

Aug 6, 1969

Dear Sector,

I that you'd be interested
in what fate a Chicano
on the inside can expect if
he halfway shows any
kind of initiative to do
his own thing for "lo roga".
We have never talked but
I felt you should know
about this matter from my
side since I don't expect
an Unbiased hearing from
the Commission
attorney designate.

From the Desk of
DOMINGO NICK REYES
6300 Luzon Ave., N. W.
Washington, D. C. 20012
AD (202) 726-9294

August 5, 1969

Mr. Howard A. Glickstein
Staff Director - Designate
U. S. Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Glickstein:

Your Official Reprimand to me of July 28 for "Failure To Secure The Written Permission Of The Staff Director Before Engaging In Outside Employment" contains numerous misstatements of fact and makes several significant omissions. Moreover, the lengthy diatribe in the July 28 letter far exceeds your statement in our discussions on July 24, this matter that a Reprimand, if any, would be a short form letter. Also, the issuance of an Official Reprimand in this instance is an excessive, unwarranted reaction in view of the fact that the regulation with which I am charged with failure to comply is a technical regulation which is honored more by its breach than by its observance and that the regulation is applied without an even hand. In view of the foregoing and the encroachment of this Official Reprimand on my rights as an employee and as a citizen, I am exercising my right to reply to your letter of July 28.

1. The Reprimand states that I "deliberly defied" the Commission regulations on outside employment by serving as moderator of the Nightcall program. That accusation is not supported by the facts.

a. I did not "deliberly defy" the regulations on outside employment by accepting the job and performing as moderator on Monday night, July 21, because I did not have an opportunity to obtain clearance of the activity from the Commission.

On Wednesday afternoon, July 16, I received a telephone call from Trafco, the producer of the Nightcall program, asking that I discuss with them the possibility of my serving as moderator of the Nightcall programs for the following week. While on annual leave Thursday, July 17 and Friday, July 18, I was in New York City. Together with my attorney J.L. Gibson I discussed with Trafco my doing the show; and on Friday we agreed that I would moderate the program for the week of July 21-25, receiving not just the expenses I had expected but also standard union compensation.

I returned to Washington Friday night. Monday, July 21, was a government holiday in honor of the astronaut moon walk and thus neither I nor the Commission worked. Monday night I flew to New York to serve as moderator.

b. I did not "delibertly defy" the regulations on outside employment by accepting the job and performing as moderator of the Nightcall program, because neither the nature of the show nor the time requirements presented to me an apparent conflict with my position with the Commission.

The nature of the Nightcall program is such that it does not involve the Commission. Nightcall, sponsored by the Methodist Church and the Ford Foundation, is an issues-oriented, live question-and-answer program in which listeners, generally by long distance, questioning the guest. The moderator does not make comments but merely asks some initial questions and directs the questions from listeners. The moderator does not make substantive contributions. Further, I was not to appear as a representative of the Commission, mention my position with the Commission, express the views of Commission or comment on its work. And, I did not receive the offer because of my position with the Commission, but because my extensive experience in broadcasting.

Therefore, because the Commission and the post as moderator are totally unrelated, it did not occur to me that preclearance of this arrangement was necessary.

This reaction was confirmed by the fact that you did not take exception to the nature of the program nor of my participation on it. The exception you took rested on the grounds of the hours required by the show and some unarticulated curfew policy of the Commission (which will be discussed under section 3 of this letter).

c. I did not "delibertly defy" the regulations on outside employment, because contrary to assertions in your letter I had not received repeated full explanations of the regulation and the Commission's interpretation of it.

Your letter contains several misstatements in this area in an attempt to show that I had received repeated full explanations of the regulation.

(1) Contrary to the clear implication of your letter, I did not receive the July 14 memorandum on "Conflicts of Interest" prior to my accepting the Nightcall post and opening as moderator. Because internal circulation in the Commission is slow and because I was on annual leave on Thursday and Friday and on government holiday on Monday, I did not receive the July 14 memorandum until July 22, after my opening on Nightcall.

