DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

UNITED STATES ATTORNEY'S OFFICE

MEMORANDUM

July 22, 1963

TO : DAVID C. ACHESON
United States Attorney

THRU: TIM MURPHY
Chief, D. C. Court of General Sessions
Division

FROM: DONALD HIRSCH
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SUBJ: Construction and Constitutionality of the Statutes Governing the Protection of the United States Capitol Grounds

CONTENTS

I. THE CAPITOL GROUNDS AND THE STATUTES PROTECTING THEM

The United States Capitol Grounds are defined by § 1 of the Act of July 31, 1946, 60 Stat. 718, 40 U.S.C. § 193a, as those so delineated on a 1946 map approved by the Architect of the Capitol. (Tab A.) They have been further enlarged by subsequent legislation.[1/]

The protection of the Grounds, and of the buildings themselves, is primarily governed by four statutes:

1. An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes, 60 Stat. 718 (1946).

This has been classified to Title 40 of the United States Code as §§ 193a-m and §§ 212a, b; and to the District of Columbia Code as § 9-118-132. For convenience of reference, the U.S.C. numeration will be used throughout. The 1946 Act is central to the four, and is analyzed in some detail infra. The Act does not apply inside the Capitol, or the office buildings. § 193m.

2. Section 15, of the Act of July 29, 1892, 27 Stat. 325, 40 U.S.C. § 101, which extends "to all public buildings and public grounds belonging to the United States within the District of Columbia" the laws and regulations within the District "for the protection of public or private property and the preservation of peace and order". This act was preserved by a saving provision, § 16(b)(3), of the 1946 act, but was subjected to the limitation, inter alia, that the Metropolitan

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1/ Second Deficiency Appropriation Act, 1948, 62 Stat. 1027, 1029 (New Senate Office Building); Second Supplemental Appropriation Act, 1955, § 1202, 69 Stat. 41 (additional House Office Building); Act, May 29, 1953, § 1, 72 Stat. 143 (miscellaneous lots west of New Senate Office Building); Act, August 6, 1958, § 1, 72 Stat. 495 (miscellaneous lots in square of New Senate Office Building).

Police force may make arrests "in response to complaints", or serve warrants, within the Capitol and office buildings only with the consent of the Capitol Police Board.

3. Act of April 29, 1876, 19 Stat. 41, 40 U.S.C. § 214, which states that "it shall be the duty of the Capitol police hereafter to prevent any portion of the Capitol Grounds and terraces from being used as playgrounds or otherwise, so far as may be necessary to protect the public property, turf, and grass from destruction or injury." This act was also preserved by § 16(b) of the 1946 act. It may have been the statute relied upon, as well as the predecessor of the 1946 act, for the 1894 arrests of the leaders of General Coxey's march on Washington. No penalty is provided, but see 40 U.S.C. § 193b: "Public travel in and occupancy of said United States Capitol Grounds shall be restricted to the roads, walks, and places prepared for that purpose by flagging, paving, or otherwise", with penalties prescribed under § 193h, discussed infra.

4. R.S. 1820, 40 U.S.C. § 193, originally enacted in 1867 as part of an act dealing with additional watchmen for the Capitol. Cong. Globe, 40th Cong., 1st Sess., p. 463. It provides that "The Sergeants at Arms of the Senate and of the House of Representatives are authorized to make such regulations as they may deem necessary for preserving the peace and securing the Capitol from defacement, and for the protection of the public property therein, and they shall have power to arrest and detain any person violating such regulations, until such

person can be brought before the proper authorities for trial." No penalty is prescribed.[2/] The statute is significant because regulations issued under it could provide a clear procedure to be followed in the event that municipal police are needed to assist Capitol Police inside the Capitol or other buildings on the Grounds. (See, also, § 106, 60 Stat. 408 (1946), 40 U.S.C. § 213a in regard to use of Capitol Police on Capitol Grounds.) This is discussed infra. I am informed by Mr. William S. Cheatham, Administrative Assistant to the Sergeant at Arms of the Senate that no regulations are now in force under R.S. 1820.

2/ The total discussion of this provision in both houses was the statement of Mr. Woodbridge of the House Committee on the Judiciary, the 1867 equivalent of the bill's floor manager, who observed, "This is a very important power to be exercised by our police, if they are to be effective as police, in preserving the Capitol from defacement and the grounds from injury." Cong. Globe, 40th Cong., 1st Sess., p. 366. No report was filed in either house.

For the progress of this statute through the Congress, see the cited Congressional Globe at pp. 299 (introduced as H.R. 79 and referred to Committee on the Judiciary), 366 (passed House), 351 (reported to Senate), 360 (referred to Committee on Appropriations), 394 (returned for correction to House), 395 (corrected and returned to Senate), 414 (reported to Senate by Committee without amendment), 455 (passed Senate with floor amendment not relating to § 2), 461 (amendment concurred in by House), 463 (signed by President, March 30, 1867). Section 2 was enacted by the 43d Congress on June 22, 1874, as § 1820 of the Revised Statutes. The historical note of the U.S.C.A. deriving R.S. § 1820, in part, from the Act of April 29, 1876, c. 86, 19 Stat. 41, is in error. The 1876 act appears in its entirety as 40 U.S.C. § 214, and is not related to the 1867 act.

On July 5, 1867, the House passed a concurrent resolution requesting that a joint select committee be appointed to inquire into the manner in which the 1867 act had been executed. Cong. Globe, supra, p. 504. The Senate refused to consider the resolution for procedural reasons. p. 508. There was no indication as to the precipitating cause of the resolution.

II. CONSTRUCTION AND CONSTITUTIONALITY OF 40 U.S.C. § 193f (PROHIBITING ANY HARANGUE OR ORATION ON THE CAPITOL GROUNDS), AND § 193g (PROHIBITING PARADES AND THE DISPLAY OF BANNERS OR DEVICES ON THE CAPITOL GROUNDS

A. Preliminary considerations and summary of conclusions

> "Congress shall make no law respecting an establishment of religion; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Two provisions of the 1946 act, supra at part I-1, are open to question under the quoted Amendment. Section 193f of Title 40 provides:

> "It is forbidden to discharge any firearm, firework or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language in said United States Capitol Grounds." (Emphasis supplied; 1962 amendment permitting the use of certain construction tools, 76 Stat. 307, omitted.)

Section 193g provides:

> "It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in sections 193j and 193k of this title."

