Ku Klux Klan Member Loses Court Fight to Regain Job

Post 12-31-74

RICHMOND, Dec. 30 (AP)—The Fourth U.S. Circuit Court of Appeals upheld toLCourt of Appeals upheld today a lower court's dismissal of a suit by a member of the Ku Klux Klan who sought to regain his job at a Richmond department store.

The klansman, John F. Bellamy Jr., claimed he was fired from his job on the security force at Mason's Department Store solely because of his affiliation with the KKK.

Bellamy, a former policeman, accused the store and its area supervisor of violating his constitutional rights to free speech and free association.

But in its opinion today, a three-judge panel of the Appeals Court held that a person has no constitutional right to protection against private discrimination.

It thus upheld dismissal of the suite last May by U.S. District Court Judge Robert R. Merhige Jr.

Bellamy also charged in his suit that his firing in 1972 was the result of a conspiracy to deprive him of free association.

In rejecting his arguments that his constitutional rights had been violated, the Appeals Court said the First Amendment prohibits only government infringement on the rights of citizens to free speech and association.

"It is perfectly true that the First Amendment now speaks to the states by way of the 14th Amendment," the court said in the eight-page majority opinion by Judge Braxton R. Craven Jr.

But, it added, "to say that it also speaks to private persons seems to us an innovation that must come from the Congress or the Supreme Court."

The Constitution, Craven wrote, does not ban private discrimination of the sort that Bellamy alleged.

But, he added, Congress has the power to enact a law that would punish private acts of discrimination.

"For example," the opinion said, "if Congress today should be concerned about the integration of public schools in Boston, it seems reasonably clear that it could constitutionally make it a criminal offense for any person to interfere by force or violence with the attendance of children at public schools. "It would seem that the Congress could rationally conclude that such a statute would aid and implement the duty of the state under the 14th Amendment to afford all school children the equal protection of the law."

Senior Judge Herbert S. Boreman, while concurring with the majority on the Bellamy case, sharply dissented from his colleagues on the scope of congressional power to punish private discrimination.

Congress, Boreman wrote, "does not have such authority gress to protect activities com-

"In my view, the 14th Amendment empowers Conmonly considered to be federal rights only from interference by governmental entities.

"The example given by the majority, that Congress could pass a law proscribing interference with public school attendance, is . . . fallacious.

"There is no federal right to be free from purely private interference in attending school."

Both Boreman's opinion and the one written by Craven on behalf of himself and Judge John J. Butzner Jr. rejected Bellamy's contention he had been a victim of a conspiracy to deprive him of his job and his constitutional rights.

Bellamy, an ex-Chesterfield County policeman, was dismissed from his job as a policeman because of his affiliation with the klan. In a 1973 decision, the Virginia Supreme Court of Appeals upheld that dismissal.