

# The Jehovah's Witnesses and Their Plan to Expand First Amendment Freedoms

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In 1942, University of Pennsylvania law professors John E. Mulder and Marvin Comisky concluded that “seldom, if ever, in the past, has one individual or group been able to shape the course, over a period of time, of any phase of our vast body of constitutional law. But it can happen, and it has happened here. The group is Jehovah’s Witnesses.”<sup>1</sup> Forty-five years later, William Shepard McAnnich, professor of law at the University of South Carolina, supported Mulder and Comisky’s claim noting that the Witnesses have had “a profound and extensive impact on the development of our law.”<sup>2</sup>

While this well-deserved praise speaks to the outcomes of Jehovah’s Witness court cases, to most First Amendment scholars, the Witness successes in court, especially the Supreme Court, were accidental. Legal scholars have uniformly dismissed the Witnesses’ methods for bringing about First Amendment cases, referring to their legal successes as mere unintended consequences of fanatical preaching. For example, legal scholar Bernard Schwartz noted that Jehovah’s Witnesses, “who became involved in trouble with the law were only

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1. John E. Mulder and Marvin Comisky, “Jehovah’s Witnesses Mold Constitutional Law,” *Bill of Rights Review* (Summer 1942): 262.

2. William Shepard McAnnich, “A Catalyst for the Evolution of Constitutional Law: Jehovah’s Witnesses in the Supreme Court,” *University of Cincinnati Law Review* (1987): 999.

seeking to propagate their unpopular creed.”<sup>3</sup> Law Professor Charles Hasson queried that there must “be some basic difference within the tenets of the Witnesses’ religion to produce this flood of litigation.” His conclusion: Witnesses “trample upon the sensitive nature of modern society.”<sup>4</sup> Legal scholar Louis Boudin speculated that civil liberties cases generally, and the Jehovah’s Witnesses’ cases more specifically, “are usually the outgrowth of temporary excitement, either general or local; and are frequently the result of action which is the reverse of deliberate.”<sup>5</sup> To these scholars and others, the Jehovah’s Witness had no legal strategy. They simply fell headlong into Supreme Court litigation.

These simple explanations for Witness legal activities disregard the complex plan devised by Watchtower executives and carried out by hundreds of men and women to combat local literature distribution and permit ordinances. In reality, the Witnesses’ success in the Supreme Court was more organizational than accidental. Judge Joseph Franklin Rutherford, president of the Watchtower Bible and Tract Society from 1917-1942, originally formed a national legal team<sup>6</sup> in 1935 to protect those spreading the “Word of God.” In that year, the Watchtower Bible and Tract Society hired Olin Moyle as the Jehovah’s Witness head legal counsel to replace Rutherford upon his ascendancy to president. Moyle, under Rutherford’s close watch, created the first centralized clearinghouse for Jehovah’s Witness legal actions and began to draw up plans and instructions for a widespread legal assault.

Moyle’s tenure was short-lived, however, following his accusations that Judge Rutherford engaged in “unkind treatment of the staff, outbursts of anger, discrimination and vulgar language.”<sup>7</sup> Only four years into his legal career with the Watchtower, Moyle was replaced by a young Texas lawyer, Hayden Covington. In conjunction with Rutherford, Covington created a plan for addressing and overcoming

3. Bernard Schwartz, *The Supreme Court: Constitutional Revolution in Retrospect* (New York: The Ronald Press Co., 1957), 241.

4. Charles G. Hasson, “Notes: Constitutional Law—Jehovah’s Witnesses,” *Notre Dame Lawyer* (November 1946): 83.

5. Louis B. Boudin, “Freedom of Thought and Religious Liberty Under the Constitution,” *Lawyers Guild Review* (June-July, 1944): 9.

6. While the Jehovah’s Witnesses have historically been skeptical and often critical of courts because they do not believe institutions created by men, Witness members were and still are encouraged to pursue legal careers to defend the rights of their brothers and sisters to proselytize. Hayden Covington explained that even the Apostle Paul on trial in Rome claimed he was “defending and legally establishing the good news.”

7. M. James Penton, *Apocalypse Delayed: The Story of Jehovah’s Witnesses*, 2<sup>nd</sup> ed. (Toronto: University of Toronto Press, 1997), 81.

legal obstacles that stood in the way of Witness preaching. "Under the leadership of Rutherford," historian Merlin Owen Newton concluded, "Witnesses prepared for Armageddon in a nationally orchestrated, aggressive campaign. In the streets and courtrooms throughout the land they confronted state and local officials whose ordinances hindered the coming of Jehovah's Kingdom."<sup>8</sup>

The Watchtower lawyers implemented a comprehensive campaign to prepare Witnesses for the legal battles they would face.<sup>9</sup> Witnesses were instructed in how to prepare for violence, arrest, trial, appeal, and jail time. They were provided names of attorneys and suggestions for obtaining bail. When Witnesses went to the streets with the Word of God, they also carried summaries of Supreme Court decisions. Spiritually and legally, Witnesses were prepared to face the unfaithful.

#### WHAT INSTIGATED THE PLAN

Arrests of Witnesses began in 1928 soon after Rutherford commanded all members to go forth on Sundays.<sup>10</sup> This intrusion on the Sabbath particularly infuriated practicing Christians who were the target of hateful rhetoric from the Witnesses. Complaints began to pour into local police stations across the country. In response, many communities instituted new ordinances aimed at halting the Witnesses' activities. As early as 1930, incidents of persecution against Witnesses were noted in local newspapers. The *St. Louis Post-Dispatch* included an editorial in its 12 October 1930 issue describing the lack of sympathy for a Witness who had been cut from the relief rolls because of his affiliation with the Watchtower.<sup>11</sup> H. Rutledge Southworth explained in *The Nation* that legal victories "seemed to impel the Witnesses to greater zeal—and their opponents to extra-legal means to

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8. Merlin Owen Newton, *Armed with the Constitution: Jehovah's Witnesses in Alabama and the U.S. Supreme Court 1939-1946* (Tuscaloosa, Ala.: The University of Alabama Press, 1995), 4.

9. This plan was very similar to one instituted by the National Association for the Advancement of Colored People (NAACP) in 1945 to battle restrictive covenant laws. Like the Witnesses, the NAACP instructed its members on legal procedure and had a network of nationwide attorneys to handle their cases. For a complete treatment on the restrictive covenant cases see: Clement Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases* (Berkeley, Calif.: University of California Press, 1959).

