Clear tonight
Sunny, warm Saturday

Times-Colonist

123rd year, No. 193

Victoria, British Columbia, Friday, June 26, 1981

Klan may use hate law

B.C.'s new anti-racism legislation will do nothing to curb the Ku Klux Klan's cross-burning activities and recruiting drives, the National Grand Chaplain of the Klan vowed Thursday.

Ann Farmer of Vancouver said the Klan may even use the new Civil Rights Protection Act to sue other groups promoting hatred of the Klan.

"Everyone in the Klan can sue East Indians for hatred they have set against us," she said. "They have said 'Kill the Klan' and that's been documented. We don't hate anyone — we just love white people."

The act, introduced Thursday by Attorney-General Allan Williams, prohibits promotion of hatred or contempt on the basis of color, race, religion, or ethnic origin or place of origin.

Its introduction was welcomed by civic leaders and police although some had reservations about its effectiveness.

Said Victoria Mayor Bill Tindall: "It's fine to say, but it may be difficulty to enforce."

RCMP Superintendent Scotty Gardiner also said the intent of the legislation is good but the interpretation "could be dicey."

"Let's hope we never have to use it."

But Emery Barnes (NDP — Vancouver-Centre) called the proposed new law "a first, very important step in the right direction."

"The bill gives people under attack access to the legal system which they never had before. I doubt if there will be much delay in using it once it becomes law."

Barnes said there might be a danger of over-reaction by civil rights groups but added: "I hope not. I hope the law is used wisely and not frivolously to bring civil rights workers into disrepute."

The legislation took the Vancouver-based Anti-Discrimination League by surprise.

Still, director Paul Winn applauded the move and felt it would make discrimination enforcement easier for the police.

The legislation came in the wake of a report into KKK activities prepared by Vancouver lawyer John McAlpine.

The report quoted Gilbert David Cook and David Harris, Klan organizers on the Lower Mainland as saying there were 14 KKK dens in the province including one in Victoria and one in Sidney.

Each den comprised "four to 10 members," the report says without elaboration.

"That's news to us," Victoria police chief Bill Snowdon said.

Page 2 — KLAN

Klan may use hate law itself

Continued from Page 1

RCMP officials were also unaware of the number of dens, and even the national security section was unable to throw much light on the matter.

A spokesman for the security section said the KKK has not been given high priority. It is not regarded as a threat mainly because "we think basically the rank and file are awfully slim."

Tindall said the fact the numbers [illegible] can't be substantiated by police should make them suspect.

"Naturally I don't condone any activities attributed to the KKK, but one of the great difficulties is determining what organizations are a threat to out life style.

"I don't think we on council are going to get too excited by a threat in Victoria comprising of only a handful of people. There is no indication at the city hall level that the organization poses a threat here."

Sidney Mayor Norma Sealey said she didn't know there was a KKK den in Sidney, but knew of some people who had received unsolicited hate mail from the Klan.

She said: "We would do everything we can to curb this sort of thing, and I would think that the community would see that these people are a little weird and wouldn't give them any credibility.

"I can speak for council when I say that we won't tolerate any open acceptance of this sort of thing."

McAlpine's 79-page report plus appendices was tabled in the Legislature by Labor Minister Jack Heinrich late Thursday afternoon.

It said the provincial Human Rights code as it stood today would be useless in curbing Klan activities.

"My conclusion is that there is no case in law against the Klan under the Human Rights Code of B.C. as currently drafted.

"It follows that the appointment of a board of inquiry (to investigate the Klan with a view to prosecution) would be unwarranted."

Superintendent Gardiner also said there was no evidence to warrant laying of criminal charges.

Government officials say they wrestled with possible changes to the code in an effort to bring in amendments to plug the loopholes revealed by McAlpine, but finally decided that the quickest way to curb the "white supremacy" claims of the Klan and its obvious racist attitudes would be in the introduction of a new law.

McAlpine urged the government to press for further reform.

"It is not enough to put the legislation in place," he said. "It must be accompanied by administrative direction. Incidents of racism can only be effectively dealt with if there is a system by which incidents are reported by the police, by the schools and government agencies. A successful complaint requires a record of specific dates, names of persons, the place where (hate or racist) literature was distributed and a copy of the literature itself."

McAlpine also recommended beefing up the attack on racial prejudice at the school level.

"Although there seems to be an awareness that racial prejudice is as pervasive in the educational system as it is in society generally, this awareness is yet to be translated into concrete policies and programs on a province-wide basis," McAlpine states.

He found racism was not rampant in Vancouver, but that it did exist in the school system throughout the province.

"Nor was I given the impression that incidents of racial violence are common or widespread in our school system."

"However," the report continued, "racism occurs in a variety of forms and there is a real potential for racial incidents to become more common than they are at present.

"We can no longer afford not to address ourselves to these issues. The questions they raise deserve answers now."

McAlpine lists a number of complaints from minority groups regarding the role of the press in reporting Klan activities, thus giving the organization the kind of publicity it required to thrive. But he made no recommendations based on the complaints referring only to the possible establishment of a press council.

He noted that radio and television stations were regulated by the CRTC rules and were forbidden to broadcast "any abusive comment or abusive pictorial representation on any race, religion or creed."

McAlpine noted there was no parallel restriction on newspapers and asked: "If communication of the 'message' is proscribed, should consideration not be given to placing restrictions upon its appearance in print?"

McAlpine quoted a recent report by the Institute for Research and Public Policy as saying there had been neglect in the past in addressing racist problems.

"Whatever the reasons for this neglect at different levels of government and whether they are justified or not, the problem of racism will not go away," the IRPP report says.

"If anything, it will get worse, as

Tourist Alert

VANCOUVER (CP) — RCMP tourist alert issued Friday. The

Trudeau

LONDON (CP) — Prime Minister Trudeau arrived in London this morning for talks with Prime Minister Margaret Thatcher after his diplomatic doubleheader Thursday failed to dispel suspicions that leaders of the world's seven wealthiest countries will not solve many problems at their economic summit in Canada.

Despite Trudeau's recent world travels aimed at increasing chances of consensus, a Canadian official warned reporters in Bonn on Thursday not to expect "any drastic bottom lines" from the two-day summit which opens July 20 in Montebello, Que.

The summit wasn't the only topic discussed Thursday when the prime minister met French President Francois Mitterrand over lunch in Paris and then dined in the German capital with Chancellor Helmut Schmidt.

Trudeau apparently got a promise that France's new Socialist leader won't interfere in the ongoing tussle between Ottawa and Quebec.

Returning the favor, the prime minister said Mitterrand's appointment of four Communists to his 40-member

cabinet w
France a
from that
expresed
Trudea
pointmen
unify the
Commun
tempts to
Democrat
election.
He was
NDP Lea
possible
giving the
represent
the Libera
After
thought, B
Canadia
meetings
along wit
summit
avoided s
Instead
broadly or
discussed
by the le
States, Fr

xp

isis in th
turbulen
en the tw
neighbor

AMERICAN CIVIL LIBERTIES UNION
601 WILLAMETTE BLDG.
534 S. W. THIRD AVE.
PORTLAND, OR 97204

EXHIBIT E
Senate Committee on Justice
6/30/81, HB 2479, 3 pages
Carol Herzog, ACLU

A BILL FOR AN ACT

Relating to equal protection of the laws; creating new provisions; amending ORS 180.070 and 180.080; providing penalties; and creating an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Every person within the jurisdiction of this state has the right to be free of intimidation by violence or the threat of violence against his or her person or property, committed because of his or her race, color, sex, sexual orientation, religion, ancestry or national origin. The state shall be deemed to have a direct interest in securing these rights to the people of the state of Oregon.

SECTION 2. (a) No person shall intentionally deprive or attempt to deprive, either directly or indirectly, any person or class of persons of [the equal protection of the laws, or of equal privileges and immunities of the laws.] any right or privilege secured to that person by the Constitutions or laws of the United States or the State of Oregon.

(b) No person shall intentionally prevent or hinder or attempt to hinder the public authorities of this State or any subdivision of the State from securing to all persons within the jurisdiction the equal protection of the laws.

SECTION 3. Violation of Section 2 of this 1981 Act is a Class C Felony.

SECTION 4. Any person injured by a violation of Section 2 of this 1981 Act shall have an action to secure an injunction, damages, or other appropriate relief against any and all persons whose actions, unlawful under this 1981 Act, caused him or her loss or deprivation of rights. Upon prevailing in such an action, the plaintiff may recover general damages for personal injury including emotional distress and injury to property, and punitive damages, and in addition shall be

entitled to judgment for reasonable attorney fees as part of costs awarded against the defendant.

Section 5. ORS 180.070 is amended to read: (1) The Attorney General may, when directed to do so by the Governor or as provided by law, take full charge of any investigation or prosecution of violation of law in which the circuit court has jurisdiction.