(2) On beginning employment with the Commission in June, 1968, I did not receive orientation sessions.

(3) I did not receive, in orientation sessions or special sessions with the personnel officer, any explanation of "restrictions on outside employment."

I did receive a copy of the Commission regulations six months after I arrived here and these regulations do contain at section 705.735.7 a 2-sentence paragraph on outside employment and activities. I did receive a copy of the routine office memorandum entitled "Conflicts of Interests". I did have discussions with the Office of General Counsel, David Rubin, concerning my participation in the outside activity of the then ad hoc Mexican American anti-defamation committee. But all discussions focus on the "conflicts of interest" questions of outside activities and are not designed to drive home the point that all employment, regardless of conflict of interest, is to be precleared. And, the outcome of the discussion with Mr. Rubin was a clear rule that outside activities were permitted, so long as the name of the Commission is not involved, a rule which I have attempted to follow.

Therefore my state of mind was such that I did not relate Nightcall to the regulations on conflicts of interest. My state of mind was not, as you termed it, "well aware of our Rules and Regulations" and my conduct, therefore, was not, as you termed it, a "deliberate defiance of these Regulations" (paraphrased).

Further, the 2-sentence regulation in question is so brief and vague as to what constitutes a conflict of interest, it is doubtful that I or anyone can be termed "well aware of our Rules and Regulations". (This point will be explored further under section 2a of this letter.)

d. I did not "deliberately defy" regulations because on my receipt of the July 14 memorandum on "Conflicts of Interests", I took steps to amend the situation.

Tuesday, July 22, the day when I received the July 14 memorandum, my name had appeared prominently in a wire story in the Washington Post and other newspapers concerning the National Mexican American Anti-Defamation Committee, Inc., for which I am spokesman, and its plans to initiate litigation against broadcasters and advertisers to stop negative stereotypes of Mexican Americans.

On receipt of the July 14 memorandum, my immediate reaction was that it would effect the Committee, more than Nightcall. I contacted my attorney, who had the same reaction. Our reactions proved to be true.

I drafted a rough letter to the Director stating my involvement in both the Committee and in Nightcall. I met with my attorney at lunch, who stated that he needed to study the regulations. Our concern lay primarily with the Committee; we contacted the Chairman of the Trustees of the Committee to discuss the situation with him. I also contacted David Hunter of the Office of General Counsel because his name had appeared that day in the newspapers on behalf of an anti-ABM group. Mr. Hunter and I discussed the meaning of the regulation, the Commission's policies on outside activities and its treatment of those who had not precleared employment. Mr. Hunter suggested in passing that I take immediate steps to correct the situation.

That afternoon, I drafted a letter to the Director requesting permission to continue Nightcall. I conferred further with my attorney and with the Committee chairman concerning the Committee. The work of the Commission consumed the remainder of the day.

Tuesday night, July 22, I did not moderate Nightcall because the thunderstorm in Washington prevented air traffic to New York.

Wednesday I conferred again with my attorney and with the Chairman of the Committee concerning the memorandum and the Committee. I finalized a handwritten letter to the Director requesting permission to moderate Nightcall.

At 5:30 p.m. Marty Sloane entered my office and informed me that he had knowledge that I was moderating the Nightcall program and had not obtained permission from the Director. I showed to him my handwritten letter to the Director which I had already prepared. Mr. Sloane never advised me against continuing to moderate the program without obtaining clearance; his conversation with me was in the nature of a series of questions, leaving the onus of the decision making on me. Mr. Sloane signed off on my handwritten letter. At 5:40 p.m., I arrived at the Office of the Director.

The Director knew of my presence in his office but made a series of telephone calls during the period of 5:40 to 6:20. He did not request that I remain to see him. At 6:20, the time I had to leave to catch a plane to New York to moderate the Nightcall program, I left the Office of the Director, depositing my letter with his secretary.

Your letter is, therefore, incorrect in its blunt accusation that I refused to wait to see you and in its conclusion that my refusal illustrates the intentional and deliberate nature of my conduct.