Section 193j relates to the suspension of prohibitions against use of the Grounds by concurrent action of the President of the Senate and the Speaker of the House of Representatives for "proper occasions"; § 193k relates, inter alia, to the authority of the Capitol Police Board to grant the District Commissioners authority to permit the use of Louisiana Avenue for purposes otherwise prohibited by § 193g.

A third provision, § 193d, which forbids the offering for sale of any article on the Grounds, also prohibits the display of "any sign, placard, or other form of advertisement therein." This seems plainly to relate to the exhibition of commercial matter, and therefore, under Valentine v. Chrestensen, 316 U.S. 52 (1941), does not offend against the Amendment. ("We are equally clear that the Constitution imposes no [First Amendment] restraint on government as respects purely commercial advertising." 316 U.S. at 54.)

The prohibition against any harangue or oration on the Capitol Grounds presents the most difficult of the problems considered in this part. For reasons discussed below, the statute is probably not invalid on its face. Nevertheless, it will be difficult to apply in a manner comporting with the line drawn by the body of constitutional law relating to the First Amendment, and to the First Amendment freedoms held by DeJonge v. Oregon, 299 U.S. 353 (1937), to be incorporated in the guarantees of the Fourteenth Amendment. Following a consideration of the legislative history of the statute in section B of this part, and its validity in section C, we attempt its construction in section D.

The prohibition against parades, processions, and the display of banners seems to present no special problems of construction. However, as we conclude in section E of this part, it almost certainly cannot survive Edwards v. South Carolina, _____ U.S. _____, 83 S.Ct. 680 (1963), discussed infra.

B. Legislative history of 40 U.S.C. § 193a-m

The "Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes," 60 Stat. 718 (1946), now classified to Title 40 of the United States Code as §§ 193a-m and §§ 212a, b, had its inception in the Act of July 1, 1882, 22 Stat. 126, whose provisions were incorporated in the later enactment with one significant change, discussed in part III of this memorandum, relating to the enforcement of the penalty provision, § 193h. See Sen. Rep. No. 1709, 79th Cong., 2d Sess., p. 3. 3/

3/ The 1946 act was passed without discussion in either house, except for the reading and adoption of committee amendments in the Senate. 92 Cong. Rec. 9212-9214, 10017-10018, 79th Cong., 2d Sess. The committee reports - H.R. 2550, and S.R. 1709, 79th Cong., 2d Sess. - are silent on the interpretation of § 193f and g, and do not discuss constitutional issues.

The 1946 act also specifically provided the Capitol Police Board with power to make and enforce traffic regulations, violations of which are prosecuted by the Corporation Counsel. These were, in fact, promulgated in 1949, and revised in 1953. "Traffic and Motor Vehicle Regulations for the United States Capitol Grounds", Effective June 16, 1953.

The legislative history of the 1882 act contains, so far as I have been able to determine, only one reference - although a significant one - to the purpose of the statute.[4/] Senator Morrill, who was managing the bill for the committee, stated on the floor:

> "The Committee on Public Buildings and Grounds have been informed that there is no law by which the police court here can punish the various offenses named in this bill. Constant damage is committed on the Capitol, pieces of the bronze doors are stolen, ink is strewed from the bottom to the top of stairs, plants are stolen from the grounds in large numbers, shrubs and trees are injured. There is no power on the part of the judge of the police court to inflict any penalty, as he understands the law. These rules and regulations have been very carefully prepared, submitted to competent judicial authority, and I believe there can be no objection to giving the police court some chance to prevent the constant mutilation of the Capitol and of the trees and shrubs and grounds around about it." 13 Cong. Rec. 1949.

Senator Morrill's statement of the purpose of the law is substantially supported by the internal evidence of the law, itself. The preamble declared:

> "Whereas the Capitol Grounds have been formed to subserve the quiet and dignity of the Capitol of the United States, and to prevent the occurrence near it of such disturbances as are incident to the ordinary use of public streets and places: Therefore the following statute for the regulation of the public use of said grounds is hereby enacted:" 22 Stat. 126 (1882).

All of the six sections of the act that dealt with substantive offenses, including the prohibition against parades, were plainly related either to the protection of the grounds from

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4/ The act, in bill form, was introduced on January 11, 1882, as S. 789, by the Senate Committee on Public Buildings and Grounds, in the first session of the 47th Congress. 13 Cong. Rec. 346. It was recommitted to the committee and was reported to the Senate on January 30. 13 Cong. Rec. 703. It passed the Senate on March 16. 13 Cong. Rec. 1949. The bill was called up in the House on June 26, read, and passed without discussion. 13 Cong. Rec. 5357. It was approved on July 1, 1882. 13 Cong. Rec. 5578. No committee reports appear to have been filed. Sections 881 to 890 of the Act of March 3, 1901, 31 Stat. 1333, inserted the 1832 act into the code then governing the District of Columbia.

abuse, or to the preservation of a decorum thought suitable to the nation's capitol.[5/] This is apparent in the language of § 193f (§ 5 of the 1882 act). The prohibition against any "harangue or oration" is set in the midst of a prohibition against discharging firearms, fireworks, or explosives; and a prohibition against the use of loud, threatening, or abusive language.

There appear to be no reported decisions construing §§ 193f, g, or its predecessors. Interestingly enough, in 1949, the language under consideration was adopted, with minor conforming and clarifying changes, for the protection of the Supreme Court Building and grounds, upon its proposal by Mr. Waggaman, the Marshal of the Court. An act relating to the policing of the building and grounds of the Supreme Court of the United States, 63 Stat. 616 (1949), 40 U.S.C. § 13f et seq. "A bill accordingly was drawn at Mr. Waggaman's request by Mr. Perley, legislative counsel of the House of Representatives, modeled upon the Capitol Police legislation. It was then submitted to the Court for its approval, which approval

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5/ "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That public travel in and occupancy of the Capitol Grounds shall be restricted to the roads, walks, and places prepared for the purpose by flagging, paving, or otherwise.

Sec. 2. That it is forbidden to occupy the roads in such manner as to obstruct or hinder their proper use, to drive violently upon them, or with animals not under perfect control, or to use them for the conveyance of goods or merchandise, except to or from the Capitol on Government service.

Sec. 3. That it is forbidden to offer or expose any article for sale; to display any sign, placard, or other form of advertisement; to solicit fares, alms, subscriptions, or contributions.

Sec. 4. That it is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, or other erection, or any tree, shrub, plant, or turf.

Sec. 5. That it is forbidden to discharge any firearm, firework, or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language.

