretations of legislative enactments. He also surveys the studies of social scientists bearing on the promotion of community relations by law and legislation, and arrives at the following conclusions:

Law is an effective means for reducing the discrimination or overt anti-minority conduct of the extremely prejudiced. We have seen that the personality studies have found such persons to be conformists of a certain kind, respecters of power, scorning the weak but toadying to the strong. One of the few constants in their behavior is submission to the symbols of power. Law, when it is backed by the full panoply of the state and has strong support in at least some sections of the community, is just such a symbol. Even if law did nothing but reduce discrimination by such persons, it would be accomplishing something of value in a multi-group democracy. But there is evidence that anti-bias laws can also influence the conditions under which our attitudes are developed and maintained.

Most investigators seem to agree that prejudice is acquired through contact with the attitude of prejudice itself, and not through contact with the groups that are the objects of prejudice. . . . There is further agreement that intergroup contact under certain conditions tends to reduce discriminatory acts, lessen hostility, alter stereotypes, and modify prejudices. . . . Investigators are careful to point out that intergroup contact in which the traditional superior-subordinate relations prevail is not likely to result in a reduction of prejudice, but that such a reduction is achieved when the contact is on equal terms, is sustained, and is reinforced by other institutional patterns. . . .

Now law is a particularly appropriate means by which to increase intergroup contact on an equal level. We saw in previous chapters how the United States Supreme Court tended to sustain laws facilitating interracial contact of the superior-subordinate type and tended to invalidate those facilitating such contact on a level of equality. Law, having thus supported intergroup barriers, can serve to remove other legal barriers and to favor such institutional arrangements as are conducive to peaceful, equal intergroup contacts. In the field of employment, housing, and education, law can eliminate the conditions that set groups apart and can encourage those that bring them together.

9. MacIver, R. M. *The More Perfect Union*. The MacMillan Company, New York, 1948.

In this earlier study of the whole field of intergroup relations, Professor MacIver had set forth the basis for some of the views which he expressed in the foreword to Dr. Berger's book. One of the topics discussed specifically by Professor MacIver is the question of group libel legislation.

10. Cantril, Hadley. *Gauging Public Opinion*. Princeton University Press, 1944.

In this work, which deals with many aspects of the problems of public opinion, Professor Cantril comments (page 228) on the relationship of law and public opinion as follows:

When an opinion is held by a slight majority or when opinion is not solidly structured, an accomplished fact tends to shift opinion in the direction of acceptance. Poll figures show that immediately after the repeal of the arms embargo, immediately after passage of the conscription laws, and immediately after favorable Congressional action on lend-lease and on the repeal of the neutrality laws, there was invariably a rise of around ten percent in the number of people favorable to these actions.

11. Maslow, Will. "Prejudice, Discrimination and the Law." *The Annals of the American Academy of Political and Social Science*, May, 1951, 9-17.

Mr. Maslow, the director of the Commission on Law and Social Action of the American Jewish Congress, reviews in this paper evidence from the social sciences bearing on the efficacy of legislation in the field of group relations.

He summarizes the findings of recent studies as follows:

We know a great deal more about prejudice and discrimination than was known a generation ago. We know that they are different phenomena, differently motivated and responding to different treatment. We can no longer accept as a simple axiom that prejudice causes all discrimination and that removing the latter is impossible unless the former likewise is extirpated. We know, for example, that many a person conforms to the discriminatory patterns of his group, not because he is prejudiced, but because it is easier to discriminate than to resist the group's demand for conformity. We know, too, that attitudes do not automatically flower into behavior, and that whether or not a prejudiced person acts in accordance with his beliefs depends on many factors, not the least of which is the community's notion of what is right and proper. We also know that while some prejudice is based on misinformation, a more significant root cause is the status gain achieved by looking down on an "inferior" group. Finally, recent studies of the "authoritarian" and prejudiced personality indicate that hatred and hostility towards large groups in our society are essentially a displacement into other channels of aggression bred by frustration.

He cites in support of these judgments studies by Saenger, Chein, Merton, Adorno, Deutsch and Collins, Lee, and others, and concludes:

When we contemplate the vast areas in which the irrelevant factors of birth or ancestry still stand as barriers to the achievement of full and equal opportunity, we must realize that no other technique of social control promises as quick, durable, and meaningful results as well-conceived and vigorously enforced civil rights legislation.

12. Yale Law Journal. "Private Attorneys General: Group Action in the Fight for Civil Liberties." *Yale Law Journal*, 1949, p. 574.

In review of a number of decisions, the editors of the Yale Law Journal indicate the difficulties confronted when discrimination is attacked through the courts. Citing a number of cases, they say:

The legal fight has been a slow whittling process wherein courts have usually decided cases on the narrowest possible grounds, thereby enabling individuals and governments to evade the effect of the decision. . . . Renewed work and further expenditure is then necessary to invalidate the discriminatory practice under each newer and cleverer disguise, until it is recognized in all its forms as illegal.

Other notes in law journals bearing on similar problems are the following:

39 *Columbia Law Review*, 986, 1,000-1,001, "Legislative Attempts to Eliminate Racial and Religious Discrimination."

18 *University of Chicago Law Review*, 1951; "Racial Violence and Civil Rights Law Enforcement."

13. Frank, John P. "Can the Courts Erase the Color Line?"  
*Journal of Negro Education*, Summer 1952, pages 304-316.

In this article Professor Frank, of Yale University School of Law, lists and analyzes in detail "three limitations to effective judicial action in the area of race relations": "First, the fear of engendering violence: second, the fear of precipitating unfortunate political consequences; and third, a group of limitations which can be lumped together as the restraint of practicality."

In his subsequent analysis and elaboration of these points, Professor Frank demonstrates that these need not be governing considerations.

In a comment upon Professor Frank's paper, in the same journal, Mr. Will Maslow suggested a fourth deterrent of judicial action: the fear of the Supreme Court "that its mandates may be publicly and contemptuously disregarded."

14. Maslow, Will, and Robison, Joseph B. "Civil Rights and the Fight for Equality, 1862-1952." *University of Chicago Law Review*, Vol. 20, No. 3, 1953, pp. 363-413.

