

words which are used in the Cohen Report. On Page 70, the Cohen Report points out that they left out the word "ridicule" which is used in the traditional formula of criminal defamation; that is, "hatred, contempt or ridicule". They have left this word out from the phrase for fear of inhibiting legitimate satire.

Senator Hollett: Now you are into trouble.

Mr. Scollin: Their recommendation in that respect has been followed.

The Chairman: I have the Oxford Dictionary definition of "ethnic" now.

Mr. Scollin: This dictionary says the word is of Greek origin, "heathen," from "ethos" meaning "nation". Then it is given as meaning the non-Israelitish nations, Gentiles. "Ethos" at one point would seem to have been the Gentiles as distinct from the Jews. As an adjective, it means "pertaining to nations not Christian or Jewish; Gentile, heathen, pagan." In modern usage, ethnicism is the religions of the Gentile nations or the common characteristics.

The Chairman: You need an American dictionary.

Senator Laird: Where do the Scotch come in?

Mr. Scollin: The original ethnic group, I think.

Senator Hollett: Leave it for the judge.

The Chairman: We will leave it. This is something we could give a little thought to later.

Mr. Scollin: The last element is the one which requires that, in order that there be an offence arising from communication or statements in a public place which do incite hatred or contempt against an identifiable group, all that having been established—that is, that the statements have been communicated in a public place, which do incite hatred or contempt, and such hatred or contempt being against an identifiable group—all this being established—nevertheless, there is a remaining essential element which must be proved in order to make up an offence under subsection (1)—it is, that such incitement is likely to lead to a breach of the peace.

On that point, the Cohen Report on page 63 observes that legislation drawn along these lines—talking about subsection (1)—would make it possible for any unreceptive audience

by their negative or violent response to determine whether or not the speaker addressing them would be liable to go to jail. But the Cohen Report believes that such dangers can be minimized by drafting the legislation narrowly in the following respects: its application should be restricted to statements communicated in a "public place"; the statements must be such as to create "hatred or contempt" of an "identifiable group," so that the speaker must be the author of his own misfortune and not merely the victim of a hostile crowd; the "identifiable group" that is protected must be limited in accordance with the definition; and the statements must be of such a character as to be "likely" to lead to a "breach of the peace".

It would, therefore, be possible under subsection (1), if statements of the kind mentioned were made and all the other ingredients were satisfied, that the breach of the peace might very well be caused by the people listening, who, undoubtedly, if they did go to the extent of actually committing a breach of the peace or being disorderly, would themselves be guilty of an offence. But nevertheless, if this were the result or if there were a likelihood of this leading to a breach of the peace, the maker of the statements would be guilty under subsection (1).

Now, it will be noted just in passing that there is a defence provided in subsection (3) to the case where statements are made in which there is a willful promotion of hatred, whether in public or in private. But there is no defence of "truth" to the offence under subsection (1). That statements are true is no defence for the chap who has communicated them in a public place to incite hatred against an identifiable group and where that incitement is likely to lead to a breach of the peace. It is no defence under the legislation for him to say, "Well, the statements were true", or that they were relevant to any subject of public interest, the public discussion of which was for the public benefit and that on reasonable grounds he believed them to be true. That is no defence under subsection (1).

Going on to subsection (2), which is the willful promotion of hatred or contempt against an identifiable group, you will note there that the essential ingredients are simply, firstly, the communication of a statement, secondly, willfully done to promote hatred or contempt and, thirdly, against an identifiable group—again as defined below.