Sec. 6. That it is forbidden to parade, stand, or move in processions or assemblages, or display any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement."

was given subject to certain suggested changes." H.Rep. 814, 81st Cong., p. 2. [6/]

It would be dangerous to read a constitutional judgment into the Court's "approval," at least insofar as the Capitol Grounds legislation is concerned. Indeed, in footnote 8 of his dissent in Kunz v. New York, 340 U.S. 290, 309 (1951), Justice Jackson characterized the provisions paralleling §§ 193f, g, and j, as follows:

> "Here is exalted artistry in declaring crime without definitive and authorizing permits without standards for use of public property for speaking. Of course, the statute would not be reported by the Judiciary Committees without at least informal approval of the Justices. The contrast between the standards set up for cities and those for ourselves suggests that our theorizing may be imposing burdens upon municipal authorities which are impossible or at least impractical to comply with."

Inasmuch as Justice Jackson would most likely have validated the statute, his ironic characterization of it, in dissent, should not be taken very seriously.

In any event, apart from the fact that a case was not before it, the Court might well apply standards to conduct in or around a court building that differ materially from those it would find applicable to similar conduct in the vicinity of a legislature. See, for example, Justice Frankfurter's dissent in Bridges v. California, 314 U.S. 252 (1941) ("A trial is not a 'free trade in ideas', nor is the best test of truth in a

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6/ The proposal, introduced as H.R. 4948, 81st Cong., came up on the Consent Calendar in the House on June 20, 1949, but was passed over. 95 Cong. Rec. 7958. It was again brought up on the Consent Calendar on July 6, and passed after a brief statement of the sponsor. 95 Cong. Rec. 8962. The bill passed the Senate without discussion, on August 9, 95 Cong. Rec. 11043, and was approved August 18, 1949. No cases have been reported under it. A similar statute, enacted by the same Congress, protects the Library of Congress. An Act Relating to the policing of the buildings and grounds of the Library of Congress, 64 Stat. 411 (1950), 2 U.S.C. § 167 et seq. No cases reported.

courtroom 'the power of the thought to get itself accepted in the competition of the market'." at 283.)

In this regard, it must be remembered that the Supreme Court enactment applies inside the Court; the Capitol Grounds statute does not apply inside the Capitol or the buildings on the grounds. Moreover, the grounds of the Court, unlike those of the Capitol, are comparatively exiguous. Any substantial demonstration on its grounds might well interfere directly with the Court's work (although, it should be pointed out, the prohibitions are not limited to periods during which the Court is in session).

C. Validity of the prohibition against any harangue or oration on the Capitol Grounds in light of the First Amendment

The legislative history and language of 40 U.S.C. § 193f are persuasive that, in prohibiting any harangue or oration on the Capitol Grounds, except as the prohibition may be suspended under § 193j, the Congress was concerned with preventing damage to the Grounds and buildings, and with maintaining what was felt to be a decorum appropriate to the nation's capitol. That the federal government has constitutional authority to take suitable measures to achieve these ends cannot be seriously questioned in view of its powers under Article I, section 8, of the Constitution to legislate for the District, and to make all laws which shall be necessary and proper for carrying its constitutional powers into execution. See, for example, Frend v. United States, 100 F.2d 691 (D. C. Cir. 1938) (Congressional power to protect embassies in the District of Columbia.)

Were First Amendment freedoms not called into question, the sole test of the validity of a statute exercising this undoubted authority, from the standpoint of due process, would be the

reasonableness of the relationship between the questioned law and the proper legislative purpose under Fifth Amendment standards.

> "If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio." Nobbia v. New York, 291 U.S. 502, 537 (1934) (Due process clause of Fourteenth Amendment construed in case not involving First Amendment freedoms.)

Arguably, at least, the Congress would not exceed the constitutional boundaries if, under a suitable law, it chose to protect the Capitol Grounds by fencing them off (as the White House grounds have been fenced), excluding the public altogether, and continuing to accept petitions and memorials under Rule XXII of the House and Rule VII, clauses 4 and 5, of the Senate. Compare, for example, Kovacs v. Cooper, 336 U.S. 77 (1949), which upheld a city ordinance prohibiting the use of sound trucks on public streets, with Saia v. New York, 334 U.S. 558 (1948), which struck down an ordinance permitting the use of such trucks, but only upon license from the Chief of Police.

But the Congressional choice has been to admit the public to the Grounds. And as the Court observed in Marsh v. Alabama, 326 U.S. 501, 506 (1946), in reversing the trespass conviction of a Jehovah's Witness who distributed religious literature in a company-owned town, and refused to leave upon request:

> "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional right of those who use it."

That the government may be the owner of the property does not, a fortiori, relax this rule. Tucker v. Texas, 326 U.S. 517

(1946).[7] As the Court pointed out in Jamison v. Texas, 318 U.S. 416 (1942), quoting the Roberts opinion in Hague v. C.I.O., 307 U.S. 496 (1939):

> "[O]ne who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion."

This background is helpful in understanding Edwards v. South Carolina, _____ U.S. _____, 83 S.Ct. 680 (1963), the most recent expression of the Court in the area of freedom of speech on public ground. The petitioners in that case were 187 Negro high school and college students who had marched to the State House grounds to submit a peaceful protest against the "discriminatory actions against Negroes", and to request the repeal of discriminatory laws. 83 S.Ct. at 681. They were admitted to the grounds, which were open to the public. After a demonstration lasting between 30 and 45 minutes, limited, at this point, to the carrying of placards and signs of protest through the grounds, police authorities advised the petitioners to disperse within 15 minutes. Petitioners then listened to a "religious harangue", sang songs, clapped their hands, and refused to leave. 83 S.Ct. at 682. They were arrested for disorderly conduct and convicted in the state court. The South Carolina Supreme Court affirmed the convictions.

In an opinion by Mr. Justice Stewart, the United States Supreme Court reversed, finding the South Carolina breach of peace law so vague and indefinite, on its face and as construed,

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7/ The Tucker case was similar to Marsh, except that it involved a town owned by the federal government. Of interest is the Court's observation, "True, under certain circumstances, it might be proper for security reasons to isolate the inhabitants of a settlement, such as Hondo Village, which houses workers engaged in producing war materials. But no such necessity and no such intention on the part of Congress or the Public Housing Authority are shown here." 326 U.S. at 520.

as to prohibit the fair use of the constitutional opportunity for free political discussion.