In this article the director and the senior staff counsel of the Commission on Law and Social Action of the American Jewish Congress review the historical record of legislation in the area of group relations.

Pointing out that the dichotomy between law and education is unnatural, and that there are many techniques besides legislation for coping with discrimination and bigotry, the authors say: "Nevertheless, we must look to legislation as the clearest expression of the people's will to equality." They continue:

We should be less than frank, however, if we concealed our conviction that the ever increasing interest in civil rights legislation in the last decade is the inevitable reaction to the failure of gradualist, *laissez faire* techniques to change deeply embedded behavior patterns. This reaction has been accompanied by a growing realization that well conceived and adequately enforced legislation works.

A historical summary follows, dealing with these topics:

The Background: Emancipation and the Black Codes; The First Federal Civil Rights Act; The Fourteenth and Fifteenth Amendments; Legislative Implementation of the Amendments; Nullification of the Civil Rights Laws.

The Right to Vote: The White Primary; The Poll Tax; Extra-legal Restraints.

Security of the Person: Anti-Lynching Bills; The New Violence; The Enforcement Problem.

Segregation: The Segregation Statutes; The "Separate but Equal" Doctrine; Federal Action Against Segregation; State Laws against Segregation.

Fair Employment Legislation: Early Legislation; The Federal FEPC; State FEPC Legislation.

The Filibuster: History of the Cloture Rule; Amending the Rule.

Other State Laws: Places of Public Accommodation; Housing; Education; Government Commissions on Group Relations.

The authors' conclusions are as follows:

Is the current agitation for civil rights legislation a passing phase or will it continue until it achieves its goal? No one would even attempt to answer that question now. It can be said, however, that nothing like the present ferment has been seen for seventy-five years. . . . It is unlikely, however, that any large part of the population will, in the foreseeable future, accept the notion that democratic government should ignore practices that oppress some of its people solely because of race, color, religion or national origin.

#### 15. Allport, Gordon W. *The Nature of Prejudice*. Addison-Wesley Publishing Company, Cambridge, Mass., 1954.

Professor Allport, on pages 470ff., weighs a number of arguments pro and con the legislative approach to intergroup relations. Professor Allport points out that it may be unwise, and may engender a contempt and a disregard for law, to multiply statutes which would not be obeyed or would encounter ignorance and apathy. He also says that "laws, especially of the Puritan type so common in America, attack symptoms, not causes. . . . Finally, there is a considerable gap between the law on the books and a law 'in action.' Such considerations as these lead some to the view that legislation is the tool least likely to succeed in the diminution of group conflict. But there are good answers to most of these arguments."

He concludes:

Law is intended only to control the outward expression of intolerance. But outward action, psychology knows, has an eventual effect upon inner habits of thought and feeling. And for this reason we list legislative action as one of the major methods of reducing, not only public discrimination, but private prejudice as well.

#### 16. Williams, Robin M., Jr. *The Reduction of Intergroup Tensions*. Social Science Research Council, New York, 1947.

This thorough and detailed review of research on problems of ethnic, racial and religious group relations, prepared under the direction of the Committee on Techniques for Reducing Group Hostility, has a bibliography of 223 items. In marshalling the

evidence from social science research on various questions of intergroup relations, Dr. Williams states a large number of propositions which seem to be supported to some extent by the research cited.

17. Committee on Education, Training and Research in Race Relations of the University of Chicago, and American Council on Race Relations. *The Dynamics of State Campaigns for Fair Employment Practices Legislation*. New York, Anti-Defamation League of B'nai B'rith, April 1950.

This study, representing an effort to assess the knowledge and experience acquired in enacting state legislation designed to eliminate discrimination in employment, was undertaken "in the hope that a better understanding of the factors associated with the success and failure of state campaigns may furnish a reliable guide for the future activities of citizens who want to bring their own states into line." The study covers activities in 27 states, from 1944 to the end of the legislative sessions of 1949. During this period FEPC bills were introduced 59 times in 27 states. The bills passed in 10 states, two of those adopting "voluntary" commissions.

The report states that the 47 times that the bill was unsuccessful may be broken down as follows: voted upon and defeated—in committee, 8; in house or senate, 6; died thru inaction or incomplete action—in committee, 20; in house or senate, 6. The above figures indicate quite clearly the importance of the legislative committees. Committees were primarily used to stall bills so that no action would be taken on them during the session. In some cases bills were kept moving from committee to committee, and were voted upon only when public pressure became such that action could no longer be avoided. Thus, there are three points of action to be considered before the introduction of a bill: the selection of the committee to which the bill is to be sent; the selection of the committee members; and, the opinions of the committee members themselves.

Rural legislators, without regard to party label, are almost consistently opposed to FEPC. Therefore, the chances of its passage appear to be better in states with large urban and foreign-born populations, but this factor is insignificant compared to such factors as the political situation in the state, and the campaign conducted in support of the measure.

National Jewish agencies assisted in the following ways: legal assistance with the drafting of FEPC legislation; publication of hundreds of thousands of pamphlets and leaflets and numerous radio scripts and "canned" radio programs; visits and lectures by people experienced with the functioning of FEP commissions; lending of staff members for various periods of time; recruiting volunteer workers, and raising the funds necessary for the educational activities.

The report finds that, though various organizations such as church groups, labor unions, veterans organizations, etc., were represented as supporting FEPC, insufficient efforts were made to interest and utilize the rank and file membership.

Organized opposition to FEPC on the state level has come, primarily, from business and industrial interests. The report comments:

It can now be demonstrated on the basis of the experience of business and industry in the states with FEPC laws that employers will obey FEPC laws in those states where they have been passed, and use arguments that can be proved false by their own experience, to oppose similar laws in other states. The infor-

mation to disprove these arguments is available. The problem is how to use it, and whether this knowledge is sufficient to pass such legislation. . . . Experience will demonstrate that opposition is not generally based upon these rational considerations, but rather on emotional attitudes and predispositions that are not amenable to change by rational argument.

The remainder of the report deals with the strategy to be employed. It concludes with recommendations as to the form of the bill. The minimum requirements are: the power to conduct full investigations, which includes the power to subpoena witnesses and records; the power to impose sanctions; and the power to have these sanctions enforced. Whether a lesser compromise should be accepted will depend on the situation within the state. It should be remembered that one or more defeats do not necessarily increase the difficulties in the passage of the bill at a later date, meanwhile the campaign has served an important educational function.