(2) When acting under this section, the Attorney General shall have all the powers of a district attorney, including the power to issue or cause to be issued subpenas or other process. The Attorney General may, when he considers the public interest requires, with or without the concurrence of the district attorney, direct the county grand jury to convene for the investigation and consideration of such matters of a criminal nature as he desires to submit to it. He may take full charge of the presentation of such matters to the grand jury, issue subpenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.

(3) All costs, fees and other expense shall be paid by the county in which the investigation takes place, to the same extent as if conducted by the district attorney of that county.

(4) The power conferred by this section, ORS 180.060, 180.220 or 180.240 does not deprive the district attorneys of any of their authority, or relieve them from any of their duties to prosecute criminal violations of law and advise the officers of the counties composing their districts.

Section 6. ORS 180.080 is amended to read: (1) When directed by the Governor, the Attorney General shall attend in person, or by one of his assistants, any term of any court, or appear before the grand jury in any county, for the purpose of managing and conducting

in such court, or before such Jury, the criminal action or proceeding specified in the requirement.

(2) When authorized by law, the Attorney General may attend in person, or by one of his assistants, any term of any court, or appear before the grand jury in any county, for the purpose of managing and conducting in such court, or before such jury, the criminal action or proceeding specified in the law.

(3) The Attorney General, or his assistant so attending, shall exercise all the powers and perform all the duties in respect of the action or proceeding which the district attorney would otherwise be authorized to exercise or perform. The district attorney shall only exercise such powers and perform such duties in the action or proceeding as are required of him by the Attorney General, or his assistant so attending.

SECTION 7. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

CHRISTIAN VANGUARD March 1980

GOODBYE CONSTITUTION

THE GENOCIDE TREATY

A PLOT

TO DESTROY OUR FREEDOMS

WHY OPPOSE GENOCIDE?

Every God-fearing person or civilized nation of the world is opposed to Genocide which is defined as "the deliberate and systematic extermination of a racial group". However, the International Genocide Treaty that was approved by the United Nations in December of 1948 was drafted with the approval of every Communist nation on earth. The language of this Treaty has been prepared and written by international conspirators who have tried for nearly thirty years to destroy the

sovereignty of the United States and subject every American citizen to an international code of jurisprudence. It would, in effect, become the law of the land, nullifying the Constitutional guarantees of every U. S. citizen.

WHEN DID THE TREATY COME INTO EFFECT?

15. **Convention on the Prevention and Punishment of the Crime of Genocide**

Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948

***Entry into force*:** 12 January 1951, in accordance with article XIII.

WHY IS IT NOT NOW BINDING ON THE UNITED STATES?

When the United Nations was established in 1945, an Amendment was adopted by the United States preventing any international laws from being imposed on the nation without the approval of the elected members of the U. S. Senate. This amendment, prepared by courageous, farsighted statesmen, is known as the Connally Reservation. Therefore, before this treaty, or any international treaty, can be binding on the United States, it must be ratified by two-thirds of the United States Senate — and actually four members could make it binding because the Connally Reservation provides that a vote of only two-thirds of those members present on the Senate Floor at the time a vote is requested, can make it law. So if only six members of the Senate were present on the Floor, it could become law by four votes. Although more than seventy nations, including the Communist and Socialist dictatorships, have ratified and signed the terms contained in this treaty, th

ALERT YOUR NEIGHBORS

5. The International Court of Justice would be empowered to decree that the President had interpreted and applied the provisions of the Convention incorrectly.

6. The Convention could authorize any party to call on the U.N. to take such action against the United States under the charter of the U.N. it considers "appropriate for the prevention and suppression of acts of genocide".

7. Individuals and government officials would be subject to trial and punishment for offenses which have always been regarded as matters falling within the domestic jurisdiction of the various nations.

8. The Convention definition of genocide is inconsistent with the real meaning of the term, so a public official or a private individual would be subject to prosecution and punishment for genocide if he intentionally destroys a single member of one of the specified groups.

9. The duty and the power to prosecute and punish criminal homicides, assaults, and batteries, and kidnappings covered by the Convention would be forthwith transferred from the states which have always had such duty and power in respect to those crimes to the federal government.

10. Congress would be required to enact new laws laying down rules of procedure to govern the trial of those newly created federal and international crimes.

11. Since the federal jurisdiction would depend upon whether the homicide is committed with genocidal intent, every unlawful homicide would apparently be within the jurisdiction of both the federal and the state government insofar as the external circumstances of the slaying are concerned. An acquittal of the charge in one court would not bar a second prosecution based on the same facts in the other court and a person could be placed in jeopardy twice for the same offense.

12. The Convention would impose upon the United States the duty to prevent and to prosecute and punish public officials and individuals who cause "mental harm to members" of the groups mentioned in the Convention. What mental harm and what psychological acts or omissions are made punishable?

13. The Convention imposes the duty to punish anyone who deliberately inflicts "on the group conditions of life calculated to bring about its physical destruction in whole or in part". Does this mean that a county official who refuses to give a member of a group the amount of welfare benefits deemed desirable can be punished for genocide? Does it mean that the Court of International Justice shall have power to judge the adequacy of welfare benefits awarded by Congress or a State Legislature?

14. The Convention makes any official or individual punishable for "direct and public incitement to commit genocide". Does this mean that if a member of Congress justifies the action of Jews of killing Arabs in the Middle East, or vice versa, that he can be prosecuted for genocide? What about free speech?

15. The provisions of the Genocide Convention would immediately supersede all state laws and practices inconsistent with them, and nullify all provisions of all acts of Congress and prior treaties inconsistent with them. Thus, the Connally Reservation and the Vandenberg Reservation to the Jurisdiction of the International Court of Justice would be voided.

WHAT CAN YOU DO TO PROTECT EVERY CITIZEN FROM THE ABOVE POTENTIALS?

It should be recalled that after the United Nations Charter had received almost the unanimous support of Congress, a poll taken by one U.S. Senator revealed that only a handful of them had even read the contents of the Charter.

You should write your elected representatives concerning this important issue. And you should inform your friends by presenting them with the facts contained in this document so they can write their Congressmen.

FLOOD CONGRESS AND THE NATION WITH THIS GENOCIDE CENTERFOLD

Extra Copies 10 for $1.00, 50 for $4.00, 100 for $6.00, postpaid — CHRISTIAN VANGUARD, P.O. Box 426, Metairie, La. 70004

WRITE YOUR SENATORS —

world is really waiting for United States approval before enforcement steps are taken. If ratified, it would be binding on the United States 90 days after ratification.

HAS THE TREATY BEEN SENT TO THE U. S. SENATE?

The treaty was transmitted to the U. S. Senate in June of 1949. Although there have been numerous hearings by the Genocide Subcommitte of the Senate Foreign Relations Committee, nearly every year since there has been strong national opposition to this document, including representatives of the American Bar Association. Former Senator Sam Ervin of North Carolina, one of its strongest opponents in the past, described the treaty this way: "There are provisions in the Genocide Treaty which would immediately supersede all State Laws and practices inconsistent with them and nullify all provisions of all Acts of Congress and prior treaties inconsistent with them. Thus the Connally Reservation and the Vandenberg Reservation to the Jurisdiction of the International Court of Justice would be voided."

WHO MAY BE PUNISHED FOR VIOLATIONS OF THE TREATY?

Article III

The following acts shall be punishable:

(*a*) Genocide;

(*b*) Conspiracy to commit genocide;

(*c*) Direct and public incitement to commit genocide;

(*d*) Attempt to commit genocide;

(*e*) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

This article is all important because Genocide is not usually committed by individuals, but by persons who hold authority and influence. Article IV of the treaty declares that those guilty of Genocide *and other acts* listed shall be punished "whether they are constitutionally responsible rulers, public officials or *private individuals.*"

This clause makes it impossible for a person to plead immunity because he was the head of a State or other public official.

WHAT ARE CONSIDERED ACTS OF GENOCIDE?

The definition of Genocide appears in Article II of the treaty which states that the term 'Genocide' embraces five specific acts "committed with intent to destroy in whole or in part" a national, ethnical or religious group, such as: "(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group", just to mention two. Any so-called 'Minority Group' could claim "mental harm" or "mental anguish" under this article and prefer charges of Genocide. And the First Amendment rights under the U. S. Constitution would not protect anyone from prosecution by an International Tribunal.

HOW ARE VIOLATORS TO BE PUNISHED?

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Where would American citizens accused of genocide be tried? Article VI of the Genocide Convention says we would ried by a "tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as have jurisdiction . . . " Article VII says: "Genocide and the other acts enumerated in Article II shall not be considered as al crimes for the purpose of extradition . . . . " The usual defense against extradition to a foreign country is that the rge is political and therefore non-extraditable. The Genocide treaty thus prevents that from being used as a shield to protect erican citizens unjustly charged.