> "The circumstances in this case reflect an exercise of these basic constitutional rights [First Amendment freedoms protected by Fourteenth Amendment] in their most pristine and classic form. The petitioners felt aggrieved by laws of South Carolina which allegedly 'prohibited Negro privileges in this State'. They peaceably assembled at the site of the State Government and there peaceably expressed their grievances 'to the citizens of South Carolina, along with the Legislative Bodies of South Carolina.' Not until they were told by police officials that they must disperse on pain of arrest did they do more. Even then, they but sang patriotic and religious songs after one of their leaders had delivered a 'religious harangue'. There was no violence or threat of violence on their part, or on the part of any member of the crowd watching them. Police protection was 'ample'." 83 S.Ct. 683-684.

The Court reiterated the language of Terminiello v. Chicago, 337 U.S. 1 (1949), that "freedom of speech, ... is ... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." 83 S.Ct. at 684.

The lone dissenter, Justice Clark, rested his opinion primarily on the facts of the record suggesting that the danger of serious disturbance or riot was imminent. On the facts as he saw them, the doctrine of Feiner v. New York, 340 U.S. 315 (1951), also expressed as dicta in Cantwell v. Connecticut, 310 U.S. 296 (1940), should have controlled. This doctrine is summed up in the observation of Cantwell that "when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious." 310 U.S. at 308.

Of especial significance to this analysis, however, is one observation of the opinion of the Court:

> "We do not review in this case criminal convictions resulting from the even-handed application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case ... These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not suscentible of exact definition.' And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." 83 S.Ct. at 684. 8/

This language should leave ample room for upholding the validity of § 1931, at least insofar as its prohibition against orations and harangues may be read to apply to speeches that are a clear and present danger to public order. Feiner v. New York, supra. The general intent of the statute cannot be fairly analogized to the law prohibiting the distribution of literature without a license, which was struck down in Lovell v. City of Griffin, 303 U.S. 444 (1938), because

> "it is not limited to ways which might be regarded as inconsistent with the maintenance of public order or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets." 303 U.S. at 451.

8/ Before the Edwards opinion was handed down, the South Carolina Supreme Court affirmed the conviction of 65 Negroes under the common law offense of breach of peace. The defendants had been engaged in singing patriotic and religious songs in front of City Hall in a manner alleged to be so boisterous as to disrupt the work of city officials. City of Rock Hill v. Henry, ____ S.C. _____, 128 S.E. 2d 775 (1962). Petition for certiorari was filed on March 28, 1963, but was not acted upon before adjournment. 31 Law Week 3367. It will be instructive to see whether the Court will follow the logic of Edwards, and hold that no common law offense of breach of the peace exists in South Carolina, regardless of circumstances.

Nor is the prohibition against any harangue or oration a part of a statute "purporting to license the dissemination of ideas," Thornhill v. Alabama, 310 U.S. 88, 97 (1940). Furthermore, we believe that the plain purport of the statute's context would save it from the objection - one of due process - that, like the law in the Edwards case, and in Winters v. New York, 333 U.S. 507 (1948), its prohibitions are vague and indefinite.

A statute such as § 193f was upheld in Davis v. Massachusetts, 167 U.S. 43 (1897), the most notable of the older decisions in this area:

> "No person shall, in or upon any of the public grounds, make any public address, discharge any cannon or firearm, expose for sale any goods, wares or merchandise, erect or maintain any booth, stand, tent, or apparatus for the purposes of public amusement or show, except in accordance with a permit from the mayor."

The statute had been upheld by the Massachusetts Supreme Judicial Court in an opinion by Holmes. The reasoning of that opinion was adopted in a unanimous opinion by the Supreme Court:

> "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in the house. When no proprietary right interferes the legislation may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the less step of limiting the public use to certain purposes." 167 U.S. at 47.

Although Davis has not been overruled, it would be perilous to rely heavily on it. It was distinguished in Hague v. C.I.O., 307 U.S. 496 (1939), which affirmed the lower court's invalidation of an ordinance of the Jersey City Board of

Commissioners giving the Director of Public Safety licensing authority over parades and public assemblies, but directing that a permit be refused only for the purpose of preventing riots, disturbances, or disorderly assemblage. The evidence showed, however, that the ordinance was being administered in a discriminatory manner. In distinguishing Davis, the Roberts opinion (there was no opinion of the Court) stated:

> "The ordinance there in question apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respect their enjoyment in parks. In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks.
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> "We have no occasion to determine whether, on the facts disclosed, the Davis case was rightly decided, but we cannot agree that it rules the instant case. Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." 307 U.S. at 515-516.

This approach seems valid today (apart from the attempt of the opinion to rest First Amendment freedoms on the Privileges and Immunities Clause, rather than the Due Process Clause of the Fourteenth Amendment. See Bridges v. California, 314 U.S. 252 (1941) (involving both an alien and a corporation)).

While it substantially limits the rationale of Davis, it strongly suggests that a Davis type statute - which § 193f clearly is - would be upheld in a proper case. See Justice Frankfurter's effort to reconcile Hague and Davis in his concurring opinion in Niemotko v. Maryland, 340 U S. 268, 279 (1951).

D. Construction of the phrase "harangue or oration"

In the absence of any showing of a more restrictive intent, it is fair to construe the phrase of § 193f, "harangue or oration" as reaching to the uttermost boundary of the constitutionally permissible. It must be construed to bar speeches that are a clear and present danger to public order, i.e., an incitement to riot. Feiner v. New York, supra. It bars, also, speeches that are mere vituperation, Rockwell v. District of Columbia, 172 A.2d 549 (Mun. App. 1961), class slander, Beauharnais v. Illinois, 343 U.S. 250 (1952), or consisting of language universally understood to be profane or blasphemous and calculated to insult. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). The speeches involved in the last three cited cases have been treated as falling outside the guarantees of the First Amendment, and therefore no showing of the clear and present danger of a substantial evil should be necessary to bar them. But see Kunz v. New York, 340 U.S. 290 (1951).

Similarly, the prohibition of § 193f extends, with undoubted constitutionality, to harangues or orations which obstruct traffic, incommode the sidewalks, or otherwise obstruct entrance to, or egress from, any of the Capitol Buildings. Scott v. District of Columbia, 184 A.2d 849 (Mun. App. 1962) (upholding breach of peace conviction of a "ban the bomb" group that refused to move from the northwest

gate of the White House; no showing of impending breach required). As the Court, speaking through Chief Justice Hughes, held in Cox v. New Hampshire, 312 U.S. 569, 574 (1941):

> "Where a restriction of the use of highways ... is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection ... the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places."

Inasmuch as this case validated the application of a statute requiring a license for the conduct of parades or processions, it will be considered more fully in the next section of the discussion.