**18. Aronson, Arnold. "Assessing the Techniques for Action—Law, Litigation, and Administrative Action." (Paper presented to the 1953 Conference on Research sponsored by the Committee on Research and Training in Race Relations of the University of Chicago and the National Association of Intergroup Relations Officials.)**

The purpose of this paper was to bring into focus questions regarding the evaluation of social action techniques which have arisen in practice, and to present these questions to social scientists as a guide to significant problems upon which research might throw further light. Mr. Aronson deals with the problem of selection of criteria, pointing out that programs and methods should be judged in relation to the objectives they seek to attain, and that intergroup relations agencies are typically seeking a variety of goals at the same time. "As one moves from an assessment of techniques in relation to their direct and immediate effects to an examination of their indirect and far-reaching consequences, the more difficult it becomes to formulate compatible and mutually acceptable criteria." Applying this approach to the assessment of the techniques of law and law enforcement, Mr. Aronson demonstrates the difficulty encountered in applying as criteria the number of laws and regulations established, or the number of defeats, pointing out that unsuccessful campaigns may have desirable effects of an indirect nature, and that the possibility of undesirable effects of successful campaigns should also not be neglected. He points out that in evaluating the effectiveness of human rights legislation which has been put into effect, the changes in social practice are extremely varied and it is difficult to determine the extent to which the observed changes can be traced directly to the operation of the law.

Mr. Aronson points out that differences in the evaluation of the effects of laws, decisions, etc., may reflect differences in the social values of the individuals and groups making the judgment. "Clearly," Mr. Aronson says, "the victim of discrimination who would willingly work with a bigot, study with a bigot, and live with a bigot, so long as an opportunity for employment, education, and housing were made available to him, would place a totally different evaluation on the law, than one whose primary concern is to minimize divisive and hostile feelings." Mr. Aronson concludes that "the techniques of law and law enforcement cannot be assessed in the one-dimensional terms in which we have been discussing them so far. We cannot assess the consequences of legis-

lative campaigns without regard to the infinite variety of forms which such campaigns may take nor without regard to the equally varied circumstantial conditions under which they are studied. . . . Research can never replace the need for reason and seasoned judgment. To the extent that it is able to throw light on some of the questions I have posed, however, it will help the practitioner to decide and to act wisely and will thereby make a significant contribution to better intergroup relations."

## B. *Legal and Legislative Information Activities—Their Place in the Work of the Jewish Community Relations Agencies.*

### 19. Pekelis, Alexander H. "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action* (Cornell University Press, New York, 1950), pp. 218-259.

The late Dr. Alexander Pekelis was chief consultant to the Commission on Law and Social Action of the American Jewish Congress. In this paper, designed to serve as the statement of the CLSA's orientation, he sets forth a line of reasoning in which he advocates the use of legal and legislative activities by Jewish community relations agencies.

In the introduction to his paper, Dr. Pekelis states "the twofold but indivisible aim":

"Jewish equality and Jewish distinctiveness, the integrity of the Jews as a people and their dignity as individuals."

Dr. Pekelis rejects "the three simple, total solutions of the Jewish problem: total assimilation, total emigration, or total isolation." He sets up five major fields requiring program action:

First, struggle for Jewish equality at home, equality in law, and equality in fact;

Second, protection of our civil liberties from the violent and fraudulent manipulation of neofascists and anti-Semites;

Third, active alliance with all progressive and minority groups engaged in the building of a better America;

Fourth, participation in the [World Jewish] Congress's attempt to protect the lives and secure the rights of what remain of the Jews all over the world; and

*Last, but not least;* action within the Jewish community aimed at communal self-knowledge, communal self-control, and communal revival.

Regarding the struggle for Jewish equality, Dr. Pekelis says (pages 226 ff.):

Anti-Semitism in America differs fundamentally from the classical, European prewar varieties of anti-Semitism in that it has its sources not in governmental restraints but in certain patterns of social behavior. The forces that limit the Jews in the full enjoyment of equality are not the forces of government but those of industry and trade, of banking and insurance companies, of real estate boards and neighborhood associations, of college faculties and university trustees—in a word, the forces of what could be called the "private governments" of America.

Dr. Pekelis writes of a trend toward extending continual restraints to "limit such private governments:

It is our task to strengthen it, make it articulate and use all the available skills for its technical implementation. . . . In other words, the first organized action undertaken against an institution must be a good test case, clear on its facts, strong on its law, and appealing to public opinion. This selective approach may be disliked by fundamentalists who rightly believe that every discrimination is in principle equally bad. But realistic policies and the necessity to budget resources will require a careful choice of objectives."

Though Dr. Pekelis certainly does not preclude action designed to end "symptoms," his program is designed basically to get at the "causes" of discrimination. His emphasis is also upon "action" rather than education exclusively.

Pekelis concludes the paper with an outline of the techniques to be utilized: social research combined with legislative action or, where legislation would be insufficient or unnecessary, with efforts to change judicial and administrative attitudes. Finally, a special plea is made for community action:

The truth of the matter is that at times any action *by the community* serves its survival better than any "successful step" taken *in its behalf*. We believe that it is high time for the Jews to regain—through trial and error, if necessary—the habit of collective action. Thus and only thus will Jews be able to end a state of affairs in which things keep happening to them. Thus and only thus will the Jewish people cease being an object and become once again, and in our lifetime, the subject of its own history.

## 20. Slawson, John. "Some Approaches to the Problem of Anti-Semitism." In *Programming Community Relations in the Present Period*. NCRAC, New York, 1947.

Dr. John Slawson, the Executive Vice-President of the American Jewish Committee, was one of the participants in a panel discussion of "Programming Community Relations in the Present Period," at the March, 1947, Plenary Session of the NCRAC. In the course of his discussion, Dr. Slawson made the following comments regarding legislation and social action (pages 17-19):

We are particularly concerned here with legislation designed to give practical effectiveness to guarantees of equal rights for all citizens. We must look upon legislation as an affirmative device for modifying patterns of prejudice. As such, legislation becomes identified with the process of community education. In other words, the inner psyche of the individual is affected eventually by outward modifications, through law. If it is not so affected, then of course the law is of no consequence. The validity of any law in this area depends upon the extent to which it meets the following criteria:

1. The law must reflect the demands of informed representative opinion.
2. The law must operate essentially on an educational rather than on a punitive basis.
3. The agency created to enforce the law must be equipped to undertake continued community education.