10. William J. Whalen, *Armageddon Around the Corner: A Report on Jehovah's Witnesses* (New York: The John Day Company, 1962), 177.

11. *St. Louis Post-Dispatch*, 12 October 1930: Editorial, in Charles G. Hasson, "Notes: Constitutional Law-Jehovah's Witnesses," 94.

defeat them."<sup>12</sup>

In the early 1930s, Witnesses were regularly charged with violations of licensing ordinances and disturbing the peace. The number of Witnesses arrested for violations of such laws increased nearly four-fold, from 268 in 1933 to 1,149 in 1936.<sup>13</sup> In the late 1930s, when Rutherford's campaign against organized religion heated up, Witnesses also began to be charged with group libel.<sup>14</sup>

In February of 1940, the Watchtower Bible and Tract Society implemented "street corner witnessing," with one or two workers placed on downtown street corners handing out literature to those who passed by.<sup>15</sup> This new practice also stirred up long-forgotten ordinances, and Witnesses were arrested for being public nuisances, clogging sidewalks, and impairing public safety. Legal historian Leo Pfeffer explained, "New laws were enacted and old laws resurrected to supply the weapons necessary to curb the Witnesses. All kinds of laws were used or attempted to be used for this purpose; laws against disturbing the peace, antipeddling ordinances, laws against the use of sound trucks, traffic regulations, revenue laws—these and many others have been invoked in one way or another against the Witnesses."<sup>16</sup> Laws designed to thwart Witness activity included "Green River" ordinances, which required a prior invitation before visiting a home as well as "Blue Laws" which prohibited certain types of activities on Sundays.<sup>17</sup>

Some ordinances, like one submitted for review to the American Civil Liberties Union by a sympathetic clergyman in Waynoka, Okla., mentioned the Witnesses and their activities by name. The ordinance read in part, "It shall be unlawful for any person to distribute in any manner the pamphlet issued by the sect or organization known as 'Jehovah's Witnesses,' or to play any phonograph records upholding the belief of the said 'Jehovah's Witnesses,' within the corporate limits of

12. H. Rutledge Southworth, "Jehovah's 50,000 Witnesses," *The Nation*, 10 August 1940, 111.

13. Watchtower Bible and Tract Society of Pennsylvania, *Jehovah's Witnesses in the Divine Purpose* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1959), 132.

14. David R. Manwaring, *Render Unto Caesar: The Flag Salute Controversy* (Chicago, Ill.: University of Chicago Press, 1962), 26.

15. Watchtower Bible and Tract Society, "History," (Pt. 16) *The Watchtower* 489 (1955): 491, in Manwaring, *Render Unto Caesar*, 23.

16. Leo Pfeffer, *Church, State and Freedom* (Boston, Mass.: Beacon Press, 1967), 653.

17. Watchtower Bible and Tract Society of Pennsylvania, *Jehovah's Witnesses in the Divine Purpose*.

the town of Waynoka, Oklahoma.”<sup>18</sup> Other ordinances were constructed more broadly but still affected Witnesses to a greater degree than members of more traditional religions. For example, ordinances that restricted the door-to-door dissemination of religious literature, banned religious groups from gathering in public parks, or forbade the distribution of printed materials without a license directly impacted the Jehovah’s Witnesses’ ministry while barely influencing religious groups with fixed congregational sites. For example, ordinances from the town of McCormick, S.C., that required a license for “agents selling books,”<sup>19</sup> or Paris, Texas, that required a permit from the mayor “to sell books, wares, merchandise or any household articles,”<sup>20</sup> had little bearing on those with traditional religious affiliations.

Writer H. Rutledge Southworth noted that Catholics in positions of power in local governments often developed these ordinances. “For years the Catholic church, firmly entrenched in local politics, has tried to restrict the activities of the Witnesses by city ordinances and police regulations,” he wrote.<sup>21</sup> While there is little evidence to support a Catholic conspiracy to thwart Witness activities at the local level, Catholic communities were often targets of Witness canvassing, and therefore, more likely to implement regulations to hinder Witness activities.

Whenever local ordinances conflicted with the Witnesses’ work, Watchtower lawyers “alleged that the local legislation infringed upon their freedom of speech and religion.”<sup>22</sup> In most cases, these ordinances were written to specifically target Witnesses. In some instances, however, the regulations were an attempt to implement true time, place, and manner restrictions. The intent of the laws was unimportant to Witnesses who were bent on carrying the message of Jehovah to whoever would listen. “The Witnesses felt they were commanded by Jehovah God to preach,” Covington said. “They ran up against a barrage of petty laws that said you could not preach that way,” but could not obey these laws of man.<sup>23</sup>

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18. W.D. Cope, President of the Board of Trustees, Waynoka, Oklahoma, “Ordinance No. 220,” (Town of Waynoka, Oklahoma), 3 June 1940, submitted with letter from Rev. Edward S. Trent to American Civil Liberties Union, 7 June 1940 (ACLU Archives, Reel 190).

19. Grover C. Powell and Hayden C. Covington, “Jurisdictional Statement,” *Follette v. McCormick*, 321 U.S. 573 (1944): 2.

20. Hayden C. Covington, “Appellant’s Brief,” *Largent v. Texas*, 318 U.S. 418 (1943): 3.

21. Southworth, “Jehovah’s 50,000 Witnesses,” 111.

22. Mulder and Comisky, “Jehovah’s Witnesses Mold Constitutional Law,” 262.

23. Marley Cole, *Jehovah’s Witnesses: The New World Society* (New York: Vantage Press,

## THE PLAN

The plan to fight for souls through use of the law was originally Judge Rutherford's idea. Historian Merlin Owen Newton wrote, "In order for the kingdom to advance, Rutherford determined, Witnesses must find a shield against escalating resistance. As a lawyer, he logically turned to the law."<sup>24</sup> Former Witness Barbara Grizzutti Harrison contended that the Witnesses "had something to gain by initiating lawsuits." "They had no material emblems to suggest or represent their singular glory," she explained, "they felt reposed in them. . . . To sustain their image of themselves, perhaps they needed to have something immense and extraordinary occur, something that would raise them above themselves, justify and exalt them. Rutherford had one weapon, the law. He used it. He made things happen."<sup>25</sup>

To initiate the new legal offensive, a new institutional structure had to be created within the Watchtower organization. In 1935, Rutherford asked Olin Moyle to take over a legal department that had been inactive since 1907 when Rutherford left the position to take over the presidency.<sup>26</sup> This legal department would be the central clearinghouse for all Witness cases. From this office at the Watchtower headquarters, Bethel House in Brooklyn, N.Y., every arrest, defense, and appeal would be coordinated.