Amplified sound, at least when it amounts to a public nuisance, can be prohibited under Kovacs v. Cooper, 336 U.S. 77 (1949); Saia v. New York, 334 U.S. 558 (1948), to the contrary notwithstanding.

Where an utterance has the effect of a verbal act - that is to say, it is an "utterance in a context of violence" and becomes "an instrument of force" rather than an appeal to reason - it may be prohibited. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, 293 (1941). It seems doubtful, however, that this doctrine would find much application in any area not reached by Feiner, to the extent that § 193f might be involved. The Congress is not in the same position, vis-a-vis picketing, as a private employer.

It goes without saying, of course, that one may not advocate the immediate and violent overthrow of the government,

whether on the Capitol Grounds or elsewhere. Dennis v. United States, 341 U.S. 494 (1951). The lip service paid by the Court, in the Dennis opinion, to the test originated by Justice Holmes in Schenck v. United States, 249 U.S. 47 (1919) - clear and present danger of bringing about a substantive evil that the Congress has the right to prevent - should not delude one into believing that advocacy of a bouleversement may be undertaken with impunity if sufficiently unlikely to occur. Indeed, notwithstanding the apparent inconsistency with its restatement of the test, the Court in Dennis held that "In each case [courts] must ask whether the gravity of the 'evil' discounted by its improbability, justifies such invasion of freeespeech as is necessary to avoid the danger." 341 U.S. at 510. As Corwin observes in "The Constitution of the United States of America," S. Doc. 170, 82d Cong., 2d Sess., p. 797, "In short, if the evil legislated against is serious enough, advocacy of it in order to be punishable does not have to be attended by a clear and present danger of success." See also, Abrams v. United States, 250 U.S. 616 (1919), Frohwerk v. United States, 249 U.S. 204 (1919), Schaefer v. United States, 251 U.S. 466 (1920), Gitlow v. New York, 268 U.S. 652 (1925), Whitney v. California, 274 U.S. 357 (1927).[9/]

9/ The "clear and present danger" test seemed to come into its own in Herndon v. Lowry, 301 U.S.88 (1940) (specific rejection of "bad tendency" test of the common law; reversal of conviction for inciting to insurrection to overthrow the government of Georgia) and Thornhill v. Alabama, 310 U.S. 88 (1940) (anti-picketing statute, prohibiting certain activity "without just cause or legal excuse", held invalid on its face because there was no requirement that a clear and present danger of destruction of life or property be present for conviction). In recent years, however, the test has seemed to give way to the "balancing" approach of Schneider v. Irvington, N.J., 308 U.S. 147 (1939). See Justice Frankfurter's concurring opinions in Niemotko v. Maryland, 340 U.S. 268 (1951) and in Dennis v. United States, 341 U.S. 494 (1951). See, also, Frantz, "The First Amendment in the Balance," 71 Yale L. J. 1425 (1962) and Fried, "Two Concepts of Interests: Some Reflections on the Supreme Court's Balancing Test," 76 Harv. L. Rev. 755 (1963).

E. Validity of the prohibition against parades and the carrying of banners or devices on the Capitol Grounds in light of the First Amendment

"The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score." De Jonge v. Oregon, 299 U.S. 353 (1937)

The regulation of parades is a customary exercise of the police power. See, for example, "Traffic and Motor Vehicle Regulations for the District of Columbia", Part I, § 107.[10/] Where a statute may be rationalized by the need for proper policing of parades, the avoidance of overlapping, the minimization of the risk of disorder, and similar considerations; and, further, where the statute is applied with uniformity of method, in a non-discriminatory way, then it will be found constitutional. As Chief Justice Hughes stated in Cox v. New Hampshire, supra, writing for a unanimous Court:

> "As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places." 312 U S. at 574.

But where a statute is attempted to be read as a prohibition against any procession or assemblage on the public streets, or upon the grounds of the legislature otherwise open to the public, it would undoubtedly fall under the Edwards case, supra.

10/ "Processions and parades, except funerals, shall not be allowed except by permit issued by the Chief of Police, which permit shall designate the time and route of such procession or parade, and no part of such procession or parade shall move except according to the terms of such permit." Also see Art. 6, § 3, of the Police Regulations, prohibiting sound trucks on the streets without a permit.

If Edwards were not sufficient to deal a death blow to 193g, Stromberg v. California, 283 U.S. 359 (1931), might well do the job. The case held that a state prohibition against the display of a red flag as a sign of opposition to organized government was an abridgment of First Amendment freedoms, because no incitement to violence need be intended.

Conceivably, the Congress could enact statutes prohibiting certain activities in the immediate vicinity of the Capitol that, as a First Amendment matter, could not be enacted with respect to other protions of the Grounds. Compare, for example, Frend v. United States, 100 F.2d 691 (D. C. Cir. 1938), which upheld a prohibition against any display, within 500 feet of an embassy, calculated to bring a foreign government into public odium, with Allen v. District of Columbia, ____ A.2d _____, No. 3086 (App. D.C., Feb. 8, 1963), which, on First Amendment grounds, reversed a conviction for disorderly conduct involving such a display, where an embassy was not involved.

Section 193f applies to the Capitol Grounds in their entirety, however. And even at the time of the enactment of the 1882 act, the grounds contained about 58 acres of land. In 1947, the grounds contained about 130 acres. Annual Report of the Architect of the Capitol for the Fiscal Year ended June 30, 1947, pp. 74-77. Since 1947, they have been substantially enlarged.

The language of § 193f would seek to prohibit a man from walking along Delaware Avenue, Northeast, in front of the Union Station Plaza, carrying a sign urging home rule, during a period in which Congress were not in session. Such a prohibition seems to us unsupportable.

III. CONSTRUCTION AND CONSTITUTIONALITY OF 40 U.S.C. § 193h (PRESCRIBING PENALTIES FOR VIOLATION OF STATUTES PROTECTING THE CAPITOL GROUNDS)

Section 193h of Title 40, United States Code (§ 8 of the 1946 act discussed supra), provides that offenses against §§ 193b-g (set forth in footnote 5 under the 1882 numeration, and omitting a recent amendment to § 193f),

> "shall be punishable by a fine not exceeding $100, or imprisonment not exceeding sixty days, or by both such fine and imprisonment, prosecution for such offenses to be had in the Municipal Court for the District of Columbia, upon information by the United States Attorney or any of his assistants: Provided, that in cases where public property is damaged in an amount exceeding $100, the offense shall be punishable by imprisonment for not more than five years."