In other words, unless public opinion is organized prior to the introduction and passage of this form of legislation, it either will fail of passage or, if it does

pass, it will be ineffectual. . . . Let us take the Austin-Mahoney Bill, designed to do for discrimination in education what the Ives-Quinn Law is doing for discrimination in employment. The F.E.P.C. had done much to educate the public to accept the Ives-Quinn type of legislation. Moreover, there is a long established pattern for state regulation of employer-employee relationships. No equivalent pattern for state control of private education exists. An extensive campaign to arouse the public to the evils of the quota system, and to line up broadly based support for legislation to eliminate it, was indispensable if such legislation was to pass.

Moreover, it would have been desirable not merely to secure such support after the bill was introduced, but to have associated outstanding Protestant, Catholic and non-sectarian groups with its sponsorship. And what about the cooperation of educators, administrators and trustees of colleges? Their neutrality, if not their cooperation, would greatly have improved the changes of passage. It is at best questionable whether the bringing of court suits seeking the withdrawal of tax exemption was a constructive tactic.

We have in the NCRAC a number of organizations. Let us suppose that there were actual collaboration with respect to obtaining equal educational opportunities for Jews and other minorities. In this collaborative effort, all effective approaches would be concurrently followed. In addition to the sponsorship of legislation, there would be a direct discussion with college officials for the purpose of convincing them that they should take corrective action on their own initiative. Here we have a synchronized approach which should prove effective because of mutual re-enforcement. If the matter can be adjusted without legislation, how much better it would be.

There should be similar collaboration between the organizations in influencing the religious and secular groups with whom they have close relations, and whose support is essential for the successful outcome of the total effort. In this collaborative effort, we see one of the advantages of the existence of more than one defense agency.

Great harm, in my estimation, flows from the initiation of badly timed, poorly prepared legislation or social action in the area of human rights. All such legislative effort should be carried on within the framework of a community education program and not as an isolated attack. Forcing or trying to force through a measure for which there is insufficient public acceptance may be actually detrimental. The fundamental objective must not be the mere enactment of a law but the creation of an instrument of education, with the aid of law. To achieve that, a psychological receptivity for the law needs to be assured. There must be a balance between the pressure of those who want the law and the receptivity of the persons affected by the law. Further, this community education process must continue beyond the stage of enactment of the law, as is the case with the N. Y. State Commission Against Discrimination (in employment) through its consultative procedures and cooperating community bodies. . . .

It is therefore important to deal with anti-Semitism on whatever levels we can; on the surface educational level by such means as the "fashion" appeal; on a deeper level by whatever means possible based upon understanding of the true mechanisms of group hatred; and on the action level of curbing the end results of anti-Semitism.

21. Epstein, Benjamin R. "The Educational Approach to Better Group Relationships." In *Programming Community Relations in the Present Period*. National Community Relations Advisory Council, New York, 1947.

Mr. Benjamin R. Epstein, the National Director (at that time Assistant National Director) of the Anti-Defamation League of B'nai B'rith, was the second participant in the 1947 NCRAC panel. The topic assigned to him was "The Educational Approach to Better Group Relationships." In the course of his discussion of this problem, he dealt with the legislative approach as follows (pages 29-31):

We are discussing today two approaches to our general problem, the educational and the legislative approach. There has been a disposition to set these off—one against the other, one instead of the other. This is utterly without justification. They are not mutually exclusive. Quite the other way. One precedes and succeeds the other. But education must come first: education before law and interpretive education after the law. . . .

Let us remember that the uneducated, unprepared and unwilling community rejects law.

We have a recent incident in our history where the legislative approach failed and failed utterly because there was no concomitant educational process. I refer to the adoption of the Volstead Act. The minds and the hearts of the people were unprepared for prohibition, and law or no law, they just did not accept it. I think that will hold true in laws that may be passed in the future affecting group relations. Unless the people are educated to receive these laws, they will remain ignored statutes on the books. And unless they are educated to understand the application of the laws after they have been adopted, these laws will serve merely to confuse rather than to help relieve group tensions. Legislation protects the individual from discrimination. It does not eradicate prejudice. But it won't even protect the individual if there is too great a discrepancy between the law and the mores of the people.

Does this mean we should ignore law and legal action in our campaign for better group relations? Of course not. We must contrive to couple education and law as we have successfully done frequently in past years.

Prior to the war years, we applied every legislative means available as a weapon against the Nazis. Such matters as citizenship, registration as foreign agents, misuse of postal regulations, are examples. Since the war, we have turned our attention to such new legal weapons as F.E.P.C., the implementation of civil rights statutes, restrictive covenants, and the possibility of the withdrawal of tax funds from recreational facilities which discriminate.

The important element is what is in the hearts and the minds of people. Only in that way can democracy work. And what is in the hearts and the minds of people is placed there through education—through living and learning together. When we together with other Americans succeed in educating each other, only then will we be able to close the gap between the American Creed and American realities; only as we educate people to democracy, will we be able to pass laws to establish and solidify democracy.

22. Petegorsky, David W. "Combatting Racism by Utilizing the Forces of Social Control." In *Programming Community Relations in the Present Period*. National Community Relations Advisory Council, New York, 1947.

Dr. David Petegorsky, the Executive Director of the American Jewish Congress, was the third panelist on the 1947 NCRAC panel. Dr. Petegorsky defined his topic as follows (page 32):

I am not going to talk about the "legislative approach to better group relations," but about utilizing the forces of social control to combat racism and anti-Semitism in America. I shall deal with legislation and the legislative approach only as one aspect of a far broader program. To term that program the "legislative approach" is just as misleading and as inaccurate as it would be to designate the "educational approach" as the "film approach," "the poster approach," or "the magazine approach." All of these are different techniques used in education. Legislation, similarly, is but one of the techniques encompassed in what I choose to call "utilizing the forces of social control" in the fight against racism.