My conduct in this period grew out of my pre-occupation with the effect of the memorandum on the Committee. With Nightcall the ox was already in the ditch. And, I sensed that Nightcall and the Committee would be linked together; it was, therefore, necessary that I know my full rights in the area of outside activities (where the Committee lay) before I discuss my obligations in the area of outside employment (where Nightcall lay). My intuition that Nightcall would be used as a club against the Committee proved to be correct (this will be discussed more fully in section 2b of this letter).

e. In conclusion, my conduct during this period stemmed initially from innocence of the meaning of the regulation and then will-placed apprehension of over-reaction. It, however, did not begin as "deliberate defiance" of the regulations and did not grow into that. As you did not object to the activity so much as my failure to preclear it, an Official Reprimand should not be issued.

2. An Official Reprimand should not be issued to me because the regulation on outside employment is vague at best and moreover is not enforced even handedly.

a. An Official Reprimand should not be issued because the regulation is vague in the sense that the language of the regulation is broader than the thrust of the regulation on conflicts of interest.

The intention of the regulation is to prevent employees of the Commission from engaging in activities and employment which constitute a conflict of interest. This intent is manifest in the memorandum's explaining the regulation, such as the one of July 14, which are entitled "conflicts of interest." And, Commission attorneys and personnel discuss the regulation as the "conflict of interest" regulation. To me as a laymen, this is the essence of the regulation.

The regulation instructs the employee to obtain preclearance of outside employment (defined by useage to be activities wherein the employee is paid). Although the regulation is clear as to its instructions to the employee, it is not clear as to its instructions as to the decision-maker.

Presumably the decision-maker is to base his decision on the employee's request on the formula articulated in the preceeding sentence that employees are prohibited from activities "incompatible with the full and proper discharge of his responsibilities of his Government employment." This refined phrase lacks real content for the employee seeking guidelines for his extra-curricular activities. Presumably, this phrase includes the traditional conflicts of interests; positions where the government employees decision-making process is compromised because he is receiving a pecuniary reward from outsiders, or his relatives. Presumably, it would also prohibit the employee from trading on his post in government to obtain other positions.

But what other restrictions are included? In the instant case, I was surprised to learn that the Director thinks that the standard includes a curfew restriction on employees, requiring that the employee cease activities by an unspecified time in the evening.

Collaterally, the regulation leaves unclear the question, whether employment and activities are subjected to the same standards and that employment and activities are differentiated only by the procedure of preclearance of employment.

And, a government employee, a layman to the law, might conclude that only that employment which is potentially a conflict of interest requires clearance.

b. An Official Reprimand should not be issued to me because the regulation is not applied even handedly.

I and many Commission employees are aware of numerous instances where Commission employees, both in Washington, D. C. and in the field, engage in outside employment, particularly in consulting.

The regulation is, therefore, used as a lever to remove those persons whom the Commission does not like for personal or for political reasons.

The regulation is also subject to misuse to discriminate against types of extra-curricular involvement. In this case, the regulation and my breach of it with regard to Nightcall was used as a club to force my resignation from the Committee.

July 24, the Director called me to his Office for a harrange concerning Nightcall. Mr. Sloane was present. The Director also ordered me to resign from all organizations I participated in. I requested to be represented by my attorney but the Director did not set another meeting. Instead, he sent to me a letter denying permission to continue Nightcall, ordering me to list all positions with decision-making authority and to resign from them by Friday.

At my request, Mr. Martin G. Castillo called another meeting that afternoon, where I was represented by my attorney.

In the second meeting with Mr. Castillo present, the Director received my request for annual leave in order to moderate Nightcall. The Director approved my remaining in the three posts as Chief Steward AFGE Local 2794; State Director LULAC; Board of Directors FIBC. The Director ordered my resignation from the DC Chairmanship of "Hulega" Committee and from Executive Director of the NMAAC Committee. When my attorney requested time to study the law on outside activities by federal employees, the Director denied the request and stated that my request for annual leave to do the Nightcall program was his "trump card." The Director intended to force my resignation from the Committee by using this regulation as a club.

c. In conclusion, the uneven application of this vague regulation suggests that an Official Reprimand should not be issued.