THIS TREATY CAN BEST BE DESCRIBED AS

A TREASON TREATY

IF IT IS PERMITTED TO PASS BY THE UNITED STATES SENATE AMERICANS COULD BE FACED WITH ANY ONE OF THE FOLLOWING:

1. Under the Treaty, the International Court of Justice could require the U.S. to go to war to revent one nation from killing the nationals of another nation.

2. The International Court of Justice could allow the U.S. to investigate or take action con- erning the acts of public officials and individuals in the U.S.

3. The Convention could lead to the creation of an International Court for trials of American itizens for genocide without the constitutional safeguards and legal rights accorded persons harged with a domestic crime.

4. The Convention could make American soldiers subject to trial for killing and wounding nembers of the military forces of our warring enemy.

AGAIN & AGAIN & AGAIN

This article prescribes that violators may be punished by local tribunal, but also provides for punishment by an International Court in an International Court of Justice; thus denying an individual his sovereign Constitutional rights.

WHAT IS THE URGENCY OF THIS ISSUE NOW?

For years nearly every liberal, left-wing, Communist or pro-Communist organization and publication has urged U.S. ratification of this treason treaty. But thanks to the efforts of many concerned patriotic citizens, it was never permitted to reach the Floor of the United States Senate. However, the Genocide Treaty has now been voted out of the Foreign Relations Committee to the Senate Floor on a voice vote with not more than five of the sixteen members present. In one of the first major addresses President Carter made after being sworn into office that was delivered to Members of the United Nations, he said:

— Los Angeles Times, Friday March 18, 1977 — The President said he would seek congressional approval of the U.N. covenants on economic, social and cultural rights and also the covenant on civil and political rights. In addition, he promised to press for congressional ratification of the U.N. genocide convention and of the treaty for elimination of all forms of racial discrimination, a pledge which drew a burst of applause from his audience.

The April 9, 1977, issue of Washington — based weekly, HUMAN EVENTS, quoted Eberhard Deutsch, a noted legal authority as stating:

"This Aritcle (IX) clearly overrides the Connally Amendment and subjects the United States to the unreserved jurisdiction of the International Court of Justice as to all matters involving the 'interpretation, application or fulfillment' of the Genocide Convention."

AMERICANS COULD BE TURNED OVER TO FOREIGN COURTS

Library
Supreme Court of the United States
Washington, D. C. 20543

December 2, 1975

Mr. LaVerne Hollenbeck,
1815 S. E. Clinton Street,
Portland, Oregon 97202.

Dear Mr. Hollenbeck:

Your letter dated November 25, 1975, which is addressed to the Chief Justice has been referred to me to answer.

You will find statements to the effect that the United States is a Christian Nation in the following opinions of the Supreme Court:

Church of the Holy Trinity v. United States,
143 U.S. 457 at 471 (1892);

Zorach v. Clauson,
343 U.S. 307 at 313 (1952);

McGowan v. Maryland,
366 U.S. 420 at 561 (1961).

Very sincerely yours,

Edward G. Hudon,
Librarian.

There Is A Difference...

. . . Between
A PATRIOT and A CONSERVATIVE

reprinted from
Freedom's Voice, Muskegon, Mich.

There are many distinct differences between Conservatives and TRUE PATRIOTS. Conservatives will "beat around the bush and never NAME THE REAL ENEMY, THE INTERNATIONAL JEW BANKERS. They are afraid of being labeled Anti-Semitic. They would never dare state that Communism is controlled by Zionists.

I'll not only state it, I'll PROVE IT.

Not all Jews are Communists, but those who control Communism are Jewish, throughout nearly all the world.

I am glad to back up these statements with names. The American Communist Party is run by JEWS. In 1949 the U.S. Communist Party leaders were 7 Jews, 2 whites, 2 Negroes. The Jews were and are, Jacob Stachel, Gilbert Green (real name GREENBERG), Robert Thompson (real JEW name unknwon), Gus Hall (real name Mike Alva Halberg), Irving Potash, Carl Winter (real name Carl Weissberg), and John Gates (real name Regenstreif). Since then Herbert Aptheker, Jew, has also risen to top leadership of the Communist Party, U.S.A. The two whites were Eugene Dennis, who died in 1961, and Williamson. The two negroes were Henry Winston, deceased, and Benjamin Davis, also deceased.

Nine of the Hollywood Ten Communists were Jews. The trial was in 1949. Their names are Biberman, Trumbo, Lardner, Lawson, Dmytry, Scott, Bessie, Ornitz, Maitz, and Cole. All were making from $1,000 to $5,000 a week at the time.

Eighty-five percent of atom spies were JEWS. Their names: The Rosenbergs, Harry Gold, David Greenglass, Nathan Silvermaster, Victor Perlo, Israel Weinbaum, Morton Sobell, Miriam Mozkowitz, Karl Fuchs, Robert Oppenheimer, Sidney Fields, and Rudolf Abel, plus many others.

Who financed the Bolshevik Revolution? A Jew, Leon Trotsky, was the creator of Russia's Red Army. In 1917 Trotsky sailed from New York with 276 men whom he placed in high positions of Russian Government when they came to power. Most of these 276 men were JEWS. (Names on request). Jewish bankers such as Jacob Schiff, of the Kuhn, Loeb & Co. banking firm in New York supplied Trotsky and his band of cutthroats with $46,000,000 dollars to finance the Revolution. These facts are contained in government documents, still available today. They were compiled between 1919-1922.

But regardless of these facts the weak kneed Conservatives never dare bring out the full truth as to the nature of THE REAL ENEMY.

A Conservative will always fight and expose the RESULT, but never touch the CAUSE. Only when one knows who controls Communism, can proper action be taken at ridding our country of all the alien "isms", which have beset our once great nation.

Out elected official are under the direction and control of the international Bankers.

At one time DEATH was the regular penalty meted out to traitors for treason. But we now have so many traitors in high offices that it is nearly impossible to remove our so-called leaders, and still continue a Constitutional Republic, without having a military coupe by THE JOINT CHIEFS OF STAFFS. If Senators and Representatives bow to the demands of BLACK POWER ADVOCATES, WHITE ANARCHISTS, WELFARE RECIPIENTS, ONE-WORLDERS, and other scum and dregs from society, and refuse to stand for the Constitution as it was intended by our Founding Fathers, then it is obvious that they have betrayed their high office and those who intrusted them with the affairs of state. Lincoln once said:

"The people of these United States are the rightful MASTERS of both Courts and Congress, not to overthrow the Constitution, but to overthrow the MEN WHO PERVERT THE CONSTITUTION."

I say let's work for THEIR OVERTHROW!

Write to and inform those so-called elected officials that if they don't take the necessary action to remove subversives from our government, and from our society, then we, as citizens, will take further action to insure that all traitors living in the U.S. shall receive the JUST PUNISHMENT as prescribed by military law.

I could list many characteristics which distinctly set conservatives and PATRIOTS apart.

A conservative can be compared to a lukewarm Christian, while the PATRIOT could be likened unto a zealous Christian that is a soul winner, saving individuals from self-destruction.

A conservative can talk up a storm, but never stir a ripple on the sea of complacency, because he NEVER mentions the driving force behind Communism, namely INTERNATIONAL JEW BANKERS. A patriot will not be afraid to call Gus Hall, A JEW, even at the risk of being called, "Anti-Semitic"!

A conservative will be afraid to admit membership in a "CONTROVERSIAL" right-wing organization not so much in fear of intimidation, but often just because "It might be bad for business, you know how it is." A patriot will use his life's savings to insure freedom for his posterity, even at the loss of his own life. A patriot would rather die on his feet than live on his knees under Communism. Winston Churchill once said:

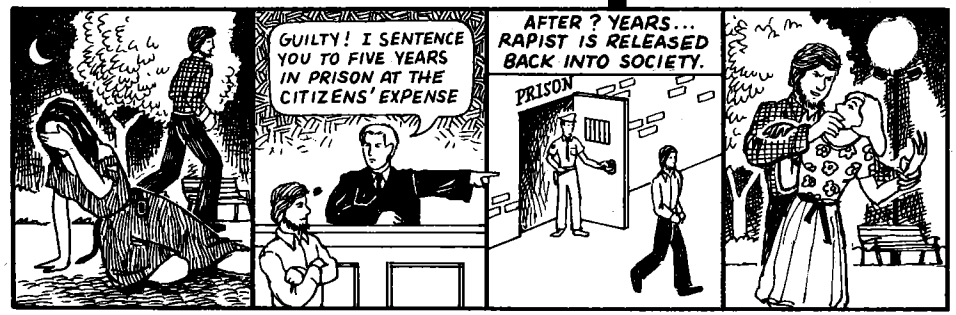
"If you will not fight for the right when you can easily win without bloodshed; if you will not fight when your victory will be sure and not too costly, you may come to a moment when you will have to fight with all odds against you and only a precarious chance of survival. There may be even a worse case. You may have to fight when there is no hope of victory, because it is better to perish than live as slaves."