Prior to the reinstatement of a formal legal department, Witnesses in the field had little formal legal support from the Watchtower Bible and Tract Society headquarters. While a standardized protocol for dealing with legal matters was available to all members in 1935, Witnesses who had been arrested were "expected to conduct their own defenses at the trial level, following a standard set of instructions issued by the Society."<sup>27</sup> If Witnesses were issued fines by the courts, they were instructed to refuse to pay, choosing jail time instead.<sup>28</sup> Prior to 1933, no formal plan to appeal cases was in place. Therefore, many of these early cases ended with Witnesses serving time in local jails.

The legal department was up and running when Hayden Covington joined the staff in 1939. At the time of Covington's arrival, the

1955), 114.

24. Newton, *Armed with the Constitution*, 4.

25. Barbara Grizzutti Harrison, *Visions of Glory: A History and a Memory of Jehovah's Witnesses* (New York: Simon and Schuster, 1978), 190.

26. Watchtower Bible and Tract Society, "History," 426, in Manwaring, *Render Unto Caesar*, 27.

27. *Ibid.*

28. *Ibid.*

Watchtower legal department consisted of the chief legal counsel, several assistants, and a clerical staff. Many of the practices for gathering information from local congregations and contacting attorneys had already been established. Booklets providing legal instructions to Witnesses in the field had been distributed. The legal department was not proactive, however, until Hayden Covington arrived. Covington's first task was to develop a legal strategy as aggressive as Rutherford's spiritual one. The first step of his plan was to identify local communities where Witnesses faced legal roadblocks to their ministry.

### IDENTIFYING LOCATIONS

Covington would determine which communities were targeted for intensive fieldwork, and thus, potential future litigation. Covington would "send people into areas they knew would be a problem, especially if there was a large Catholic population,"<sup>29</sup> "an active priest,"<sup>30</sup> or "previous opposition."<sup>31</sup> Covington would simply inform a certain congregation that they needed to preach in a certain territory, often adding, "It hasn't been preached in awhile."<sup>32</sup> For example, in New Haven, Connecticut, three Witnesses and two of their sons were canvassing Cassius Street with a new Judge Rutherford recording attacking the Roman Catholic Church. About 90 percent of the residents of Cassius Street were Roman Catholic.<sup>33</sup> While Covington never admitted to deliberately provoking local residents or law enforcement agents, his tactics often produced the desired outcome—arrest.

Identifying localities ripe for litigation was a long, often challenging process. When communities initially targeted produced little response from law enforcement, Witnesses were sent on to the next potential test site. Professor Jerry Bergman, a former Jehovah's Witness, explained, "They would deliberately send them into this area and if there was no problem, send them into another area."<sup>34</sup> Covington "probed in community after community," Historian Merlin Owen Newton wrote, "to determine local limits."<sup>35</sup> Covington saw the process

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29. Jerry Bergman, interview by author, 18 May 2002, tape recording, Montpelier, Ohio.

30. Hayden Cooper Covington, interview with Jerry Bergman, 1973, Cincinnati, Ohio.

31. Ibid.

32. Ibid.

33. Stanley High, "Armageddon, Inc.," *Saturday Evening Post*, 14 September 1940, 58.

34. Jerry Bergman, interview by author.

35. Newton, *Armed With the Constitution*, 74.

of cultivating arrests and appeal as a “long-term struggle,” one that would not end by “winning a case tomorrow.”<sup>36</sup>

Witnesses were often sent into confrontational situations unaware of the danger,<sup>37</sup> but they did not question Covington’s plan. Even when they may have suspected trouble, Witnesses were taught not to question decisions from the Watchtower leadership who claimed they had a direct line to God. Also, Witnesses saw themselves as instruments of God, and “God was fighting this battle.”<sup>38</sup> Witnesses believed that they should be used in whatever way necessary to advance the cause. Newton explained that Roscoe and Thelma Jones, whose case *Jones v. Opelika* would reach the Supreme Court in 1942, believed “if their convictions could be used to further the larger cause . . . then their convictions must be part of Jehovah’s divine plan.”<sup>39</sup>

### CLOGGING THE JAILS

The Watchtower Bible and Tract Society also created divisions of mobile Witnesses who would go to the assistance of their brethren in case of trouble. The country was divided into seventy-eight areas, each patrolled by a division of mobile Witnesses who would descend on any “hot spot” where local members had been arrested. These mobile Witnesses would blanket a town, visiting each house within an hour of their arrival. The job of these Witnesses, in addition to spreading the word of God, was to get arrested, thus clogging the local jail and legal system and freeing up local members to return to their work.<sup>40</sup> By replacing local members with mobile Witnesses in the jails, Covington was able to ensure that the Watchtower could continue to spread the Word of God *and* generate test cases. With law enforcement and court officials tied up in processing the newly arrived Witnesses, local Witness members were free to continue proselytizing. The mobile Witnesses, recently arrested under the same questionable ordinances, provided new opportunities for trial and appeal.

In addition to returning local Witnesses to their ministry, the plan had a secondary effect. By prompting arrests in so many localities, the Witnesses generated test cases in multiple jurisdictions. Subsequently, the legal team at Watchtower headquarters could choose which cases

36. Hayden Cooper Covington, interview with Jerry Bergman.

37. Jerry Bergman, interview by author.

38. *Ibid.*

39. Newton, *Armed With the Constitution*, 56.

40. Watchtower Bible and Tract Society of Pennsylvania, *Jehovah’s Witnesses in the Divine Purpose*, 133.



to pursue based on the level of constitutional violation, the amount of persecution, or the predilections of sitting judges.