Dr. Petegorsky says further (pages 33-34):

In times of social stability and relative prosperity, there is little resistance to, and a good deal of acceptance of, the message of brotherhood and goodwill. But the real dangers emerge in times of social instability, of political chaos and economic stress. Then, a new climate is created. And whatever atmosphere has been generated about goodwill and group relations through the use of so-called educational techniques or special or mass media approaches is pretty quickly blown away by far stronger forces generated by our social organism. . . . The security of Jews, as of all other groups, is inseparably bound up with the strength of the democratic system. To the degree to which a democracy is incomplete, that democracy is unsafe and insecure. And an unsafe and insecure democracy is potentially the greatest threat to Jews—or any other group—in America.

Dr. Petegorsky says further (page 41):

The use of such agencies of social control as law, legislation, administrative regulation, judicial precedent, etc., becomes increasingly important today. Greater and greater areas of our social life are being shaped by patterns which the people themselves are deliberately creating. The relationships between human beings, between groups, are being increasingly shaped by the regulative forces in our social and political structure. These forces can today become the most effective instruments in extending and then safeguarding the democratic rights of our people.

On the relationship between prejudice and discrimination, Dr. Petegorsky says (page 42):

A good deal has been said about the impossibility of legislating prejudice out of existence. The argument completely misses the point. It is a misleading cliché and we would be well advised to drop it.

When people advocate fair employment or fair educational practice legislation, they are not trying to legislate prejudice out of existence. What we are saying is that there are a series of established practices in our society which constitute a violation of democratic rights; which place barriers in the path of

intergroup cooperation; which help strengthen and maintain prejudice; which threaten the stability of our democratic structure. We want to abolish and end these practices, just as we would eliminate fire hazards or unsanitary working conditions. Ending these discriminatory practices, we argue, will produce certain results, among them the elimination of one of the sources on which prejudice feeds.

On relationship between education and legislative action, Dr. Petegorsky says (page 45):

I believe in education. Education, after all, is the communication of information, of an idea, an attitude, a stimulus to action. But what type of education is really effective in this field? The only kind which is fundamentally helpful is that which concentrates on a specific issue; which tells the people about the facts of a specific problem; which gives them a specific objective towards which to work; and provides them with a practical basis for cooperation. I wouldn't trade all the Brotherhood Weeks this country has had for one good campaign for the passage of a fair educational practices bill.

23. National Community Relations Advisory Council. *Report on the Jewish Community Relations Agencies*. New York, 1951.

Includes Section I, by R. M. MacIver, Section II, "Statement of Views of the Participating Agencies," and Section III, "Statement Adopted by the NCRAC Plenary Session of November, 1951." This book contains the basic documents in the two-year study of community relations agencies which resulted in the recommendations adopted by the NCRAC Plenary Sessions of 1951 and 1952.

Some of Professor MacIver's comments are as follows (pages 77-80):

The civil rights area is one that has grown in importance and now claims a high rating among the activities of nearly all the agencies. [The American Jewish] Committee, ADL, and [American Jewish] Congress all have sectors dedicated to this service, and JLC and JWV are also directly engaged in it. Congress occupies a special position here, in that its Commission on Law and Social Action is one of its two divisions, its only major activity outside of research. It has taken a particularly active part in the legal and legislative field, and while Committee engaged in civil rights operations prior to the birth of Congress and has more recently taken an important role in this area; much of the pioneer work in various directions has been done by Congress.

The area of civil rights, as understood by the agencies, embraces a considerable number of different activities. . . .

[They] fall into two groups, (1) those that require the service of experts trained in the law and (2) those that, while of course calling for appropriate skills, are not of so specialized a character.

In the first category come the drafting of model legislation and the preparation of briefs *amicus* and related activities. In the second come campaigning activities, promotion and follow-up activities, and lobbying activities. It is significant for our immediate analysis that activities of the first category for the most part do not require concurrent services, for the same situations, by different agencies. There is no need for two of them to prepare model bills for a particular occasion. There is generally no advantage, and sometimes a disadvantage, when

two agencies prepare and file separate briefs *amicus* in the same case. There is no reason to suppose that the courts welcome separate briefs thus submitted or that it is an advantageous way to present a case. This expert service, then, is one in which we can properly find a needless duplication, since campaigning activities and appeals generally can have a cumulative effect. We shall therefore take each of these categories by itself for consideration here.

#### *Activities Requiring Expert Legal Service*

In this group of activities, besides the already-mentioned drafting of bills and preparing of briefs we would include the analysis of legal and judicial issues for general information or for practical purposes. So far as the national agencies are concerned it seems to us to be unnecessary and undesirable that any one of these operations should be duplicated in any particular reference. There may be very exceptional situations in which such duplications might be excused or even justified, but such cases could be given special treatment on cause being shown. With this proviso *the national agencies ought to make or to accept an agreement to the effect that expert legal service, as above specified, shall be in each particular instance supplied by one agency alone, through mutual arrangements or, in case of dispute, through reference to the NCRAC; the service thus provided to be subject to review in accordance with NCRAC procedures.* This latter proviso does not, however, apply to cases where only a single agency is interested in a particular case.

Since time may be an important factor in the approach to legal or judicial issues, . . . the NCRAC [should] be assigned the right of appointing for the purpose either an *ad hoc* committee or a single person as arbiter.

The need for an arrangement of the kind we have proposed is sufficiently established by the amount of needless duplication that has actually occurred in this field. In the Sweatt case, for example, separate briefs were filed in May 1949 by Congress and thereafter jointly by Committee and ADL. In the Lapidés case Committee and ADL together filed a brief *amicus* after Congress had at an earlier stage filed a brief in favor of *certiorari*. The employment of at least two expert staffs on the same case seems a very uneconomical way of using available agency resources. We should also remember that in a number of important legal cases in which the agencies take an active interest there are other organizations, such as the American Civil Liberties Union and the National Association for the Advancement of Colored People, that also make representations and file briefs before the courts.

So far as the national agencies are concerned the solution is not the preparation and filing of *jointly drafted* briefs but the assignment of the responsibility of preparing a single brief to one agency, to be submitted on behalf of the agencies as a whole and subject to the supervision of the appropriate NCRAC committee. . . .