A conservative will hope that education and political action alone will defeat Communism. But a patriot will realize that if all other means fail, a well-organized underground army must be PREPARED IN ADVANCE, as a last means of defense, to defend our freedom with ARMS if necessary.

A conservative will lay this article aside and continue watching his favorite TV program, but a PATRIOT will decide, RIGHT NOW, to make himself or herself a COMMITTEE OF ONE, to STAND UP AND BE COUNTED, regardless of the hardships, and personal dangers which he may ultimately be faced with. A PATRIOT will now take a second to ponder the great challenge before him, then with stern determination set out to return this country to a Constitutional Republic, with Christian Principles, regardless of the obstacles. ■

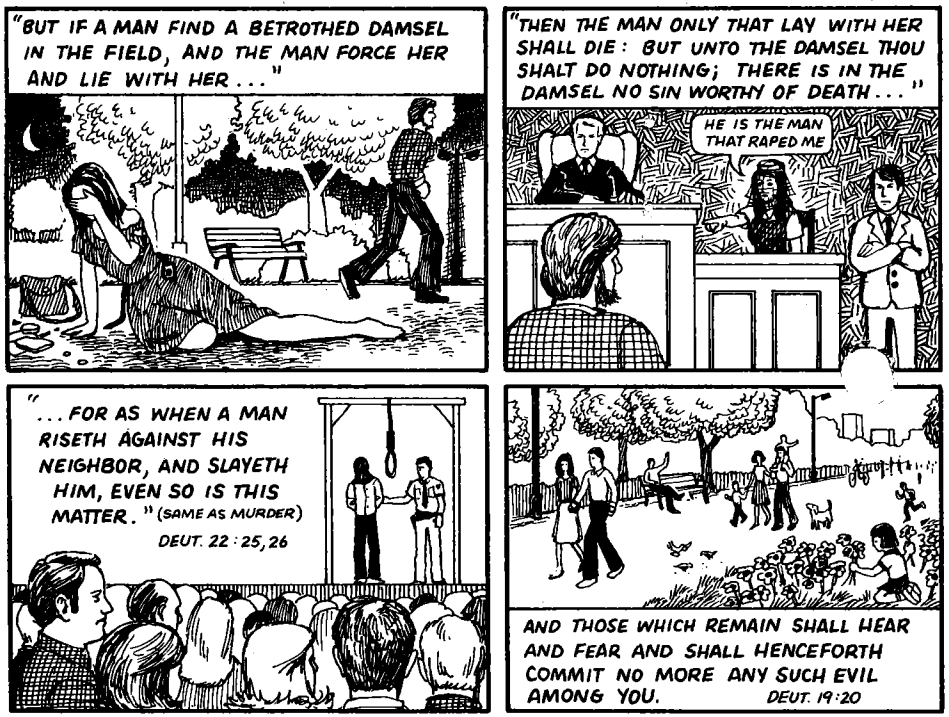
GIL MEYER
P. O. BOX 197
GARIBALDI, ORE. 97118

Man's Law on Rape



Repetition of rape by former rapists is almost certain, as most are mentally defective.

GOD'S LAW ON RAPE



When those who violate God's Laws are punished according to God's Judgments (punishments), the citizens enjoy justice, order, quietness, and peace. God says: "When My judgments are in the earth, the inhabitants of the world will learn righteousness" (Is. 26:9).

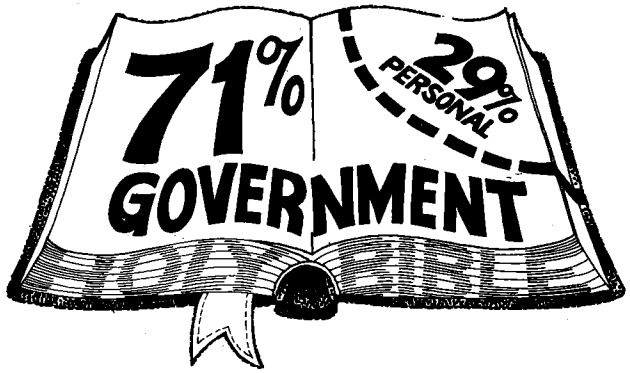
Prepared by LORD'S COVENANT CHURCH, INC., AMERICA'S PROMISE RADIO, BOX 5334, PHOENIX, AZ 85010. Copies, 100 for $3.00 offering, or permission hereby granted to reprint. Write for a free list of other printed material. For an instructive study of Bible Law for America, send a $3.00 offering and ask for the 186-page book: TO HEAL THE NATION.

FOR THE INSTRUCTION OF CIVIL AUTHORITIES

AMERICA MUST TURN TO

God's Law

Demonstrating the correctness and effectiveness of Divine Judgment



DEUTERONOMY 4

5 Behold, I have taught you statutes and judgments, even as the Lord my God commanded me, that ye should do so in the land whither ye go to possess it.

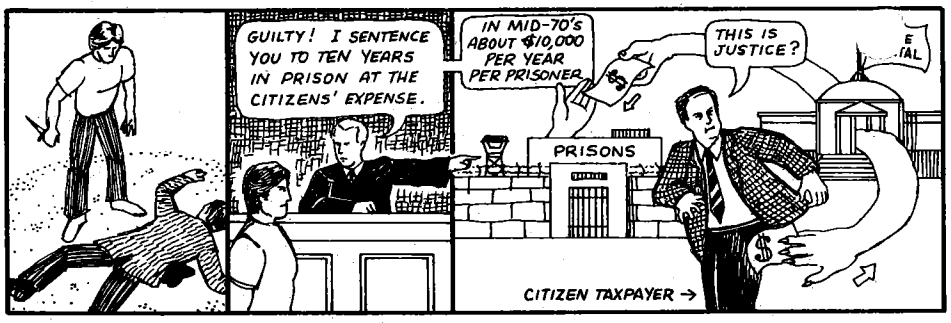
6 Keep therefore and do them; for this is your wisdom and your understanding in the sight of the nations. . .

THE KEY: 2 Chronicles 7:14

"If My People, which are called by My Name (the Christians), shall humble themselves (not humble the enemy), and seek My Face (My Law and My Will), and turn from their wicked ways (turn from their disobedience to My Law); then (after they do all that) will I hear from heaven, and will forgive their sin (their transgression of My Law), and will heal their land."

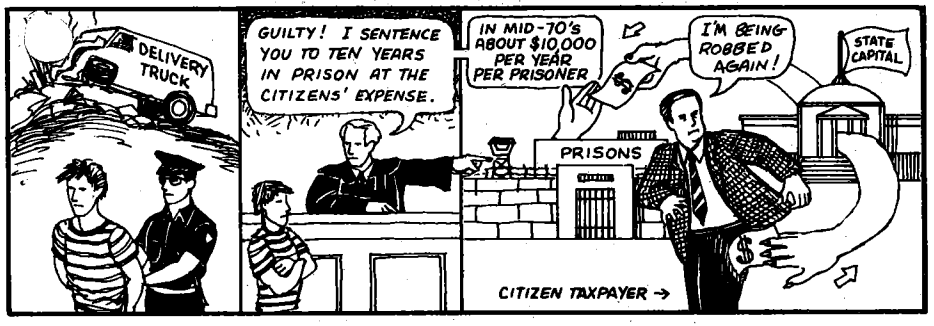
Sin is "the transgression of the Law" (1 John 3:4). To quit sinning, America must turn and obey God's Laws. See inside for examples of our disobedience.

Man's Law on Murder



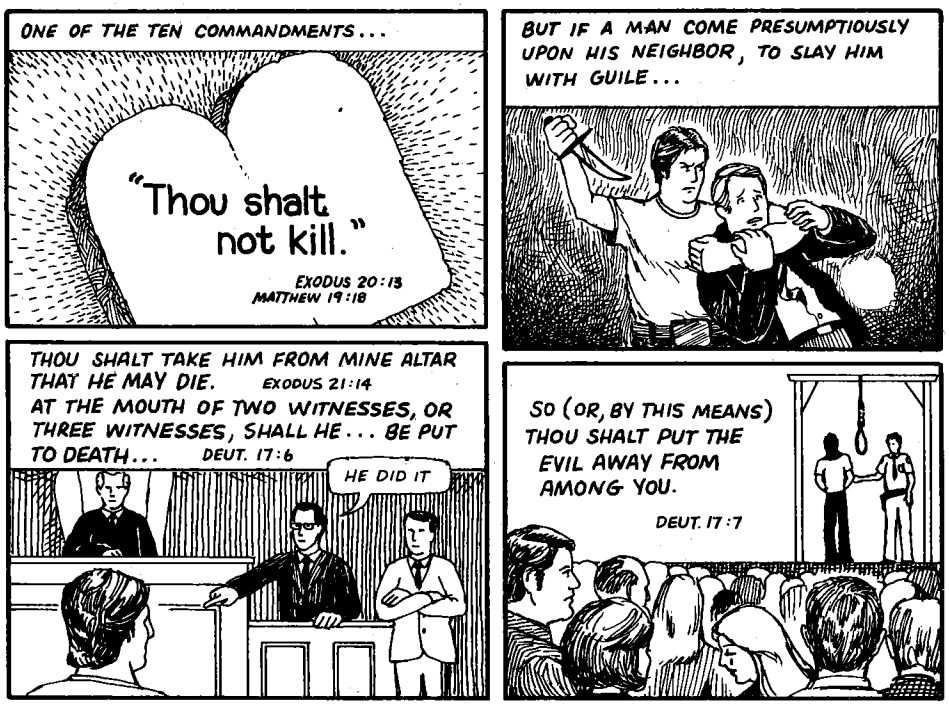
In addition to the money lost to the citizens for feeding murderers, many murderers, upon release, commit robberies and assaults, and some kill again.