#### PREPARING FOR ARREST, TRIAL, AND APPEAL

Witnesses were trained in legal as well as spiritual matters. In addition to reviewing visitation quotas and discussing scripture at weekly service meetings, Jehovah's Witnesses also learned legal strategy. Written instruction to Witnesses was quite detailed and included how to deal with police, what to do if arrested, and what to do if held for trial. Beginning in 1939, a pamphlet entitled *Advice to Kingdom Publishers* was sent to all Witness Pioneers and Publishers, full-time and part-time Jehovah's Witness workers. The sixteen-page pamphlet included information on how to avoid arrest, as well as what to do if arrested.<sup>41</sup> The Watchtower legal office sent updated and more detailed instruction booklet to Witness members in 1941,<sup>42</sup> 1943,<sup>43</sup> and 1953.<sup>44</sup>

In these manuals, Witnesses were instructed to "be polite," and "meekly submit"<sup>45</sup> to law enforcement agents. Covington instructed Witnesses to "obediently accompany" the arresting officer, and "do not by force or any other means try to escape from custody."<sup>46</sup> Witnesses practiced these instructions during weekly service meetings when brothers, dressed as law enforcement officials, would break up a meeting and conduct "mock arrests."<sup>47</sup>

As Witnesses were usually carrying a great load of printed materials or sound equipment, they were also informed how to retrieve property confiscated during arrest. Because "police have a right to take portions of the literature being distributed as evidence," Covington explained, Witnesses should suggest to the arresting officer that "two copies of each publication be kept" by the police and the remaining returned to them.<sup>48</sup> Witnesses were also told to "obtain a receipt for all property

41. Watchtower Bible and Tract Society, *Advice for Kingdom Publishers* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1939).

42. *Ibid.*, *Jehovah's Servants Defended* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1941).

43. *Ibid.*, *Freedom of Worship* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1943).

44. Hayden Cooper Covington, *Defending and Legally Establishing the Good News* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1950).

45. Jerry Bergman, interview by author.

46. Covington, *Defending and Legally Establishing the Good News*, 10.

47. Jerry Bergman, interview by author.

48. Watchtower Bible and Tract Society, *Freedom of Worship*, 16.

kept by the police.” “Should the police keep personal property,” Covington warned the congregants, “their action is unlawful. Make a vigorous protest and threaten to take legal action.”<sup>49</sup>

Witnesses were instructed how and when to report the arrest to Watchtower officials. They were told to inform their local congregations, via a written report, of the details of their arrest as soon as they were released from jail. “Give all the facts,” Covington instructed Witnesses: “(1) what the publisher was doing when arrested, and everything that happened; (2) what action was taken by the police;” and “(3) what action can be expected in the future.”<sup>50</sup> Along with the report, Witnesses were to provide all legal documents, including the name of the court where they would appear and the date of the trial, as well as any “newspaper clippings.”<sup>51</sup>

Witnesses were also told how and when to contact an attorney. Pioneers and publishers were supplied with cards identifying lawyers in their region sympathetic to the Watchtower cause.<sup>52</sup> Witness lawyers were not readily available in every part of the country, especially in communities hostile to the Witnesses and their messages. When lawyers affiliated with the Witnesses were not available, members in trouble with the law turned to other sympathetic organizations. For example, in August of 1941, the American Civil Liberties Union received a request for legal referral from George Carson, a Witness Company Servant. Mr. Carson wrote, “In this locality, Jehovah’s Witnesses find it very difficult to secure legal counsel. . . . Without the aid of an attorney it is difficult to see justice done in such cases, particularly when Jehovah’s Witnesses are involved on account of so much prejudice against us. Will you please inform us of the name of an attorney. . . . who would be willing to counsel and advise us free of charge or at a reasonable cost.”<sup>53</sup> This was far from an isolated request. A *Life* magazine article published in 1940 noted that the American Civil Liberties Union was involved in more than 200 cases representing

49. Covington, *Defending and Legally Establishing the Good News*, 10.

50. Watchtower Bible and Tract Society, *Freedom of Worship*, 15. The 1953 booklet included these same instructions, but added that the report should be “an accurate written report, with typewriter if possible.” Covington, *Defending and Legally Establishing the Good News*, 10.

51. Watchtower Bible and Tract Society, *Freedom of Worship*, 15-16; Covington, *Defending and Legally Establishing the Good News*, 10.

52. Jerry Bergman, interview by author.

53. George Carson to The American Civil Liberties Union, 26 August 1941, ACLU Archives, Reel 200.

more than 1,300 Witnesses.<sup>54</sup>

Beginning in 1933, Witnesses were provided instruction manuals outlining simple legal procedures in case no attorney was available and they had to defend themselves.<sup>55</sup> These procedures included the chronology of a trial, specifying who would speak, in what order, and with what opportunities for dissent.<sup>56</sup> Later manuals included detailed guidance on how to file a motion to dismiss, how to request an appeal from a judge, and how to secure a bond.<sup>57</sup> After 1941, Watchtower lawyers even included specific wording for arguments to be placed in court briefs.<sup>58</sup>

Covington, through pamphlets and congregational visits, also taught Witnesses how to prepare for a trial. In his booklet, *Defending and Legally Establishing the Good News*, Covington included lists of possible questions for direct- and cross-examination to aid litigants in preparing for an actual trial. "Questions pertinent to the case should be selected from among those listed below and propounded to you by your counsel or friend," Covington wrote.<sup>59</sup> "You should be prepared to answer all questions," Covington reminded Witnesses, "whether they may be material or based on prejudice."<sup>60</sup> To practice these instructions, Witnesses held mock trials during service meetings, "some of them lasting for weeks, with overseers role-playing the parts of the prosecution and defense attorneys."<sup>61</sup>

Along with trial procedures, Witnesses were also educated in legal etiquette. "You will show respect to the judge presiding and to the prosecuting attorney," Covington wrote, but do not "show fear of men. A proper attitude of kindness and courtesy on the same dignified level that a judge of a court ordinarily exhibits should at all times be kept by us as ambassadors of God's kingdom of righteousness."<sup>62</sup>

Witnesses in the field were also taught how to behave when

54. "Jehovah's Witnesses Who Refuse to Salute U.S. Flag, Hold Their National Convention," *Life*, 12 August 1940, 20.

55. Watchtower Bible and Tract Society, *Order of Trial* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1933).

56. *Ibid.*; Covington, *Defending and Legally Establishing the Good News*, 19-30.

57. Watchtower Bible and Tract Society, *Freedom of Worship*, 16-34; Covington, *Defending and Legally Establishing the Good News*, 12-18.

58. Watchtower Bible and Tract Society, *Jehovah's Servants Defended*; Watchtower Bible and Tract Society, *Freedom of Worship*, 16-34; Covington, *Defending and Legally Establishing the Good News*, 12-18.

59. Covington, *Defending and Legally Establishing the Good News*, 14.

60. *Ibid.*, 16.