The principle we recommend should also be applied to the provision of legal service to the CRCs on matters of common interest. When they seek assistance of this kind *there should be an established procedure* to avoid what has happened on various occasions, viz., the concurrent tendering of legal advice or the despatch of a representative from more than one agency to handle for a community some legal issue that one alone could quite adequately perform. The NCRAC Legislative Information Committee might, for example, be empowered to work out a method of assignment.

There would, indeed be a clear advantage if it were possible to go further and allocate to a single agency the whole business of supplying expert legal service in community relations. Congress has repeatedly proposed that all such service as the drafting of bills and briefs and the analysis of legal or judicial situations should be allocated entirely to itself. It has put forward good arguments why, if such an allocation were to be made, it should fall to Congress. Congress has specialized in this field and refrained from entry into most other fields, even discontinuing one activity, the investigation of anti-Semitic groups, on the ground that it was adequately handled by other agencies. Congress set the example of submitting briefs *amicus* well before other agencies embarked on this practice. Its briefs are regarded in competent circles as excellent presentations.

These arguments certainly deserve sympathetic consideration. We do not, however, feel prepared to make a positive recommendation in this direction. In the first place, the distinctive ideology of Congress does have some influence on its approach to problems of civil rights. It is more drastic in its demands and more forcible in its expression of them than are, on the whole, the two other agencies most directly concerned in this matter.

We have consistently refrained from making any recommendation for unification where it seemed to us that genuine differences of ideology are involved. It might be said, as Congress does say, that bill-drafting and brief-writing are purely technical services, but we do not regard this position as tenable. It might also be said that any allocation procedure carries with it the right of review and of revision by the other agencies, so that nothing of the distinctive ideology of the particular agency would appear in the briefs prepared in the name of all. In our judgment that consideration is adequate when it is a matter of case by case assignment. And it might suffice to justify a total allocation where the difference of approach was not itself the expression of a clearly defined ideological difference.

But in the present situation the difference is of the latter kind, and if the allocation were complete a difference of emphasis might develop that would be hard to control and that would carry with it ideological overtones. In the second place we must take into account the determined opposition of other agencies to the selection of Congress for this allocation. Although Congress would be the logical recipient on grounds already mentioned, other agencies, notably Committee, have highly qualified experts in this field, and Congress has shown a certain intransigence in its attitude toward the viewpoints of these agencies, such as would imperil the successful working out of the proposed arrangement. For these reasons we are unable to recommend a plan that otherwise has important merits.

In a further discussion of reportorial activities, Professor MacIver recommends that the American Jewish Congress "shall be responsible for all informational bulletins or reports, reviews or analyses on legal and legislative events, trends, and developments."

In a summary of subsequent discussion and clarification of findings, on page 145, the following paragraph appears:

A question was raised as follows: Why has Professor MacIver accepted the principle of allocation of function in all areas except that of legal work?

Professor MacIver replied that he has not proposed allocation of any entire major field. His recommendation with regard to legal work did not rest upon

any greater opposition of other agencies to divesting themselves of their legal departments. He started from the premise, Professor MacIver said, that no allocation should be made exclusively to any one agency where some ideological factor is involved; and in his opinion, since the writing of briefs, for example, is not simply a technical function but involves the presentation of a total argument and therefore may well take a somewhat different form according to the viewpoint of the writer, an ideological factor may here enter in. Even the safeguard of review by an NCRAC committee would not, in his opinion, make exclusive allocation possible in this area.

In Section II, the American Jewish Committee, in stating its views of Professor MacIver's recommendations, says the following (page 166):

With Dr. MacIver's views that the civil rights field cannot and should not be allocated, the American Jewish Committee is in complete concurrence. Regarding his recommendations on "reporting" in this field, we believe that assignment of such a specific task to a single agency, with combined editorial responsibility on the part of all agencies concerned, would very likely grow out of the joint study process we propose.

Also in Section II, the American Jewish Congress states its views as follows (pages 190-191):

#### *Civil Rights Activities:*

During the past five years, no area has caused more friction and time-wasting within the NCRAC than this particular field. Although, budget-wise, it occupies a relatively minor role in the work of the organizations (with the exception of the AJ Congress), it has claimed an excessive and disproportionate share of NCRAC time and attention. It is therefore unfortunate that the only instance in which Professor MacIver fails to apply his principle of the allocation of function to the various agencies is in one important aspect of this work. That failure, precisely because it occurs in an area which is the source of so much tension and procedural controversy, may very well undo most of the constructive results that might follow adoption of the rest of Professor MacIver's recommendations.

While all Jewish agencies claim to have engaged in civil rights activities for many years, those activities were almost exclusively limited to the investigation of and counter-measures against anti-Semites, the handling of specific complaints of discrimination and the occasional expression of opinion on legislative measures in which the Jewish community had a direct interest.

It was not until the American Jewish Congress organized its Commission on Law and Social Action in 1945 that major expression in this area took place. Pointing out that the attempts to combat prejudice through goodwill propaganda had failed, the AJCongress launched a comprehensive program for the establishment of full equality for all Americans through law and public policy. We sought directly to challenge discrimination and anti-Semitism through key test cases in the courts, the filing of briefs *amicus*, legislation on the national, state and local levels, intervention before administrative agencies, the effective enforcement of existing laws and social action. To make this program possible, the AJCongress recast its structure, made fundamental budgetary revisions, abandoned its activities in certain areas in which other agencies were active, such as the investigation of anti-Semitic agitators, and engaged and trained a highly specialized and expert staff.

The challenging and pioneering character of that program was strikingly revealed by the fact that other agencies, notably the Anti-Defamation League and the American Jewish Committee, vigorously opposed it on the grounds that it was premature, ill-advised and doomed to ineffectiveness. For a few years, as a result, there was very little duplication of the work of the AJCongress in this field.