The problem raised by this section is identical with the problem raised by the comparable section of the act relating to the policing of the buildings and grounds of the Supreme Court, discussed in part II-B. The latter section was analyzed in a memorandum of August 12, 1949, from Alexander M. Campbell, Assistant Attorney General, to Peyton Ford, Assistant to the Attorney General. The pertinent portions of this memorandum are included under Tab B. In essence, the memorandum points out that the proviso of the quoted section must be read as implying that in cases in which damage exceeds $100, prosecution must be by indictment in the District Court. The increased penalty would raise the offense to a felony which, under the Fifth Amendment, must be prosecuted upon an indictment by a Grand Jury. In the absence of any clear intent to enlarge the jurisdiction of the Court of General Sessions, constitutional questions can be avoided by trying such felonies in the District Court. (Even in the event that the offense should be determined to be a misdemeanor, notwithstanding the penalty, trial in the

District Court could not be attacked because of that court's concurrent jurisdiction over misdemeanors.)

IV. RELATIONSHIP BETWEEN THE STATUTES SPECIFICALLY GOVERNING THE PROTECTION OF THE UNITED STATES CAPITOL GROUNDS, AND THE LAWS OF THE DISTRICT OF COLUMBIA FOR THE PROTECTION OF PROPERTY AND THE PRESERVATIONOF PEACE AND ORDER

As we have indicated in part I-2, the laws and regulations within the District "for the protection of public or private property and the preservation of peace and order" have been extended to all public buildings and public grounds belonging to the United States within the District. 40 U.S.C. § 101. This extension is vital to the protection of the interior of the Capitol, the office buildings, the power plant, and the garage, because the act protecting the grounds does not apply inside those buildings. 40 U.S.C. § 193m.

A "sit-in" demonstration in one of the office buildings, for example, would be punishable under D. C. Code 22-3102 as an unlawful entry, if the demonstrators refused to leave upon request of the person lawfully in charge of the building, i.e., the Architect of the Capitol, 40 U.S.C. § 175.[11/] (See Tab C for map showing jurisdiction of the Architect.) No problem is presented by the doctrine of Peterson v. City of Greenville, ____ U.S. ____, 31 LW 4475 (May 20, 1963), which refused to enforce a state trespass law against such a demonstration because of the existence of a state criminal statute requiring such discrimination. No such statute or municipal policy exists in the District of Columbia.

11/ Indeed, on the basis of Mr. Nebeker's memorandum, in the office case manual, entitled "Unlawful Entry," it seems likely that an unlawful entry would be committed by a person who refuses to leave the Capitol Grounds upon request of the Architect.

One possible source of difficulty should be touched upon. Although 40 U.S.C. § 212a would permit a Metropolitan Police officer to pursue an offender into a building on the Capitol Grounds, if the offense had occurred on the Grounds, the section does not permit the officer to enter the building upon a complaint except with the consent or upon the request of the Capitol Police Board. In the event that the Capitol Police need assistance inside a building during the course of a demonstration, there should be some simple and expeditious means, set forth in regulations issued under 40 U.S.C. § 193, whereby the needed consent or request may be tendered. This will obviate the possible defense of an accused who is arrested by a Metropolitan Police officer inside one of the Capitol Buildings, that the arrest was unlawful because the officer was without jurisdiction.

TAB "B"

Memorandum of August 12, 1949, from Alexander M. Campbell, Assistant Attorney General, to Peyton Ford, the Assistant to the Attorney General, calls attention to the fact that "Section 8 provides that any violation of Sections 2 to 6 or any regulations prescribed under Section 7 shall be prosecuted by an information filed by the United States Attorney in the Municipal Court for the District of Columbia. The penalty is a fine of $100 or imprisonment of 60 days, or both. The only provision which may raise some difficulty, is that proviso in Section 8 which states that in any case of damage to property in which the amount of damage is in the amount exceeding $100, the period of imprisonment "may be not more than five years." This possible penalty of five years raises the offense from the class of a misdemeanor to that of a felony under Title 18, Section 1, of the United States Criminal Code, (and see Ex parte Brede, 279 Fed. 147, affirmed 263 U.S. 4; Mackin v. United States, 117 U.S. 348; Ex parte Wilson, 114 U.S. 417; Hoss v. United States, 232 Fed. 328; Sheridan v. United States, 236 Fed. 305, cert. denied, 243 U.S. 638.) Under the Fifth Amendment of the Constitution prosecution for a felony must be upon an indictment by a Grand Jury rather than an information filed by the United States Attorney.

"Further, the jurisdiction of the Municipal Court of the District of Columbia is limited to the trial of misdemeanors. (See District of Columbia Code, Title 11, Secs. 602 and 755. See also Cleveland v. Mattingly, 387 Fed. 948; Peak v. Reed, 24 F.(2d) 619.) Therefore, this statute on its face appears to direct that the trial of an offense which involves a

sentence of as much as a possible five year imprisonment, shall be tried in the Municipal Court of the District of Columbia, whose jurisdiction is limited to the imposition of a one year sentence. Nor is there anything in this Act which enlarges the jurisdiction of the Municipal Court in order that it may impose a sentence of 'not more than five years.' The Supreme Court stated in discussing the local Municipal Court (formerly called Police Court) that: "The jurisdiction of the Police Court, as defined by existing statutes does not extend to the trial of infamous crimes or offenses punishable by imprisonment in the penitentiary." (See Callan v. Wilson, 127 U.S. 540.) In Schick v. United States, 195 U.S. 65 at p. 68, the Supreme Court said: "The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether among crimes or misdemeanors." (See also District of Columbia v. Colts, 282 U.S. 63; Clowans v. District of Columbia, 300 U.S. 617.) Under Title 18, Sec. 1, any offense punishable by more than one year imprisonment is a felony.

"... the difficulty presented by this section can be avoided by issuance of special instructions to the United States Attorney's Office to proceed by information in Municipal Court in all cases [where] the damage is less than $100 as the statute directs, and where the damage is notoriously extensive and obviously exceeds $100, then prosecution should be by presenting the matter to the Grand Jury, securing an indictment, and prosecution in the federal district court ..."

File

8/2/63 (Friday)
2:05 p.m.