61. Harrison, *Visions of Glory*, 192.

62. Covington, *Defending and Legally Establishing the Good News*, 18-19.

violence broke out. Witnesses were told by elders at service meetings to “get names of officials present, carry cameras and take pictures of any disorder.”<sup>63</sup> Company Servant C.R. Hessler, leading one service meeting, told his congregation that “written reports should be made and copies sent to the Department of Justice, the governor of the state, the mayor, police officials and the Civil Liberties Union.”<sup>64</sup> Witnesses followed these instructions without fail. For example, in a letter dated 12 January 1942, Thomas Maddux, a practicing Witness, wrote to Hayden Covington detailing mob action against Witnesses and his own arrest in El Dorado, Arkansas.<sup>65</sup> In his letter, Maddux included times and dates of all violent actions, the outcomes of each incident, and the names, addresses, and affiliations of local community members involved in the incidents. Maddux also described his own arrest and subsequent release including the name and address of the arresting officer and the Chief of Police.

Jehovah’s Witnesses were excellent pupils. They had been schooled for years in how to best reach the public with the news of salvation. A 1940 *New York Post* article explained that a Jehovah’s Witness, “knows the answer to every possible question, and once a prospect begins asking questions, it is only a matter of minutes before [she] is in the parlor.”<sup>66</sup> Learning the ins and out of the legal world was no different. To Witnesses familiar with taking orders and following directions, learning how to be arrested or the best way to get a case appealed to a higher court was no problem.

#### PREPARING FOR BATTLE

Each publisher and pioneer carried an identification card indicating his or her ministerial status and connection with the society. These membership cards were the Witnesses’ only “official” link to the headquarters and were used to identify themselves to the public, the police, and government officials. The Jehovah’s Witnesses’ identification cards read in part, “Jehovah’s witnesses are ordained and commissioned by God, and the signer of this card Scripturally claims such ordination and commission, as set for this the Bible at Isaiah 43:9-

63. “Sect Members Defy the Heat: 15,000 Jam Hall for Convention Session,” *Detroit Free Press*, 26 July 1940.

64. *Ibid.*

65. Thomas E. Maddux to Hayden Covington, 12 January 1942, (ACLU Archives, Reel 207).

66. Malcolm Logan, “Jehovah’s Witnesses High-Pressure Satan—and Customers,” *New York Post*, 15 July 1940.

12; Matt. 10:7-12; Matt. 24:14; Acts 20:20; 1 Peter 2:21; 1 Cor. 9:16. Being one of Jehovah's witnesses, in obedience to God's commandments, preach the gospel and worship almighty God by calling upon people in their homes, exhibiting to them the message of the gospel of said Kingdom in printed form."<sup>67</sup> Witnesses were instructed to show the card "to any policeman who arrests them,"<sup>68</sup> thus establishing themselves as clergy immediately upon being taken into custody.

The plan for legally establishing identification for Witnesses as ordained clergy was implemented prior to Covington's tenure. Olin Moyle, Covington's predecessor, also used the identification cards as evidence of ministerial work. In *Schneider v. New Jersey*, Moyle wrote that Clara Schneider's work "consisted of visiting residents of Irvington, exhibiting to them her Testimony and Identification Card (R. 35-36) and leaving or offering to leave with them certain printed literature."<sup>69</sup>

Identification as a minister was important to the legal cases of Witnesses. Covington insured that whenever possible, these identification cards were introduced into evidence as proof of the appellant's religious status. For example, Covington began the facts section of his brief in *Marsh v. Alabama* by noting that "Grace Marsh is an ordained minister of Almighty God. . . . The Watchtower Bible and Tract Society, under the direction of which she carried forward her ministerial activities, issued to her a certificate of ordination and identification."<sup>70</sup> "The Watchtower Society issues to its authorized agents, ordained ministers of Jehovah God, a certificate of identification and ordination (Exhibit 9, R 33)," Covington wrote in the Supreme Court brief for *Largent v. Texas*.<sup>71</sup>

Identification cards were used as the basis for two prominent legal arguments in Witness cases. First, the cards placed Witnesses squarely in the occupational category of clergy. Many of the community ordinances applied to specific vocations. By identifying themselves as ministers, Witnesses could be exempt from these regulations. Second, the identification cards issued by the Watchtower Bible and Tract

67. Hayden C. Covington, "Statement as to Jurisdiction," *Follette v. McCormick*, 321 U.S. 573 at 5.

68. Herbert Hewitt Stroup, *The Jehovah's Witnesses* (New York: Columbia University Press, 1945), 65.

69. Olin R. Moyle and Jacob S. Karkus, Petitioner's Brief, *Schneider v. New Jersey*, 308 U.S. 147 (1939).

70. Hayden C. Covington, Grover C. Powell, D.R. Coley, Jr., Roy A Swayze, Appellant Brief, *Marsh v. Alabama*, 326 U.S. 501 (1946): 6.

71. Covington, *Largent v. Texas*, 318 U.S. at 5.

Society allowed Witnesses to claim that the distribution of their literature was, in fact, worship.

The distribution of religious literature was also commonly exempted from regulation. For example, in Opelika, Alabama, where one of the Witnesses' Supreme Court cases originated, the local licensing ordinance exempted "Book Agents" who "sold Bibles."<sup>72</sup> By establishing themselves as clergy, Witnesses were able to claim the materials they delivered door-to-door were purely religious in nature. Covington was sure to include this distinction in each of his briefs. In *Follett v. McCormick*, Covington wrote, "The appellant, at the time of his arrest, was distributing literature dealing with Biblical subjects."<sup>73</sup>

Witnesses doing fieldwork were also provided booklets that explained their rights under the First Amendment. These booklets included a "detailed analysis of the legality of Witnesses' practices,"<sup>74</sup> with specific references to Supreme Court cases that reinforced their rights and explanations of penalties that could be exacted upon those who interfered with their rights. Like the identification cards, the booklets were to be shown to law enforcement representatives when confronted. The first such booklet, entitled *Liberty to Preach*, was by written Olin Moyle and published just after the Witnesses' Supreme Court victory in *Lovell v. Griffin*. It included sections on "Literature Distribution Ordinances," "Canvassing and Peddling Laws," "Soliciting of Contributions," "Trespass Ordinances," and "Offensive Literature." In each section, the booklet described why the Witnesses' constitutional rights protected them from arrest. For example, under the heading "Literature Distribution Ordinances," the booklet explained, "Any law requiring a license to distribute printed matter, or prohibiting the distribution of printed matter, is invalid on its face. It is immaterial whether a fee is charged for such licenses or whether it is issued gratis. Distribution of informative material or opinion cannot be subjected to license."<sup>75</sup>

As with the identification cards, Jehovah's Witnesses clearly followed instructions for presenting these booklets to law enforcement officials. In the Jurisdictional Statement for *New York v. Saia*,

72. Joseph F. Rutherford and Hayden C. Covington, Petitioner's Brief, *Jones v. City of Opelika*, 316 U.S. 584 (1942): 3.