Events, however, demonstrated the validity of our program. In fact, this area of work is the only aspect of community relations of which Professor MacIver offers no criticism in his report. The ADL and the AJCommittee began to enter the field. They expanded their legal staffs. Throughout, the AJCongress emphasized that it was urgent for all Jewish groups to join in the campaign for full civil rights for all Americans but that it was wasteful and harmful to duplicate the technical facilities for such tasks as bill-drafting, brief-writing and legal analysis which already existed in the AJCongress. No action, however, was taken to prevent the continued growth of that duplication by the ADL and the AJCommittee, despite the repeatedly expressed willingness of the AJCongress to perform those technical functions under the supervision of an appropriate NCRAC committee.

As a result, virtually every problem in the field became the subject of exhaustive and exhausting procedural controversy. Disputes arose as to which agency should undertake the preparation of reports and technical documents. Cumbersome and time-consuming procedures were evolved. The situation is partly but effectively documented by Professor MacIver in the report.

To meet the problem, the AJCongress urged that it be allocated the responsibility for those technical functions under NCRAC supervision, while the other agencies be assigned similar responsibilities in their respective fields of concentration and competence. That suggestion did not contemplate the exclusion of other agencies from civil rights activities. On the contrary, it would have enabled them to devote their resources to those aspects of the work they could best perform: the mobilization of popular support, the enlightenment of public opinion, the influencing of key figures.

The American Jewish Congress in its statement supports Professor MacIver's recommendation that social action involved in the influencing and mobilizing of public opinion cannot be subject to allocation since no problem of duplication is raised. The recommendation on factual reporting is also accepted. It took issue, however, with his recommendation that the principles of allocation of function should not apply in the field of legal work (page 194):

We submit that none of the reasons advanced by Professor MacIver justified any failure to extend the principle of allocation to the legal field as well. Failure to adopt that principle in this area will only serve to perpetuate, if not deepen, existing tensions, and to encourage further duplication.

The ADL stated its views in part as follows (pages 218-219):

In the civil rights field, especially in the area of law and legislation, proposals for allocation of function to one or another agency run athwart the problem of deep philosophic cleavages. The Report accepts at face value a statement of the AJCongress that it is the pioneer in this field and should therefore be given pre-eminence. That claim would seem to be supported by the fact that the Congress devotes the largest part of its budget to this activity. Nevertheless, the

record shows that ADL was engaged in this field long before the AJCongress had a single active unit in the area. It has always been a matter of emphasis. ADL does not believe that law and legislation provide the whole answer to the civil rights problem. It has, therefore, avoided over-emphasis on law and legislation and has given to them that proportion of effort which seemed proper in the framework of its total program.

National and international events, the development of the liberal movement, the flowering generally of civil rights programs is what has given importance in recent years to the field of endeavor. All of the agencies, as time passed, met the growing opportunities to improve development and protection of civil rights through law. Thus the Report's proposition that AJCongress has historically had pre-eminence in the field of law and legislation is without basis.

But there is a far more important reason why arbitrary allocations of law and legislation to one or another agency runs counter to the best interests of American Jewry. The Report indicates that a single agency can be safely vested with the function of drafting model legislation, preparing briefs amicus in court actions and related activities. By doing so, the Report states that a great deal of unjustified duplication could be eliminated. But it thus ignores a basic characteristic of activity in this field. The decision that certain legislation is necessary and the consequent drafting of a model law is in itself an expression of an ideology. . . . Under these circumstances, what happens to the notion that separate action by different agencies represents duplication? It is not duplication at all, but the proper expression of differing viewpoints within the Jewish community.

The Report, too, sees unnecessary duplication by the agencies in their separate analyses of legal and judicial matters distributed "for general information or for practical purposes" and in the rendering of expert legal services. But here, too, the differing viewpoints of the agencies comes into play and their analyses and their services reflect those views. As long as this is true, there is no duplication. The present practice among the agencies in NCRAC is the only democratic one. Where upon consideration it appears that all join in one view, one agency, by mutual agreement, handles the preparation of the required material. Any dissenter from the agreement may and does act independently. . . .

The Report makes the statement that "there is generally no advantage and sometimes a disadvantage, when two agencies prepare and file separate briefs amicus in the same case." This conclusion is highly debatable, there being no way of knowing which particular brief has swayed a court to reach its decision. . . . Would the assignment of brief preparation to one agency not mean that the remaining organizations would lose interest in them? Not very likely. Each would still be determined that such briefs reflect its legal points of view and political ideology. This is as it should be and the amount of alleged duplication eliminated would be limited indeed.

In discussing legal service to community relations councils, the Report ignores the fact that one reason for separate replies to such requests from CRCs is that there is frequently a difference of opinion among the national agencies as to the best solution of a problem. It also ignores the fact that, if this difference of opinion is not reported to a CRC, the result is a loss of freedom of choice and the CRC would, of necessity, become subservient to the views of one particular national agency.

24. Duker, Abraham G. *Jewish Community Relations: An Analysis of the MacIver Report*. Jewish Reconstructionist Foundation, Inc., New York. 1952.

This is an extended comment upon the "Report on the Jewish Community Relations Agencies." On the question of legal service, Mr. Duker says (pages 100-101):

MacIver recommends apportioning the handling of situations requiring expert legal service to different agencies on different occasions.

In view of his almost blanket approval of the work of Congress in this area, and in view of the ample share of other fields of CR handed over to the Committee and ADL, it may be fairer that Congress be given exclusive charge of situations where expert legal service is called for. This does not exclude the possibility of other agencies' maintaining minimum legal staffs to cooperate with Congress and see that their points of view receive adequate recognition.

# Agenda for the Meeting of December 9-11, 1954

THURSDAY, December 9, 1954

Noon—Registration

1:30 to 2:45 p.m.—*Opening Session*

*Presiding:* BERNARD H. TRAGER, Bridgeport, *Chairman*, NCRAC

*Welcome:* MR. TRAGER

*Questions Before the Conference:* IRVING KANE, Cleveland; *Chairman*, NCRAC Special Committee on Reassessment

*The Uses of Law in the Struggle for Equality:* WILL MASLOW, *Director*, Commission on Law and Social Action, American Jewish Congress.