Man's Law on Theft



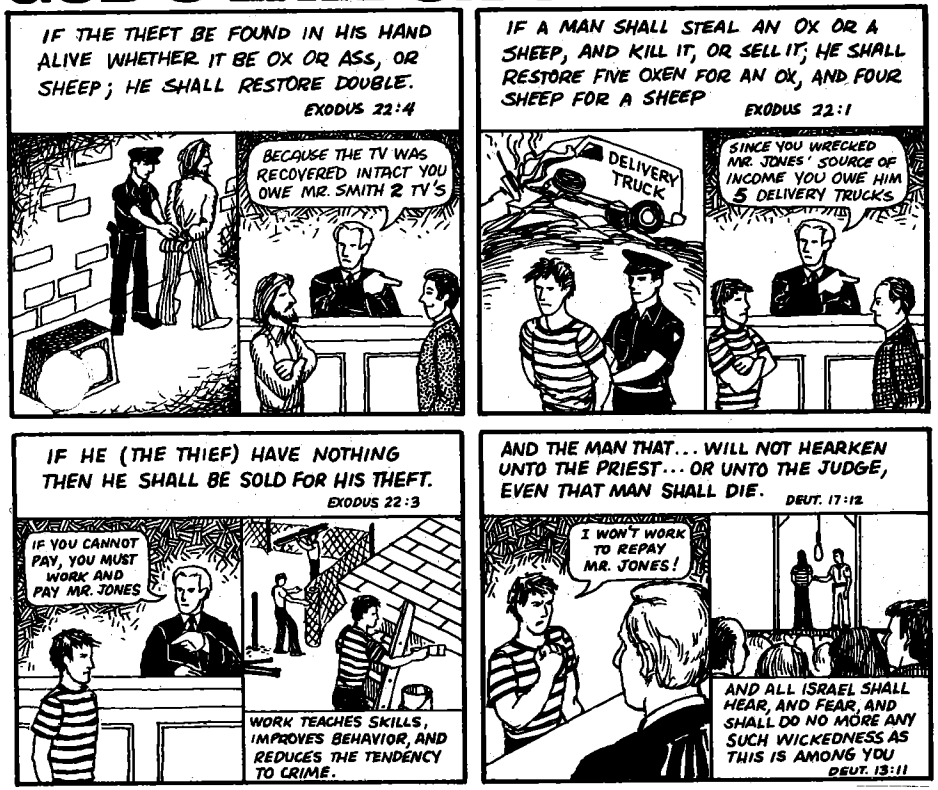
Repetition of the crime of robbery by released thieves is higher than with murderers!

GOD'S LAW ON MURDER



The above is for first degree murder. (This would include aborticide.) Different provisions are made in Bible Law for killing in self-defense, to stop the commission of a crime, for accidental killing, and for killing in war. God requires execution of murderers, because "the blood it defileth the land; and the land cannot be cleansed of the blood that is shed therein, but (except) by the blood of him that shed it." Our refusal to execute murderers has defiled America's land.

GOD'S LAW ON THEFT



Thieves who have been punished according to God's judgments (punishments) rarely steal again, as they have had demonstrated to them that "crime does not pay." At the same time, by this example, others learn not to steal. "When the scorner (or disobedient) is punished, the simple is made wise. . ." Proverbs 21:11. Parents and teachers know that punishing one child for disobedience teaches all the rest not to disobey. Adults react the same way, just as God's Word says.

What Did Abraham Lincoln Say?

"What I would most desire would be the separation of the white and black races."

(Spoken at Springfield, Illinois, July 17, 1858;, **Abraham Lincoln Complete Works**, edited by Nicolay and Hay, published by The Century Company, 1894, Volume I, p. 273.

"I will say, then, that I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races—that I am not, nor ever have been, in favor of making voters or jurors of negroes—nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which will ever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together, there must be the position of superior and inferior, and I, as much as any other man, am in favor of having the superior position assigned to the white race."

(Spoken in sixth joint debate with Senator Douglas at Quincy, Illinois, October 13, 1858), Ibid., pp. 369, 370, 457, and 458.

"Why . . . should the people of your race be colonized, and where? Why should they leave this country? This is, perhaps, the first question for proper consideration. You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong I need not discuss, but this physical difference is a great disadvantage to us both, as I think your race suffer very greatly, many of them by living among us, while ours suffer from your presence. In a word we suffer on each side. If this be admitted, it affords a reason at least why we should be separated.

"It is better for both, therefore, to be separated."

(Spoken to a committee of colored men at the White House, July 14, 1862), The New York Daily Tribune, August 15, 1862, p. 1; New York Semi-Weekly Times, August 15, 1862, p. 5.

ON THE JEFFERSON MEMORIAL: THE TRUTH, BUT NOT THE WHOLE TRUTH

On the Jefferson Memorial in Washington, D.C., Thomas Jefferson is quoted about the negro, "Nothing is more certainly written in the book of fate than that these people are to be free." The rest of his original statement is NOT there, "Nor is it less certain, that the two races, equally free, cannot live in the same government." That is the WHOLE truth!

But they intermarried in Canaan, going *after the heathen that were round about them* (2 Kings 17:8-15, etc.). Because they would not segregate themselves and began to follow the heathens' gods, God removed Israel out of Canaan into the Assyrian captivity before 700 B.C. (2 Kings 17 & 18).

These *dispersed* (Jhn. 7:33-35) were under punishment, but they were also under God's Abrahamic covenant to be multiplied and blessed, so from Assyria they overspread Europe in the centuries before Christ and are the ancestors of the White Race there. (Write for our list of books on this Biblical Truth.)

We are the descendants of those dispersed Israelites and therefore we are Israelites. Our fathers were punished for

What Does the Bible Say?

The first reference to offspring is in the creation record in Genesis 1 in the term *after his kind*. It refers to animals multiplying and seems proof that God made living things to reproduce their OWN KIND. We know robins beget robins, Coho salmon produce Coho salmon, red clover seeds grow into red clover, White humans have White children, Chinese beget Chinese, etc.

THIS DOES NOT HAPPEN when a negro and White mate. Their offspring are "mulatto" or "half-breed," not *after his kind* as written by the Creator-God.

BIBLE ORIGIN OF THE RACES

Adam and Eve were created about 6,000 years ago, according to Bible chronology. Their descendants increased in the "fertile crescent" of Mesopotamia, often called "the cradle of civilization." The White Race obviously descended from them.

All other races are much older, with archeological evidence and histories of tens of thousands of years in other parts of the earth before the White Man appeared in Mesopotamia. They are the humans of Genesis 1:26-28 who were commanded to overspread the earth whereas Adam's offspring began in a geographically limited area. The intelligence and morals of these other peoples are substantially below those of the descendants of Adam and Eve.

Marriages between the Adamites (sons of God) and the pre-Adamites (daughters of men) (Gen. 6:1-2) brought on the Noahic

flood to destroy their mongrel offspring in that area. God saved Noah, who was perfect in his generation [pure Adamic] to continue the Adamic line (Gen. 9).

Intermarriage again corrupted the Race of Adam, and God destroyed their *tower of Babel* because *the people is one* (Gen. 11:6). Their attempt to amalgamate into *one* race (like the integrationists of today) had produced half-breeds who worshipped idols and committed amoral abominations just as the heathen did.

THE ORIGIN OF ISRAEL

Much later God chose Abraham, as he had once chosen Noah, to carry on a pure racial line and produce His Chosen Race.

Abraham knew God's command for racial purity and saw that his son Isaac married in the line of Shem and Heber (Gen. 24). Isaac fathered twin sons, Esau and Jacob. Esau, the first-born, married Canaanite wives (Gen. 26) and his descendants were Edomite-Canaanites (Gen. 36). God caused Esau to the Abrahamic birthright to Jacob; and after Jacob took Leah and Rachel of his own race as wives and had 12 racially pure sons, God then changed his name to Israel, which means "ruling with God."