73. Powell and Covington, "Statement as to Jurisdiction," *Follett v. McCormick*.

74. Pauline Côté and James T. Richardson, "Disciplined Litigation, Vigilant Litigation, and Deformation: Dramatic Organization Changes in Jehovah's Witnesses," *Journal for the Scientific Study of Religion* (March 2001): 15.

75. Olin R. Moyle, *Liberty to Preach* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1938).

Covington explained that Saia “attempted to show them [police officers] booklets and decisions containing legal arguments in favor of the right of Jehovah’s Witnesses to protection in the exercise of their rights of freedom of speech, press and worship.” The arresting officer replied that he, “didn’t have a damn bit of use for what had been written about the Constitution protecting the rights of Jehovah’s Witnesses, nor the decisions of the Supreme Court of the United States.”<sup>76</sup> The first police officer on the scene to confront Mr. Saia, James Pittard, also reported that the Witnesses “showed us a book too, and read from it that all Police officers that make an arrest or cause an arrest to be made are subject to fifteen to fifty years in jail and fine of five thousand dollars.”<sup>77</sup>

Along with identification cards and booklets outlining legal decisions, after 1939 Witnesses were also provided an official letter from the Watchtower Bible and Tract Society to present to local police departments. The letter, entitled “To the Police Department of the City of \_\_\_\_\_” (to be filled in by the Witness), informed local law enforcement of Witness canvassing activities in their area. The letter was to be delivered to the local police station prior to the start of door-to-door or street corner work. The goal of the letter was to make local law enforcement officials aware of their activities (all guaranteed under the First Amendment) so they could intervene to prevent conflict with opposing groups.

While there is no evidence to support ulterior motives of Watchtower officials, the formal announcement of their arrival may have tipped off those opposing the Witnesses and certainly could have led to more rather than fewer arrests in these communities. In most communities hostile to Witness activity, police officers were also anti-Witness. Mulder and Comisky concluded that Witnesses “found it necessary to struggle against a tremendous surge of unfriendly local opinion and opposition . . . aided and abetted by zealously antagonistic local law-enforcement authorities.”<sup>78</sup> For example, a 1940 article in *Survey Graphic* magazine detailed the passivity of law enforcement during the beating of several Witnesses as they were run out of a small, Southern town. As one female Witness was hit squarely in the back with a brick, the local sheriff “leaned against a telephone pole,” making

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76. Hayden C. Covington, “Jurisdictional Statement,” *New York v. Samuel Saia*, 297 N.Y. 659 (1947): 8.

77. James Pittard, “Transcript of Testimony,” *People of the State of New York v. Saia*, State of New York Police Court—City of Lockhart, 10 September 1946, 45.

78. Mulder and Comisky, “Jehovah’s Witnesses Mold Constitutional Law,” 262.

“no move to join the crowd, or to check it.”<sup>79</sup>

### NO PERMITS, NO LICENSES

Witnesses were instructed by the Society *not* to obtain a permit or license for their canvassing activities, even if one were required. To them, asking for a permit to spread the word of Jehovah God would be an “insult to the Almighty.”<sup>80</sup> Witnesses believed that requesting a permit for speaking the Word of God could result in “everlasting destruction” as such a request would be an “act of disobedience” to God.<sup>81</sup> Olin Moyle, in the Petitioner’s Brief for *Schneider v. New Jersey*, explained: “Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah to do His work and that such application would have been an act of disobedience to His commandment.”<sup>82</sup> Alma Lovell and Daisy Largent, two Witness litigants whose cases reached the Supreme Court, also followed these orders. Ms. Lovell stated that she did not seek a permit because she was sent “by Jehovah to do his work.”<sup>83</sup> In the Supreme Court brief for *Largent v. Texas*, Covington openly stated, “Appellant admittedly did not apply for or receive a permit or license.”<sup>84</sup> In the Supreme Court brief for *Chaplinksy v. New Hampshire*, Covington again submitted, “Jehovah’s Witnesses, including appellants named herein, did not apply for a permit and none was issued for such ‘information march.’”<sup>85</sup>

While the refusal to submit to a worldly government was clearly a part of Witness theology, there was also a legal reason to refrain from seeking permits. In each licensing case, Covington set forth the premise that ministers cannot be licensed in the United States. “The constitutional ‘right’ to serve Almighty God cannot be taxed or licensed,” Covington wrote in the *Jones v. City of Opelika* brief, “It is

79. Beulah Amidon, “Can We Afford Martyrs?” *Survey Graphic*, September 1940, 77.

80. Witness litigants routinely used this kind of language in depositions to justify why they had not secured a permit for their activities. For example, in *Coleman v. City of Griffin*, the defendant explained, “To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to Almighty God, and would in time result in my own destruction.” 55 Ga. App. 123: 127.

81. Covington, “Appellant’s Brief,” *Largent v. Texas*, 318 U.S. at 11.

82. Olin R. Moyle and Jacob S. Karkus, “Petitioner’s Brief,” *Schneider v. State*, 308 U.S. 147 (1939): 3.

83. *Lovell v. City of Griffin*, 303 U.S. 444 (1938): 448.

84. Covington, *Largent v. Texas*, 318 U.S. at 11.

85. Joseph F. Rutherford and Hayden C. Covington, Appellant Brief, *Chaplinksy v. New Hampshire*, 315 U.S. 568 (1942).



not a 'privilege,' but a *right*.”<sup>86</sup>

The Witnesses' reasons for refusing to obtain a permit were not always accepted as valid by the Supreme Court justices. Justice William O. Douglas recalled Justice James McReynolds's disgust with Judge Rutherford's argument for supporting his client's refusal to obtain a permit in *Lovell v. Griffin*. At one point in Rutherford's oral arguments, McReynolds interrupted, saying, "Instead of applying for a permit, which seems to me a reasonable requirement, this lady defied the law. Tell me, why did she do it?" Rutherford pointed his finger to the sky and in his booming voice replied, "This lady did not get a permit, because Jehovah God told her not to."<sup>87</sup> McReynolds left the bench for the remainder of that day's arguments.