*A Social Scientist's View of the Use of Law and Legislation for the Advancement of Community Relations Objectives:* DR. ISIDOR CHEIN, Professor of Psychology, New York University

2:45 to 3:00 p.m.—*Workshop assignments and organization of workshops*

3:00 to 5:30 p.m.—*Workshops*—Three concurrent workshop sessions

*Workshop A—Research findings, needed research, and evaluation*

*Co-Chairmen:* ISAAC FRANCK, Washington

DR. M. DELOTT GARBER, Hartford

*Consultants:* HARRY I. BARRON, Cleveland

DR. DONALD J. HAGER, American Jewish Congress

DR. HERBERT GARFINKEL, Dartmouth College

DR. ARNOLD ROSE, University of Minnesota

What assumptions are involved in seeking to advance community relations objectives through law and legislation? What light has been thrown on these assumptions by research in the social sciences? What are the implications of existing research findings? What conclusions appear to be firmly established regarding the role of law and legislation in the advancement of community relations objectives? What assumptions are still in need of checking? What assumptions appear to be doubtful or unlikely?

*Workshop B—The application of existing law to the advancement of community relations objectives*

*Chairman:* WILLIAM COHEN, Detroit

*Consultants:* HAROLD A. LETT, New Jersey Department of Education

PHINEAS INDRITZ, Washington, D.C.

LEO PFEFFER, American Jewish Congress

HENRY SPITZ, New York State Commission Against  
Discrimination

JACOB SEIDENBERG, President's Committee on Government  
Contracts

What resources are now available at federal, state, and municipal levels in existing law, administrative regulations, government agencies, accepted decisions and interpretations? To what extent and in what ways have these brought about improvement? How have they met, or failed to meet, the

needs of the Jewish community specifically? What are their strengths and weaknesses?

*Workshop C—Needed extensions and improvements on existing law for the advancement of community relations objectives*

*Chairman:* MRS. ELSIE ELFENBEIN, New York City

*Discussants:* BORIS M. JOFFE, Detroit  
CHARLES POSNER, Cincinnati  
PHILIP SCHIFF, Chevy Chase, Md.  
S. WALTER SHINE, Washington, D.C.

What gaps in existing law suggest unmet needs for the enactment of new law? To what extent is there need for new kinds of legislation? What is needed at the federal, state and municipal levels?

5:30 to 8:30 p.m.—*Recess for dinner*

8:30 to 10:30 p.m.—(*Three concurrent workshops, each a continuation of one of the afternoon workshops; chairmen and discussants are the same*)

*Workshop A—Research findings, needed research, and evaluation*

What lines of research now in progress can be expected to throw light on questions crucial for the advancement of community relations objectives by law and legislation? What problems particularly require further exploration in the future? How can research on these problems be encouraged? What should be the role of community relations agencies with regard to the conducting of such research?

*Workshop B—The application of existing law to the advancement of community relations objectives*

In what ways can the existing powers and resources be utilized more fully and effectively? What next steps appear to be indicated? What litigation should be initiated? What factual surveys are required? What improvements are needed in regulations and procedures of official bodies? What issues should receive particular attention? Under what conditions? What questions of strategy and tactics should be considered in programming?

*Workshop C—Needed extensions and improvements on existing law for the advancement of community relations objectives*

What improvements on existing law appear to be mostly timely? To warrant priority? To what extent should there be concentration on issues of direct community relations significance; to what extent should community relations agencies support broad measures for the public welfare? What questions of strategy and tactics arise? What changes in conditions might require alterations in strategy and tactics? What dangers should be avoided?

FRIDAY, DECEMBER 10, 1954

9:30 a.m. to 12 noon—(*Three concurrent workshops, each a continuation of Thursday's workshops; chairman and discussants same as above*)

*Workshop A—Research findings, needed research, and evaluation*

How have community relations agencies utilized research findings in planning program in the areas of law and legislation? Can further application be made of research findings? In what ways? What is an advisable relationship between research and future program in this area?

*Workshop B—The application of existing law to the advancement of community relations objectives*

What should be the role of voluntary organizations in utilizing the existing instrumentalities? What specifically should be the role of Jewish agencies, national and local? What is the proper relationship of voluntary agencies to public agencies and resources? What resources are needed to carry out the necessary program?

*Workshop C—Needed extensions and improvements of existing law for the advancement of community relations objectives*

What are the proper roles of voluntary, and specifically of Jewish, organizations? What is their proper sphere of activity with regard to the development of new law. What problems should be avoided? What resources or activities are necessary for the proper discharge of their role?

12 noon to 2:00 p.m.—*Recess for lunch*

12 noon—*Meeting of Agenda Subcommittee* with chairmen and consultants of workshops, for purpose of preparing and integrating workshop reports.

2:00 to 3:30 p.m.—*Reports session*

*Presiding: HERMAN L. WEISMAN, Chairman, NCRAC Committee on Legislative Information*

*Report by chairman of each workshop*

3:30 p.m.—*Recess for Sabbath*

SATURDAY, DECEMBER 11, 1954

5:30 p.m.—*Meeting of Agenda Subcommittee*

8:00 p.m.—*General Session*

*Presiding: IRVING KANE, Chairman, NCRAC Special Committee on Reassessment*

*Action on reports*

## Other Reports

of the

### Special Committee on Reassessment

*Report on the Jewish Community Relations Agencies*, by ROBERT M. MACIVER. 1951. 261 pages. \$3.00.—Includes Professor MacIver's report and recommendations, statements of views by the participating agencies, and text of the statement adopted by the NCRAC Plenary Session of November, 1951.

*Community Relations Values of Interreligious Activities*. 1953. 64 pages. Free.

*Overt Forms of Anti-Semitism: Violence, Vandalism and Defamation—Their Significance for the Jewish Community Relations Program; How Communities Can Best Deal With Them*. 1954. 88 pages. Free.

*Available from*

National Community Relations Advisory Council

9 East 38th Street, New York 16, N. Y.

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### *National Agencies*

American Jewish Congress  
Jewish Labor Committee  
Jewish War Veterans of the United States  
Union of American Hebrew Congregations  
Union of Orthodox Jewish Congregations of America  
United Synagogue of America

### *Local, State, and Regional Agencies*

Jewish Welfare Fund of Akron  
Jewish Community Relations Council for Alameda and Contra Costa Counties,  
California  
Baltimore Jewish Council  
Jewish Community Council of Metropolitan Boston  
Jewish Community Council, Bridgeport, Conn.  
Brooklyn Jewish Community Council  
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