Jacob-Israel and his sons moved to Egypt under Joseph. Later Moses delivered two million of their offspring to God at Mt. Sinai where God took these White Israelites of the Adamic-Shemite line as His "Chosen People" (Exodus 19).

To retain their racial purity, God gave Israel VERY STRICT COMMANDMENTS AGAINST RACIAL MIXING (Gen. 7, etc.).

mixing with the heathen; and we, too, suffer when our race commits such sins, for God said if Israelites marry non-Israelites *so will the anger of the Lord be kindled against you* (Deut. 7: 4).

If you are still skeptical that God harshly forbids Israel to marry with the heathen, read Numbers 25 where Israel *began to commit whoredom with the daughters of Moab.* God brought a plague upon Israel until Phineas, grandson of Aaron, executed an Israelite in the act of intercourse with a Canaanite woman, and *the plague was stayed from the children of Israel.*

Read Ezra 9, where Ezra heard *the holy seed* [Israel] *have mingled themselves with the people of those lands.* He fell on his knees and said, *O my God, I am ashamed and blush to lift up my face to thee my God: for our iniquities are increased over our head, and our trespass is grown up unto the heavens.* Ezra knew racial intermarriage was the gravest and most terrible sin Israel could commit!

In Proverbs we are told God's Word will keep a man from the *strange woman*. The term means "non-Israelite."

One White girl who married a negro was quoted in CHRISTIAN LIFE as saying her parents opposed her marriage but gave her "no rational arguments." If they (or she) had known their true Adamic-Israelitish origin, there would have been no question but that such interracial marriage is wicked and a sin against God.

CHRISTIAN LIFE magazine approved her marriage and asked, "Can a Christian interracial marriage be successful by Scriptural standards?" The magazine answered, "Yes." (They did not mention her descendants would be "coloreds!")

Most White parents do not know that "Christian" magazines and ministers are telling their children that God "approves" of Whites marrying non-Whites. When a white girl is asked for a date by a negro, she can tell her parents, "Why, Billy Graham says it is alright with Jesus." What can they answer?

If they knew, they could answer that the New Testament calls Esau a *fornicator* in Hebrews 12:16 and that since Esau actually MARRIED his wives (see Gen. 26:34 and 28:8-9), it was not promiscuity that gave him the title of *fornicator*, BUT MARRYING OUTSIDE OF HIS OWN ADAMIC RACE!

A White Israelite descendant of Jacob marrying a negro or other non-Israelite would be a fornicator by the same Scriptural definition. Fornication will keep a person from God's Kingdom (1 Cor. 6:9).

But secret anti-Christs will continue to promote negro-White marriages as they attempt to destroy true Israel; and Jesus warned that such interracial fornication would be widespread at the end of this age. In Matthew 24 He said this age would end *as the days of Noah . . . marrying and giving in marriage.* He meant interracial marriage for we have seen that is what brought on the Noahic flood.

As before Noah and Babel and as in ancient Israel, Adamites' mixing with pre-Adamites always brings in heathen religions, witchcraft, sex perversion, poverty, drugs, and every abomination known to man or God. Any city or nation where the dark, mixed-bloods live is proof of this.

And so the age will close. But God will

reveal Truth to Israel; and as our Race sees the horror of heathen filth and the oppression of our people by non-Whites, the[illegible] will pray, *Spare thy people, O Lord, and give not thine heritage to reproach, that the heathen should rule over them . . .* (Joel 2:17). God will answer and deliver us.

The Prophets wrote of a day when Israel would be separated from ALL heathen races. In the time of great trouble in which this age will close, and the Kingdom age begin, *They shall every man turn to his own people, and flee every one into his own land* (Isa. 13:14 and Jer. 50:16).

In the Old Testament the heathen were called *briers* and *thorns*, and Ezekiel wrote of a time to come when *There shall be no more a pricking brier unto the house of Israel, nor any grieving thorn of all that are around about them* (Ezekiel 28:24).

May the God of Israel shut the mouths of our enemies and the false prophets whose lies deceive our Race and corrupt our children. May God forgive us for our sins and [illegible] trespasses and open the eyes of our People to His Truth, in Jesus Christ,

Pastor Emry

Printed for distribution by

AMERICA'S PROMISE RADIO
P. O. BOX 5334
PHOENIX, ARIZONA 85010

Any number of copies available. Why not distribute them in YOUR neighborhood, church, or school? Our cost about 2¢ each; please send an offering.

Right? or Wrong?

GOD and Lincoln on Negro-White Marriages

Movies, magazines, television, and other media glorify the negro in America and endorse negro-White marriages. People objecting to such integration are called bigots, white racists, or white supremists.

As long ago as 1969, CHRISTIAN LIFE magazine ran articles approving negro-White marriages. BIOLA radio magazine has for years told its readers there is no Scripture against interracial marriage. Billy Graham often repeats his stand: "The Bible does not prohibit people of different races marrying." Other ministers and publications parrot Billy Graham.

With such statements from "religious" sources supplementing secular promotion of race-crossing, White parents often find their children believe God gives approval of Whites marrying other races.

EXHIBIT J
Senate Committee on Justice
6/30/81, AHB 2479
1 page

WITNESS REGISTRATION

Senate Committee on JUSTICE

Date: TUESDAY, JUNE 30, 1981 **Time:** 8:30 a.m. **Room:** 350

Public Hearing on AMENDED HOUSE BILL 2479
Measure No.

Please register if you wish to testify on the above-named measure.

Name and address	Representing	For	Against
Carol Herzog	ACLU		X
MYRON HALL	Ecumenical Ministries		
Neil KAYER	Box 65 - Fairview, Oregon 97024		✓
Roger Martin	Ore. Catholic Conf.	✓	
Owen Harris	9618 N.E. Wygant, Portland 97220 U.S. Constitution		✓
Angel Lopez	Oregon State Bar		
Bob Oliver			

EXHIBIT A
Senate Justice
HB 2479 - 7/7/81 - 8 pages

July 6, 1981

PROPOSED AMENDMENTS HB 2479

On page 1 of the bill as amended delete lines 6 through 8.

On line 17 before the period insert "in an amount not to exceed $5,000".

Delete lines 18 through 23.

B

SB 2479 relating to racial harrassment

1) The Oregon conspiracy statute was substantially altered in 1971. Now, under ORS 161.450 there is no overt act requirement. The state has the burden of proving an agreement between one or more persons to perform the prohibited conduct. see State v. Brewer, 267 Or. 346, 517 P.2d 264 (1973).

2) The Supreme Court of the United States has long recoqnized that the conspiracy can be punished more severly than the intended act of the conspiracy. Clune v. U.S., 159 U.S. 590, 40 L.Ed. 269, 16 S.Ct. 125 (1895). This was most recently reviewed in Ianelli v. U.S., 420 U.S. 770, 43 L.Ed.2d 616, 95 S.Ct. 1284 (1975), Justice Powell writing, the pertinent portions of which are attached. (III A)

334 F.Supp. 1092 (ND Ohio 1971), and United States v. Figueredo, 350 F.Supp. 1031 (MD Fla.1972), rev'd sub nom. United States v. Vaglica, 490 F.2d 799 (CA5 1974), cert. pending, Scaglione v. United States, No. 73–1503, District Courts sustained preliminary motions to dismiss conspiracy indictments in cases in which the prosecution also charged violation of § 1955. In this case, 339 F. Supp. 171 (WD Pa.1972), and in United States v. Kohne, 347 F.Supp. 1178, 1186 (WD Pa.1972), however, the courts held that the Rule's purposes can be served equally effectively by permitting the prosecution to charge both offenses and instructing the jury that a conviction for the substantive offense necessarily precludes conviction for the conspiracy.

Federal courts likewise have disagreed as to the proper application of the recognized "third-party exception," which renders Wharton's Rule inapplicable when the conspiracy involves the cooperation of a greater number of persons than is required for commission of the substantive offense. See Gebardi v. United States, *supra*, 287 U.S., at 122 n. 6, 53 S.Ct., at 37. In the present case, the Third Circuit concluded that the third-party exception permitted prosecution because the conspiracy involved more than the five persons required to commit the substantive offense, 477 F.2d 999, a view shared by the Second Circuit, United States v. Becker, 461 F.2d 230, 234 (1972), vacated and remanded on other grounds, 417 U.S. 903, 94 S.Ct. 2597, 41 L.Ed.2d 208 (1974).[9] The Seventh Circuit reached the opposite result, however, reasoning that since § 1955 also covers gambling activities involving more than five persons, the third-party exception is inapplicable. United States v. Hunter, 478 F.2d 1019, cert. denied, 414 U.S. 857, 94 S.Ct. 162, 38 L.Ed.2d 107 (1973).