James J. P. McShane
Chief, Executive Office for United States Marshals

TOILET FACILITIES TO BE PROVIDED FOR AUGUST 28 RALLY

Meeting was held in District Building, Room 304, and the following were present:

David V. Auld	D. C. Sanitary Engineer
William H. Cary, Jr.	Department of Health (D.C.)
David Fry	" " " "
Dr. Fred Heath	" " " "
Claude Sizemore	Sanitary Engineer's office
Allan Fay	" " "
John B. Thomas	U. S. Public Health Engineer
Theodore T. Smith	National Park Service

Dr. Heath requested the writer to have an answer by Monday, August 5, on getting GSA approval for use of space in Government buildings for first aid stations.

Mr. Auld stated his Department has six drinking water bubbler units. These bubblers are 8 feet long, and each bubbler has 4 outlets. For the American Legion Convention held here some years ago, they had an estimated crowd of 100,000, and the six units were sufficient to supply that crowd.

Mr. Auld said about 800 people per hour can utilize one unit.

Dr. Heath was of the opinion that there should be between 12 and 24 units placed in Zone 1. Mr. Sizemore and Mr. Smith will make a survey as to where they best should be located.

TOILET FACILITIES

Sanitary Engineers have two large Sanit-mobile units, each having 6 stools, plus urinals. Mr. Auld said they should be located on the west side of 15th Street and north of E. It is the only prepared location in Zone 1 area.

The National Park Service also has three trailer toilets, each having 6 stools and a urinal. They could be located at the following spots:

(1) S. E. corner of 15th and Constitution Avenue
(2) East side of 16th and Constitution Avenue
(3) 23d and Constitution Avenue (Over the "e" in "West" on Esso map. Plumbers say this is only place in Memorial vicinity where a toilet can be located.)

There is a permanent toilet located on the S.W. corner of 17th St. and Constitution Avenue.

TROOP PRIVIES

Sanitary Engineers have 2" troop privies they could use, but they and Dr. Heath feel "Johnny-on-the-Spot" toilets would be better. Troop privies must be placed over manhole covers when in use. (They could not be used on Constitution Avenue, because the flow of water in the sewer there is so strong that anyone falling through his seat would, in all probability, be washed out to sea--or at least to the Potomac!!!) However, they could be used in some areas around Virginia Avenue, 22d to 24th Streets, where buses are being parked, with little danger of losing an occupant.

Also, in the vicinity of the Memorial they could place two--one for women has 4 seats and one for men has 3 seats and 2 urinals.

There are two companies that rent mobile toilets, Santi-Can and Johnny-on-the-Spot. Santi-Can has two types (30-gallon and 60-gallon) while Johnny-on-the-Spot is 40-gallon. Both are one-holers. It costs as much to rent for one day as for one week. Each unit costs $45.

There are also chemical toilets, called "Battery Toilets," that can be placed on rollers and made mobile. Each Battery consists of 8 units--4 "men" and 4 "women". Dr. Heath feels that 10 Batteries will be sufficient.

He and Mr. Auld will recommend to the Commissioners that 100 "Johnny-on-the-Spots" be rented for the day. Cost: $4500.00.

Mr. Smith informed the writer that in Zone 2 the buses would not be permitted to park in the Mall. A new sprinkler system, costing thousands of dollars, was recently installed there.

JJPMcS:gad

Department of Public Health
Washington 1, D. C.

Civil Rights March Planning Conference
Office of Director, Department of Sanitary Engineering
August 2, 1963

On August 2, 1963, a meeting was held in the Office of David Auld, Director, Department of Sanitary Engineering, for further discussion of measures to be taken during the Civil Rights March on August 28, 1963.

The following individuals attended the meeting:

Dr. Frederick C. Heath, Department of Public Health
Mr. David Auld, Department of Sanitary Engineering
Mr. William Cary, Jr., Department of Public Health
Mr. David Fry, Department of Public Health
Mr. James McShane, U. S. Department of Justice
Mr. C. Sizemore, Department of Sanitary Engineering
Mr. John B. Thomas, National Park Service (NCR)
Mr. Theodore T. Smith, National Park Service (NCR)
Mr. Allen B. Fay, Department of Sanitary Engineering

With reference to the previous conference of August 1, 1963, Mr. McShane stated that their liaison officer from the Department of Defense had informed them that the Department of Defense would provide the tents and that he would obtain the dispensary in the Navy Building.

Drinking Water Facilities -

Dr. Heath requested the opinion of those present as to the nature and extent of drinking water facilities which should be provided for the 100,000 participants.

Mr. Auld stated that they have six drinking water units which are attached to hydrants at the curb line to provide a good run off. Each of these units has four bubblers making a total of 24 bubblers which are now available. Mr. Sizemore stated that 800 persons per hour could use one drinking water unit.

It was the general opinion of those present that this number would be insufficient for the purpose. Dr. Heath suggested that a survey be made to obtain more definite information as to possible locations and as to the additional number of units that will be needed.

Mr. Sizemore, Superintendent of the Water Operations Division, Department of Sanitary Engineering, will be responsible for this survey. Mr. Cary, Chief of the Bureau of Environmental Health, Department of Public Health, will work with Mr. Sizemore, who will also be assisted by a representative of the National Park Service, designated by Mr. Smith.

Sanitary Facilities -

Two semi-mobile sanitary units are presently owned by the Department of Sanitary Engineering. It will cost a minimum of $1,000 each to haul, assemble, and disassemble these units.

Mr. Auld stated that 15th and E Streets, N. W. was the only practical prepared site for such units since a special man-hole with water supply, sewerage disposal, and electricity are all available there. This means that only one of these units can be used.

The National Park Service has three trailer units, each of which has four stools, and two stools and two urinals for men. These units will be located as follows:

1. 15th and Constitution Avenue, Southeast corner.

2. East side of 16th and Constitution Avenue at the approach to the Ellipse Circle.

3. Southwest corner of 23rd and Constitution Avenue (over the "E" in WEST in the Esso map).

Six troop privies can be used in the Virginia Avenue bus parking area between 21st and 23rd Streets, N. W. The Lincoln Memorial has four stools for women and three stools for men plus two urinals. Their capacity per hour will be reported to Dr. Heath by Mr. Smith.

It will be necessary to rent chemical toilets and it is understood that the rent will be high. Some of these toilets have 30-gallon holding tanks and others have a 60-gallon capacity. Eight single units will be required at each location (four male and four female).

The contractors have requested authority to use man-holes in the vicinity of the operation with adjacent hydrants. Mr. Auld will authorize them to do so at two locations; one at each end of the parade and assembly area.

In total, about 100 of these units will be required, located as follows:

3 batteries on the Monument Grounds
5 batteries in the Lincoln Memorial area
2 batteries on the east side of the Ellipse, near the second division Monument and on the northwest corner of the Ellipse
1 or 2 on the Mall
The balance to be scattered.