3. An Official Reprimand should not be issued to me because the objection to my moderating the Nightcall program because of its late hours implies that the Commission has authority to issue a curfew to its employees.

The Commission like the entire federal government does not have authority to issue curfew orders to its civilian employees.

In a letter of July 24, the Director denied permission to moderate Nightcall on the ground that its late hours prevented my proper performance of my duties at the Commission. The gist of that objection is that I am not getting enough sleep and must be placed on curfew to insure that I will.

Such an objection is clearly beyond the authority of the Commission and not properly a reason for denying permission under the regulation. Your curfew-views are consistent with your oral assertion to me on July 24 that you were inclined to disapprove my request for annual leave for Nightcall on the ground that you believed every Commission employer should work so hard and so late that he could not maintain outside employment. You also stated that you would not approve a job which would take me to New York because you felt an employee was on call 24 hours a day. These slave-shop attitudes are also clearly

beyond the authority of the Commission and not properly a reason for denying permission under the regulation.

4. An Official Reprimand should not be issued because the order, in reality, based on objections to my serving as Executive Director of the Committee, is an encroachment on my rights as a citizen under the Fifth Amendment to free speech and assemblage.

The Official Reprimand contains itself to Nightcall and does not reach to my serving as Executive Director of the Committee. Yet, the discussions with the Director on July 24 clearly indicate that he viewed the two as related (he referred to them as "a package deal") and that Nightcall was a club to force to cease activities as the Executive Director of the Committee.

The Director explained his objection to my participation on the Committee by interpreting the regulation on outside activities on the basis of his view that the Commission has a Congressional mandate to remain as an objective fact finding body. He therefore interpreted the regulation prohibiting activities by employees, particularly highly visible activities, which would serve to undercut the position of the Commission as objective. These counter arguments occur: As the Commissioners approve and adopt the reports, it is doubtful that activities of staff members could prejudice the reports or undercut their acceptance. Moreover, the Commission is not active in the area in which the Committee is active. And finally, the above interpretation of the rule permits each federal agency to have its own interpretation of the "conflicts of interest" regulations violating the symmetry throughout the government of the Civil Service laws.

Moreover the Director's construction is in conflict with the Constitution which by the Fifth Amendment guarantees all citizens the right of free speech and organization. The major limitation on federal employees is the Hatch Act restrictions on politics, and the Committee's activities are not such. Therefore, regulations and interpretations of those regulations to restrict employees are not valid.

5. This Official Reprimand should not be issued to me because the wording of this Reprimand far exceeds our agreement on July 24 to settle this matter.

Discussions on July 24 with the Director lead to a final third meeting at 5:30 p.m. with the Director and Larry Glick of the Office of General Counsel. In that meeting, we attempted to reach a compromise on the question of my resignation from the post as Executive Director of the Committee.

In that meeting, the Director stated that he felt he must issue an Official Reprimand to me. My attorney objected. My attorney then asked the nature of the Reprimand. The director stated that it would be a "short form letter." On further questioning, the Director stated that it would state that I had "deliberately defied" the regulations. My attorney again objected and the Director consented to limit the letter to a statement that I had failed to gain his approval of my employment as Nightcall moderator, and that the Director did not disapprove the request when I did make it. The clear meaning of that agreement was that the Reprimand would not contain language imputing "deliberate defiance" of the regulations or words to that effect.

I regard our agreement for annual leave and my resignations for outside activities as settling this matter and an official reprimand is excessive and unwarranted. But if one were issued, then it should be short and directed toward a failure to seek approval, not deliberate evasive tactics.

In conclusion, for the above stated reasons, I request that an Official Reprimand be not issued in this case.

Moreover, due to your involvement in this case and your heatedly expressed views on it, I request that this question be referred to another person, or a panel of persons, for a decision.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alan", with a horizontal line underneath it.