The Courts of Appeals are at odds even over the fundamental question whether Wharton's Rule ever applies to a charge for conspiracy to violate § 1955. The Seventh Circuit holds that it does. *Hunter*, *supra*; United States v. Clarke, 500 F.2d 1405 (1974), cert. denied, 420 U.S. 925, 95 S.Ct. 1121, 43 L.Ed.2d 394 (1975). The Fourth and Fifth Circuits, on the other hand, have declared that it does not. United States v. Bobo, 477 F.2d 974 (CA4 1973), cert. pending sub nom. Gray v. United States, No. 73–231; United States v. Pacheco, 489 F.2d 554 (CA5 1974), cert. pending, No. 73–1510.

As this brief description indicates, the history of the application of Wharton's Rule to charges for conspiracy to violate § 1955 fully supports the Fourth Circuit's observation that "rather than being a rule, [it] is a concept, the confines of which have been delineated in widely diverse fashion by the courts." United States v. Bobo, *supra*, 477 F.2d, at 986. With this diversity of views in mind, we turn to an examination of the history and purposes of the Rule.

III

A

[1–3] Traditionally the law has considered conspiracy and the completed substantive offense to be separate crimes. Conspiracy is an inchoate offense, the essence of which is an agreement to commit an unlawful act. See, *e. g.*, United States v. Feola, 420 U.S. 671, 95 S.Ct. 1255, 43 L.Ed.2d 541 (1975); Pinkerton v. United States, 328 U.S. 640, 644, 66 S.Ct. 1180, 1182, 90 L.Ed. 1489 (1946); Braverman v. United States, 317 U.S. 49, 53, 63 S.Ct. 99, 101, 87 L.Ed. 23 (1942).[10] Unlike some

9. This appears to represent a departure from the Second Circuit's earlier view. The conspiracy charge dismissed in United States v. Sager, 49 F.2d 725 (CA2 1931), involved agreements by more than two persons to commit substantive offenses that could have been consummated by only two. In that case, however, the Second Circuit determined that Wharton's Rule precluded indictment for both offenses.

10. The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the

crimes that arise in a single transaction, see Heflin v. United States, 358 U.S. 415, 79 S.Ct. 451, 3 L.Ed.2d 407 (1959); Prince v. United States, 352 U.S. 322, 77 S.Ct. 403, 1 L.Ed.2d 370 (1957), the conspiracy to commit an offense and the subsequent commission of that crime normally do not merge into a single punishable act. Pinkerton v. United States, *supra*, 328 U.S., at 643, 66 S.Ct., at 1181.[11] Thus, it is well recognized that in most cases separate sentences can be imposed for the conspiracy to do an act and for the subsequent accomplishment of that end. *Feola*, *supra*; Callanan v. United States, 364 U.S. 587, 81 S.Ct. 321, 5 L.Ed.2d 312 (1961); *Pinkerton*, *supra*; Carter v. McClaughry, 183 U.S. 365, 22 S.Ct. 181, 46 L.Ed. 236 (1902). Indeed, the Court has even held that the conspiracy can be punished more harshly than the accomplishment of its purpose. Clune v. United States, 159 U.S. 590, 16 S.Ct. 125, 40 L.Ed. 269 (1895).

The consistent rationale of this long line of decisions rests on the very nature of the crime of conspiracy. This Court repeatedly has recognized that a conspiracy poses distinct dangers quite apart from those of the substantive offense.

> "This settled principle derives from the reason of things in dealing with socially reprehensible conduct: collective criminal agreement—partnership in crime—presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality. Group association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked. Combination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed. In sum, the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise." Callanan v. United States, *supra*, 364 U.S., at 593–594, 81 S.Ct., at 325.

As Mr. Justice Jackson, no friend of the law of conspiracy, see Krulewitch v. United States, 336 U.S. 440, 445, 69 S.Ct. 716, 719, 93 L.Ed. 790 (1949) (concurring opinion), observed: "The basic rationale of the law of conspiracy is that a conspiracy may be an evil in itself, independently of any other evil it seeks to accomplish." Dennis v. United States, 341 U.S. 494, 573, 71 S.Ct. 857, 899, 95 L.Ed. 1137 (1951) (concurring opinion). See also United States v. Rabinowich, 238 U.S. 78, 88, 35 S.Ct. 682, 684, 59 L.Ed. 1211 (1915).

B

The historical difference between the conspiracy and its end has led this Court

case. See Direct Sales Co. v. United States, 319 U.S. 703, 711–713, 63 S.Ct. 1265, 1269–1270, 87 L.Ed. 1674 (1943). In some cases reliance on such evidence perhaps has tended to obscure the basic fact that the agreement is the essential evil at which the crime of conspiracy is directed. See Note, Developments in the Law—Criminal Conspiracy, 72 Harv.L.Rev. 920, 933–934 (1959). Nonetheless, agreement remains the essential element of the crime, and serves to distinguish conspiracy from aiding and abetting which, although often based on agreement, does not require proof of that fact, see Pereira v. United States, 347 U.S. 1, 11, 74 S.Ct. 358, 364, 98 L.Ed. 435 (1954), and from other substantive offenses as well. *Id.*, at 11–12, 74 S.Ct. at 364.

11. This was not always the case. Under the early common law, a conspiracy, which was a misdemeanor, was considered to merge into the completed felony that was its object. That rule was based on the significant procedural differences then existing between felony and misdemeanor trials. As the procedural distinctions diminished, the merger concept lost its force and eventually disappeared. See generally Callanan v. United States, 364 U.S. 587, 589–590, 81 S.Ct. 321, 322–323, 5 L.Ed.2d 312 (1961), and sources cited therein.

Argued June 1, affirmed December 20, 1973

STATE OF OREGON, *Respondent, v.* JAMES LEWIS BREWER, *Petitioner.*

517 P2d 264

The Circuit Court, Jackson County, Mitchell A. Karaman, J., found defendant guilty of conspiracy to commit first-degree robbery, and defendant appealed. The Court of Appeals, 12 Or App 105, 504 P.2d 1067, affirmed and petition for review was filed. The Supreme Court, Bryson, J., held that evidence was sufficient to establish defendant's intent to use deadly weapon in commission of robbery.

Affirmed.

Conspiracy—Statute

1. Requirement of overt act has been removed from conspiracy statute. ORS 161.450, 164.415 (a).

Conspiracy—State had burden of proof

2. In prosecution on charge of conspiracy to commit robbery while armed with deadly weapon, state had burden of proving beyond reasonable doubt that defendant and another party conspired and agreed with each other to commit robbery in first degree. ORS 161.450, 164.415 (a).

Conspiracy—Evidence sufficient to sustain conviction

3. As against claim that state failed to show intent to use deadly weapon, evidence in prosecution on charge of conspiracy to commit first-degree robbery was sufficient to sustain conviction of defendant who repeatedly referred to guns in discussing robbery. ORS 161.450, 164.415 (a).

See evidence in prosecution for conspiracy.
16 Am Jur 2d, Conspiracy §§ 34 et seq.
CJS, Conspiracy § 93 (5).

On review from the Court of Appeals.

J. Marvin Kuhn, Deputy Public Defender, Salem, argued the cause for petitioner. With him on the briefs was Gary D. Babcock, Public Defender, Salem.

John W. Osburn, Solicitor General, Salem, argued the cause for respondent. With him on the brief was Lee Johnson, Attorney General, Salem.

Cite as 267 Or. 346

Before O'CONNELL, Chief Justice, and DENECKE, HOLMAN, TONGUE, HOWELL, and BRYSON, Justices.

AFFIRMED.

BRYSON, J.

The defendant Brewer and one Muncey[©] were jointly indicted in Jackson County for conspiracy to commit first degree robbery. ORS 161.450. Defendant waived a jury and was found guilty by the trial court. The Court of Appeals upheld the conviction[©] and we accepted review.

The defendant and Muncey were arrested during the early morning hours of April 15, 1972, in Medford, Oregon. They were subsequently indicted for the crime here involved.

The sole issue raised on review is that "[t]he evidence was not sufficient to prove a conspiracy to commit robbery in the first degree beeause the state did not show an intent to use a deadly weapon in the commission of the alleged crime."

The defendant argues that "[w]hile the defendant would agree with the conclusions of law drawn by the Court [Court of Appeals] regarding the crime of robbery in the first degree, defendant submits that even assuming the state may have proved an agreement and/or intent to commit theft, it did not prove defendant guilty of a conspiracy to commit robbery in the first degree because it failed to show an intent to use a deadly weapon in the commission of the theft." A review of the evidence discloses the following: Defend-

---

© Muncey was found guilty by separate jury trial and the conviction was affirmed on appeal. State v. Muncey, 12 Or App 118, 504 P2d 1052 (1973), *review denied* April 24, 1973.