Witnesses did not always circumvent the permit process. Covington clearly viewed door-to-door canvassing and public assembly as separate legal concerns. Witnesses were regularly reminded to follow local ordinances unless these laws would keep them from their work. For example, Witnesses regularly sought permits for holding meetings and using sound equipment in public parks. Sometimes permits were granted to Witnesses who followed the proper procedure; other times, they were not. Either way, the Witnesses would hold their meetings. When Samuel Saia, a Witness established in upstate New York, was denied a permit for the use of sound equipment for a series of meetings to be held in the Lockport, N.Y., park, he held the meetings anyway. In this case, the Witnesses claimed they "did not desire to flout the law . . . but since the Mayor had denied the permit to use the sound equipment they regarded his action, as well as the ordinance prohibiting the use of the sound equipment, as being contrary to the law of Almighty God."<sup>88</sup>

Like Saia, William Poulos, another Witness working in New England, requested a permit to hold a public meeting in a local park. His petition to the City of Portsmouth, N.H., was rejected because, as the city council explained, "they had never received a petition of a religious group to use the public parks, and that it was the policy not to permit any religious meetings in the park."<sup>89</sup> Poulos held his meeting

86. Rutherford and Covington, Brief for Petitioner, *Jones v. City of Opelika*, 316 U.S. 584 (1942).

87. William O. Douglas, *An Almanac of Liberty* (Garden City, N.J.: Doubleday & Co., Inc., 1954), 150.

88. Hayden C. Covington, "Jurisdictional Statement," *New York v. Samuel Saia*, 297 N.Y. 659 at 13.

89. Hayden C. Covington, "Brief for Appellant," *Poulos v. New Hampshire*, 345 U.S. 395 (1953): 11.

and delivered his speech entitled, "Preserving Godliness Amid World Delinquency," as scheduled without the required permit. In the appellant's brief for the Supreme Court, Covington described why Poulos did not have a permit for the meeting. Poulos "did not have a permit," Covington wrote, "because the City Council had denied the petition for a license." Covington also added that Poulos "did not have a permit because it was not necessary."<sup>90</sup>

After 1937, to avoid being arrested under ordinances that required a licensing fee or permit for the selling of literature, Witnesses were instructed to offer their literature for "no fixed contribution."<sup>91</sup> Witness identification cards, shown to all law enforcement officials with whom they had contact, also contained an explanation of their policy on "selling" literature. "Bibles, books, booklets and magazines," the identification card read, "are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this world for a witness, giving other people the opportunity of learning of God's gracious provision for them."<sup>92</sup> Hayden Covington, in the Supreme Court brief for *Marsh v. Alabama*, explained that "Grace Marsh distributed the *Watchtower* and *Consolation* magazines each Saturday afternoon on the sidewalk in front of the business block . . . calling out in moderate tones, 'Watchtower, announcing Jehovah's Kingdom.' She insisted that the magazines were not for sale and that she was not selling them, but she explained that she offered this literature freely to all persons with whom she came into contact."<sup>93</sup> Walter Leckrone of the *Detroit News* reported in 1940 that, "Judge Rutherford says they solicit neither money nor members, although contributions to the cause are freely made by followers."<sup>94</sup> Covington further articulated this stance in his 1950 booklet, *Defending and Legally Establishing the Good News*, where he reminded Witnesses "we are not selling books but do accept contributions and freewill offerings when we leave literature."<sup>95</sup> To Witnesses, distributing literature for a return offering was parallel to hearing a sermon and

90. *Ibid.*, 13.

91. Watchtower Bible and Tract Society, *Yearbook of Jehovah's Witnesses* (Brooklyn, N.Y.: Watchtower Bible and Tract Society, 1939), 64-65.

92. Covington, "Statement as to Jurisdiction," *Follette v. McCormick*, 321 U.S. at 5.

93. Hayden C. Covington, Grover C. Powell, D.R. Coley, Jr., Roy A. Swayze, Appellant's Brief, *Marsh v. Alabama*, 326 U.S. 501 (1946): 10-11.

94. Walter Leckrone, "Jehovah's Witnesses Flourish Despite Many Patriotic Flareups Against Their Sect," *Detroit News*, 29 July 1940.

95. Covington, *Defending and Legally Establishing the Good News*, 8.

passing the collection plate.

When the legal issue of selling religious literature became too prominent to ignore, Watchtower lawyers devised an argument for court cases that was repeated each time the issue arose. It did not matter, Covington would argue, whether literature was given for free or distributed in return for a contribution as the First Amendment to the United States Constitution covered both acts. "It is clearly evident that to hold that the constitutional shield protecting freedom of press covers only 'free' or gift distribution of pamphlets and other printed informative material is to sound the death toll for that most vital of constitutional rights in this country," Covington explained in *Jones v. Opelika*.<sup>96</sup> Representatives of established religious organizations such as the Catholic Church and the Salvation Army distributed pamphlets and solicited funds, he argued.<sup>97</sup> Salespeople peddled newspaper and magazine subscriptions door-to-door, and collected money for their products. Their words as well as their distribution methods were protected, so too should those of the Watchtower. Any tax on the distribution of literature, Covington argued repeatedly, was a prior restraint on free speech and press.<sup>98</sup>

Taxing the distribution of religious literature was also unconstitutional, Covington maintained, because it hindered the free expression of religion as practiced by the Jehovah's Witnesses. Because the Witnesses practiced their religion through the door-to-door distribution of literature, any limitation on this practice would violate their First Amendment rights. "The activity of Jehovah's Witnesses in distributing Bible literature is admittedly a 'religious rite,'" Covington wrote. "Their accepting money contributions, free will offerings, while wholly *incidental* to their primary aim of encouraging recipients of literature to study the printed message," he argued in the Supreme Court brief for *Largent v. Texas*, "is a necessary integral part of the entire *act of worship*."<sup>99</sup>

#### KEEP ON KEEPING ON

Witnesses were expected to return to complete their ministerial work no matter what or whom they had encountered the previous day.

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96. Rutherford and Covington, "Petitioner's Brief," *Jones v. City of Opelika*, 316 U.S. at 26.

97. Covington, "Appellant's Brief," *Largent v. Texas*, 318 U.S. at 20.

98. See for example: Rutherford and Covington, "Petitioner's Brief," *Jones v. City of Opelika*, or Covington, "Appellant's Brief," *Largent v. Texas*.

99. *Ibid.*, 22.

