

APPENDIX B

LAW OFFICES,
BLOCH, HALL, GROOVER & HAWKINS,
Macon, Ga., February 21, 1960.

Mr. WILLIAM R. FOLEY,
Counsel, Judiciary Committee, House of Representatives, Old House Office
Building, Washington, D.C.

DEAR MR. FOLEY: Supplementing my letter of February 20, at page 80 of the typewritten transcript of the hearing of February 16, 1960, is a discussion of the precedent in the antitrust laws as to the presumption sought to be set up in House bill 10035.

What I had in mind was that at page 21 of the confidential committee print of Judge Walsh's testimony of February 9, 1960, the judge had said: "Well, if you found a pattern and practice against Negroes, and he is a Negro, I think Congress is justified in jumping the gap and establishing a conclusive presumption that that is the reason for his troubles."

The chairman then asked: "You mean that Congress can justify *that presumption?*" [Emphasis added.]

A few lines later, the chairman asked: "Is there any precedent where Congress has created *such a presumption?*" [Emphasis added.]

Judge Walsh answered: "The first thing that occurs to me is in the antitrust cases, where the presumption is not conclusive, but presumptive. * * * This is not a conclusive presumption; that would establish a prima facie case."

Doubtless, Judge Walsh was referring to title 15, section 16, of the United States Code. (Act of October 15, 1914, c. 323, sec. 5, 38 Stat. 731.)

While that statute was amended July 7, 1955 (69 Stat. 283), title 15, section 16 of the United States Code Annotated shows that it continues to read: "A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15(a) of this title as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: * * *"

In the United States Code Annotated, note 19 to title 15, section 16 is: "Prima facie effect of criminal convictions."

Theatre Enterprises v. Paramount Film Corporation, 346 U.S. 537, 542, 74 S. Ct. 257, 260, shows how carefully the Court provides that such prior decrees should be only prima facie evidence in the subsequent proceeding. That the question was decidedly an issue is shown by Justice Black's dissent.

The limitation as to the application of the prior decree in an antitrust suit is demonstrated by *Eagle Lion Studios, Inc. v. Loews, Inc.*, 248 F. 2d 438 (2d circuit). (Affirmed, 358 U.S. 100.)

The limitation is further demonstrated by *Monticello Tobacco Co. Inc. v. American Tobacco Co.*, 197 F. 2d 629 (2d circuit). (Certiorari denied, 344 U.S. 875.)

Both of these cases were tried in the last decade in the southern district of New York, and Judge Walsh is undoubtedly familiar with them.

Aside from any other consideration, the constitutionality of a statute creating a rebuttable presumption is quite different from the constitutionality of a statute creating a presumption which is fixed and irrebuttable.

Adler v. Board of Education, 72 S. Ct. 380(16), 342 U.S. 485, demonstrates that. It recognizes that the relation between the fact found and the presumption must be clear and direct, and not conclusive.

The most cogent demonstration of the constitutional difference between rebuttable and irrebuttable presumptions is a comparison of the cases of *Mobile, J. & K. C. R. Co. v. Turnipsced*, 219 U.S. 35, and *Western & A. R. Co. v. Henderson*, 279 U.S. 639.

In the former, the Court held a "presumption statute" valid because its only legal effect was to cast upon the defendant the duty of producing some evidence to the contrary.

In the latter, the Court held a similar statute invalid because it created an inference that was given effect of evidence to be weighed against opposing testimony, and was to prevail unless such testimony was found by the jury to preponderate.