© State v. Brewer, 12 Or App 105, 504 P2d 1067 (1973).

ant asked an acquaintance, James Pack, if he had a small handgun for sale or trade but did not reveal his intended use of the gun. Pack arranged to have defendant meet with Michael Waltman, an undercover police officer who Pack knew had a gun for exchange. At the meeting with defendant, Waltman mentioned that he had a valuable handgun and defendant replied that he had some shotguns. Defendant and Muncey subsequently met Waltman and discussed "drugs and guns." The defendant testified as follows concerning that conversation:

"Q. Did you talk to him at all about the possibility of armed robbery or anything of that nature?

"A. I told him it wouldn't be hard around here."

By prearrangement, undercover officers Waltman and Fox met defendant and Muncey in the parking lot of the Junction Tavern in Medford. Waltman asked defendant how things had gone. Defendant replied that things had not gone very well and that he and Muncey had entered a store but they could not carry out their "job" because a large number of people were present. Defendant stated he was going to see a man to have him cut down the shotguns because "the guns they had were really too big to be carrying around." At this time the officers observed two shotguns in defendant's car. Officer Fox testified that the defendant "wanted to know if we wanted to buy it [defendant's shotgun] after they were done with it because it was too nice a gun to throw off the bridge or dispose of."

Defendant then told the officers that he and Muncey were planning a "kick-in" of a tavern later that night but that they were concerned about a person who supposedly slept in the tavern. Officer Fox testified that to him the term "kick-in" meant "entering a place

Cite as 267 Or. 346

that was already closed." Defendant indicated to Pack that he had been unable to trade a shotgun to Waltman for a handgun. Pack testified:

"Q. Did you have any other conversation with him at that time regarding any weapons?

"A. Well, Jim [defendant] indicated to me he'd like to get a small hand gun. He said that it wasn't too cool to go walking into a place with a shotgun because everybody would know what was going on."

When the defendant was booked into jail, Officer Steven C. McCartney overheard another officer ask defendant what he and Muncey had been doing driving around Medford. Defendant replied, "We were driving around trying to get our guts up."

James Pack had a conversation with the defendant while he was in jail regarding which Pack testified as follows:

"Q. * * * Do you recall any conversation to the effect that Mr. Brewer indicated he was going to pick off a couple of places for money for the purchase of drugs?

"A. Well, Mr. Brewer didn't indicate to me any specific place. He indicated to me he was planning on obtaining money with a gun, with the weapon.

"Q. Do you recall specifically any words that he used as to how he was going to obtain that money?

"A. I couldn't make an exact quote. I got the impression he was going to knock off a place."

On cross-examination Pack testified:

"A. He [defendant] didn't come right out and say 'I'm going to commit armed robbery.' He said that he was intending on going, said, you know, wanted something a little better for going in and knocking off a place."

The defendant was indicted under ORS 161.450 (1), Oregon Criminal Code of 1971, which states:

"A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony [first degree robbery] or a Class A misdemeanor be performed, he agrees with one or more persons to engage in or cause the performance of such conduct."

The "conduct" sought to be proved by the state in this case was an agreement between defendant and Muncey to commit a robbery while armed with a deadly weapon. ORS 164.415 (a).

The adoption of ORS 161.450 and related sections in the new Criminal Code pertaining to conspiracy constitutes substantial changes from previous Oregon law, ORS 161.320 (repealed 1971). For a discussion of the changes, see Crim. Law Rev. Comm., Proposed Oregon Criminal Code § 59, Commentary (1970); Model Penal Code § 503, Comment (Tent. Draft No. 10, 1960), although Oregon statute departs from Model Penal Code; and Glenn, *Definition of Conspiracy In the Oregon Code: A Unique Approach to the Crime*, 51 Or L Rev 595 (1972).

1. Under the new statute, the requirement of an overt act has been removed. The Criminal Law Revision Committee explained the reason for removing the overt act requirement as follows:

"The gravamen of a conspiracy is recognized as the combination, the coming together of two or more persons which may greatly increase the chance that the substantive crime contemplated will be consummated. The comment in the Michigan proposed code is appropriate here as to the efficacy of the overt act requirement:

" 'The Committee could find no value in adding such a requirement, particularly since the insignificance of the acts that will meet the requirement render it almost meaningless.' (Comment to § 1015, 99 (1967))."

See also, *Developments in the Law—Criminal Conspiracy*, 72 Harv L Rev 920, 945-49 (1959).

2. The Court of Appeals held that the state was required to prove that defendant had intended to use a deadly weapon. The basis for its holding is as follows:

"* * * For, '[u]nder any rationale of the crime, it is certain that conspiracy to commit a particular substantive offense cannot exist without *at least* the degree of criminal intent necessary for the substantive offense itself * * *.' Developments in the Law—Criminal Conspiracy, 72 Harv L Rev 920, 939 (1959). *See also,* Model Penal Code, Tent. Draft No. 10, § 5.03, at 109." (Emphasis theirs.) 12 Or App at 108.

We agree with this statement of the law. The state had the burden of proving beyond a reasonable doubt, as alleged in the indictment, that defendant and Muncey conspired and agreed with each other to commit robbery in the first degree.

The petitioner does not argue the merits of the conspiracy statute but contends that the state "did not prove defendant guilty of a conspiracy to commit robbery in the first degree because it failed to show an intent to use a deadly weapon in the commission of the theft."

This court has the difficult task of determining whether the inferences that can be drawn from the evidence are sufficiently reasonable to amount to proof beyond a reasonable doubt that defendant and Muncey conspired to commit theft while armed with a deadly weapon.

In *State v. Russell*, 252 Or 630, 632, 451 P2d 858 (1969), the only assignment of error was defendant's contention that there was insufficient evidence to prove his intent. We stated, "The evidence of intent was circumstantial. The jury was entitled to draw all reasonable inferences that were capable of being made from the circumstances. *State v. Zauner*, 250 Or 105, 441 P2d 85 (1968); *State v. Harris*, 241 Or 224, 231, 405 P2d 492 (1965). * * *"

As previously set forth, defendant first asked his acquaintance, Pack, if he had a small handgun for sale. Pack arranged for defendant to meet with undercover Officer Waltman. Defendant Brewer, Muncey, and Waltman discussed armed robbery and defendant stated, "I told him it wouldn't be hard around here." Defendant had two shotguns and shells in his car. After the aborted robbery at the store, defendant was trying to get a smaller gun. He told Pack "* * * it wasn't too cool to go walking into a place with a shotgun because everybody would know what was going on." Defendant subsequently altered and shortened the barrel of one shotgun, which was in his car when apprehended. When defendant was booked into jail he was asked why he and Muncey were driving around Medford, and defendant replied, "We were driving around trying to get our guts up." Defendant also indicated to Pack that he (defendant) was planning on obtaining money with a gun. Pack got the impression that defendant "was going to knock off a place."

3. From this evidence and the entire record, we conclude there is evidence from which reasonable inferences can be drawn to prove that defendant conspired with Muncey to commit theft while armed with a deadly weapon.

Affirmed.

Argued June 6, affirmed December 20, 1973, petition for rehearing denied January 22, 1974

KIRSCHBAUM, *Respondent*, *v.* ABRAHAM, *Appellant.*

517 P2d 272

Defendant brought mandamus proceeding in circuit court to compel district court to appoint attorney to represent him. The Circuit Court, Multnomah County, William M. Dale, J., issued the writ and district court judge appealed. The Supreme Court, McAllister, J., held that where district court judge had twice refused to appoint an attorney for the defendant, he had determined the matter so that it was not error for circuit court to issue a writ; that testimony did not require circuit court to find that attorney would have represented defendant at a fee he could afford; that district court judge had applied impermissible standard in determining defendant's rights; and that where judge stated at hearing on mandamus that, on the basis of evidence adduced at the hearing, he still would not appoint counsel for defendant, it was proper for circuit court to issue writ of mandamus without remanding for evidentiary hearing.

Affirmed.

Denecke, J., concurred specially and filed an opinion in which O'Connell, C. J., concurred.

Mandamus—Refusal to appoint attorney

1. Where district judge had twice refused to appoint an attorney to represent defendant, district court had exercised its discretion and determined the matter so that circuit court could issue a peremptory writ of mandamus dictating how the district court should decide the matter.

Mandamus—Testimony did not require finding attorney would have represented defendant

2. Testimony by attorney who had been contacted by defendant, who was seeking court-appointed attorney, that he had offered to work out a payment arrangement but had not gone into specifics did not require a finding, as a matter of law, that attorney would have represented defendant at a fee that defendant could pay.

Criminal law—Right to counsel—Court applied impermissible standard

3. Where court had not held hearing to determine if defendant was in fact destitute and where refusal to appoint attorney for defendant was based on letter from defendant, written to another judge, stating that defendant was clearing $76 a week and on fact that defendant had deposited cash bail of $305, court had applied