No one had to tell them to continue, really, as their personal salvation relied on their successful proselytizing. Journalist Stanley High commented in a 1940 issue of *The Saturday Evening Post*, “They never retreat. On the contrary—fortified again by the Scripture—they welcome it.”<sup>100</sup> So, day after day, no matter the weather, the legal restrictions or the mob violence, they returned to fulfill their mission. This repetition was the foundation for testing the legality of licensing restrictions in the 1930s and 1940s. In essence, the reappearance of Witnesses each day forced local law enforcement agents to apply existing regulations or create new ordinances, which in turn led to arrest, trial, appeal, and review. The Jehovah’s Witnesses, willing to fight at any cost to spread the truth, would face these new ordinances head on and test every one of them if need be, beginning with the most flagrantly unconstitutional. Covington claimed that the Witnesses were the only group willing to confront the ordinances, what he termed, “mischief framed by law.”<sup>101</sup>

#### TEST CASES AND APPEALS

Each congregation, after having gathered information from its members, was assigned the task of reporting any arrests or litigation in its territory to Watchtower headquarters. Covington then selected which cases to more closely follow or join. When sifting through reports from the congregations, Covington was looking for litigants “who had good reputations in the community, who were storeowners, who were shopkeepers.”<sup>102</sup> Most of all, Covington wanted to eliminate as many extraneous variables as possible. For example, if a Jehovah’s Witness appearing in court had a son who was kicked out of school, that Witness would be removed from consideration as a test case.<sup>103</sup> Covington wanted to be sure the judge or jury had no reason, before the case began, to vote against his client.

The Watchtower legal team also chose litigants who would play on the emotions of jurists. “They wanted women,” Professor Jerry Bergman recalled Covington saying, “especially women that had children.” These women, Covington believed, would be seen as “just a mother who was doing God’s will.”<sup>104</sup> This strategy seemed to work for

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100. High, “Armageddon, Inc.,” 18.

101. Hayden C. Covington in Cole, *Jehovah’s Witnesses*, 113.

102. Hayden Cooper Covington, interview with Jerry Bergman.

103. Jerry Bergman, interview by author.

104. Hayden Cooper Covington, interview with Jerry Bergman.

the Watchtower as many of the literature distribution cases that reached the Supreme Court had women as litigants.<sup>105</sup>

Race was also a consideration. Covington said that they had some cases with black defendants they thought they could use, but were concerned prejudice would “mix the issues.”<sup>106</sup> Bergman noted that Covington felt, “they may lose if they were black. So, almost all of the cases were white.”<sup>107</sup> One of the few Jehovah’s Witness cases to reach the Supreme Court with an African American as defendant was *Jones v. Opelika*. Interestingly, Covington and the Witnesses initially lost this case when it reached the Supreme Court in 1942, although the decision was overturned a year later.

In addition to choosing the proper litigant for a case, for the plan to be successful the Jehovah’s Witness legal team also had to ensure the case would be heard by a court beyond the local jurisdiction in which the violation had occurred. To implement this national strategy, by 1933 all Witness lawyers were instructed to appeal adverse decisions to a higher court.<sup>108</sup> Members were instructed in how to proceed once a court case was underway to “establish the basis for appellate review of conviction.”<sup>109</sup> If Witnesses lost in court, they were reminded not “to let a lower court stand against you without review of appellate courts.”<sup>110</sup> The biblical reasoning for appeal derived from Paul’s “appeal unto Caesar,” to escape death in Jerusalem (Acts 25: 10, 11).<sup>111</sup> The legal reasoning for appealing decisions was more obvious—to build a file of test cases from which to devote Society resources. Because appeal was an integral part of Covington’s plan, many cases reached higher courts for review. “Before the smoke of the war years cleared,” Jehovah’s Witness Marley Cole wrote, “190 appeals were taken to higher courts.”<sup>112</sup>

In select instances, Watchtower lawyers from Brooklyn would be sent to oversee or take over representation of the cases from the beginning. More often, however, local or regional lawyers affiliated or

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105. See for example, *Lovell v. Griffin*, 303 U.S. 444 (1938); *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Largent v. Texas*, 318 U.S. 418 (1943); *Marsh v. Alabama*, 326 U.S. 501 (1946).

106. Hayden Cooper Covington, interview with Jerry Bergman.

107. Jerry Bergman, interview by author.

108. Watchtower Bible and Tract Society, “History,” 426, in Manwaring, *Render Unto Caesar*, 27.

109. Harrison, *Visions of Glory*, 192.

110. Covington, *Defending and Legally Establishing the Good News*, 14.

111. *Ibid.*

112. Cole, *Jehovah’s Witnesses*, 113.

sympathetic with the Society would handle lower court appeals for Witness clients. Often these regional lawyers would assume control of a case after Witnesses themselves appealed the case from a lower court. The appeal process was a kind of pyramid, with higher-level attorneys joining for each level. Hayden Covington, while keeping abreast of the details of these test cases from the beginning, would not join the legal team until a case was to be appealed to the U.S. Supreme Court.

For example, Roscoe Jones, a Witness arrested in Opelika, Alabama, appealed his own case from the recorder's court when he was "sentenced to pay a \$50 fine or spend ninety days in jail."<sup>113</sup> Grover Powell, a Witness lawyer working in Atlanta, joined the case after its first appeal from the Opelika, Alabama recorder's court. Powell "responded to the call of Roscoe Jones and prepared his case for trial in the Alabama Fifth Circuit."<sup>114</sup> Powell continued as Jones's primary counsel through the denial of appeal in the Alabama Supreme Court. Hayden Covington joined Powell in preparing the appeal for the U. S. Supreme Court, and shortly after, developing oral arguments for the Court. Covington, alone, presented the case before the Supreme Court.

#### AFTER THE DUST SETTLED

The Watchtower Bible and Tract Society expanded First Amendment protections in a precisely orchestrated, deliberately instigated plan. This plan did, first and foremost, protect Witnesses carrying forth the message of Jehovah God. It was not a simply a secondary effect that this plan guaranteed Witnesses' rights of free speech, press, and religion, however. Rutherford's vision to protect Witnesses by use of the law was expanded by Covington's desire to fight against unconstitutional ordinances. The plan, implemented by thousands of Jehovah's Witnesses doing God's work, produced a flood of cases, all appealed to a higher court. Those 190 appeals,<sup>115</sup> in turn, led to the hearing of nineteen literature distribution and permit cases before the U.S. Supreme Court between 1939 and 1950. Fourteen of these decisions favored the Witnesses. It was neither accidental nor coincidental that the Jehovah's Witnesses protected their religious practices. It was neither accidental nor coincidental that the Jehovah's Witnesses changed the meaning of the First Amendment.

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113. Newton, *Armed With the Constitution*, 54.

114. *Ibid.*, 56.

115. Cole, *Jehovah's Witnesses*, 113.

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