In addition to the facilities previously outlined, toilet facilities will be available in Government buildings in the parade and assembly area, particularly in the Navy Building, Munitions Building, Pan-American Building, Lock House, and on the Washington Monument Grounds.

Both the Department of Public Health and the Department of Sanitary Engineering will supervise the use of the man holes.

Two points were raised concerning the general plans for the march. Mr. Smith stated that there was a serious doubt as to whether buses could be parked on the grass lands in the Mall because of the sprinkler system imbedded therein. The systems were seriously damaged on a previous occasion by parked buses.

The second question, which has not been resolved, is whether the Monument Grounds or the Lincoln Memorial will be the final assembly point.

The meeting was adjourned at 4:00 P.M.

File

8/1/63
2:30 p.m.

James J. P. McShane
Chief, Executive Office for United States Marshals

MEETING IN CONJUNCTION WITH THE AUGUST 28 RALLY

A meeting was held in Room 205, Red Cross Building, 2025 E St., N. W., to discuss first aid and medical facilities relative to the August 28 Rally.

Attending were:

Dr. Fred Heath, 1st Deputy Director of Public Health (137-3095)
Francis H. Cobb, Chapter Manager, D. C. Chapter, American Red Cross (170-3671)
Douglas H. McAllester, Civil Defense Representative, D. C. Department of Health, c/o Department of Health, 4820 Edward Street, N. W. (137-791).
Daniel Leonard, Director, Safety and Disaster Service, D. C. Chapter, Red Cross (170-642)
David Fry, Hospital Operations Officer, D. C. Department of Health (137-3216)
Richard Knapp, Operations Officer, D. C. Office of Civil Defense, 137-791 or 362-9710)
James J. P. McShane, Chief, Executive Office for U. S. Marshals.

Dr. Heath said the purpose of the meeting was to discuss locations for First Aid and medical facilities. He also wanted to know what the plans were for the location of the Rally, and I informed him what had transpired in meetings with Chief Murray and police officials.

Dr. Heath said they had made tentative plans to have First Aid and/or Restroom facilities in some of the following Government buildings:

Commerce Building	14th between E St. and Constitution Ave.
Temps. Building T-3	17th and Constitution Avenue
Navy Building	17th to 19th on Constitution Avenue
Interior Building	C St., between 18th and 19th Streets
Pan American Adm. Annex	Constitution Ave., between 18th and 19th
Munitions Building	19th and Constitution Avenue

National Science Foundation	19th and Constitution Avenue
State Building	22d and C Streets
Tempo Buildings K-L-J	Lincoln Memorial to Constitution Avenue, N. W.
Old Printing & Engraving Building	14th and Independence Ave., N. W.
North Agriculture Building	14th and Independence Ave., N. W.
New Smithsonian Building	12th and Constitution Ave., N. W.
Union Station	1st St. & Massachusetts Ave., N.E.

They wanted us to have someone contact GSA to get blanket permission to use the lobby of some of these buildings. I told them I would discuss it with Mr. Douglas.

Mr. Leonard said the Red Cross will have six ambulances and a mobile First Air Unit located at the Memorial or the Ellipse, depending on where the larger crowd is gathered. If necessary, they can get additional ambulances from their Chapter in Baltimore. All ambulances have a radio which is tuned on 47.42 megacycles, FM, the National Red Cross disaster frequency. The dispatching facilities are located in the D. C. Chapter Building, and a hookup will be provided with Civil Defense at 6:00 p.m., August 27. Mr. Leonard, or his substitute, will be responsible for providing ambulance service.

Tentative plans have been made to have first aid stations at the following locations:

4 stations in Govt. building in the vicinity of the Ellipse
1 on the Monument grounds
1 in the Navy Building
1 in the Munitions Building
1 in the Medicine & Surgery Building
1 by the Memorial
1 at 23d St. and Constitution Ave.
1 on each side of the Reflecting Pool

Total of 12 Stations and one Mobile First Aid Van.

At each of these Stations a police car will be assigned. Each Station will be staffed with one doctor and 2 nurses. The Stations will be housed in a pyramidal 16 x 16 tent. An additional first aid station at Union Station will also be staffed with a doctor and two nurses from the Health Department.

The conference group agreed on the following assignment of responsibilities:

SUPPLIES

Civil Defense will furnish paper blankets and litter cots. If the Government dispensaries utilized will furnish their own first aid supplies, the Red Cross will not bill the District for other supplies used in their stations. Civil Defense has two hundred (200) litter cots at D. C. General Hospital from which the required amount can be drawn. It will not be necessary to return the paper blankets. The Health Department will arrange with the Department of Corrections to transport these supplies.

PROFESSIONAL PERSONNEL

It was agreed that the Health Department would assume responsibility for providing professional personnel but that volunteer nurses would be provided by the Red Cross and that Visiting Nurses Association personnel would also be used.

Dr. John R. Pate, Chief, Bureau of Disease Control, Department of Public Health, will have the specific responsibility for the assignment and movement of doctors. Miss Mildred E. Hegus, Assistant Chief, Bureau of Public Health Nursing, will be responsible for the assignment and movement of all nurses. In order to free professional personnel, the Health Department will go on a "Sunday schedule" on the day of the March.

It was noted that we could anticipate about 1,000 casualties in a group of this size.

SIGNS

Dr. Heath will request the D. C. Commissioners' permission to utilize the sign-making facilities of the Department of Highways and Traffic and/or other D. C. agencies together with the labor to erect such signs.

Mr. Leonard will provide Dr. Heath with an order for signs, plus samples.

INDIVIDUAL IDENTIFICATION

The Police Department expects to provide arm bands for key personnel and it is understood that buttons are being sold to the March participants.

Mr. Fry will prepare a proposed Commissioners' order, specifying the identification which will be used.

MOBILE COMMUNICATION

Both the Red Cross and the Department of Civil Defense are prepared to furnish walkie-talkies and other mobile communication equipment.

Civil Defense radio operations will begin at midnight, August 27, 1953. It will be necessary for both the Police and Fire Departments to furnish communication personnel to man their facilities.

It was requested that I -

1. Contact the Surgeon General to have him instruct Dr. Horzler (phonetic), Public Health, to give permission to use all Clinics in Government buildings;

2. Have GSA make available space in Government buildings where it is considered necessary to have a first aid station.

3. Have Army provide tents and necessary equipment and personnel to erect the tents.

Meeting adjourned at 4:00 p.m.

JJPMcS:gad