

THE ELEANOR ROOSEVELT PROGRAM

February 23, 1951

Description: In the opening segment, ER and Elliott Roosevelt respond to a listener's question about the court case *Kellems v. United States* and the right of the government to seize private citizen's money. In the interview segment, ER's guest is Weston Vernon, Jr., vice president and chairman of the Executive Committee of the New York State bar Association.

Participants: ER, Elliott Roosevelt, Weston Vernon Jr.

[Elliott Roosevelt:] And now mother to study our mail today uh I have here a letter from uh a Mrs. Roth of Astoria, Long Island, who asks the following question. She says, "I'm enclosing a clipping of the Kellems case [*Kellems v United States (1951)*], to me there is no comparison for her case with the CIO union. She defied the government of the United States in a time of distress by absolutely refusing to cooperate in a measure of a national law. Why shouldn't the thousands of other firms demand likewise? I suppose this woman in her conversation denounces Russia, but in her dictator tactics, to me, she is in the same class. Does this mean she still does not have to deduct the withholding tax from her employees?" The clipping Mrs. Roth enclosed is a short article written by Miss. Kellems [*Vivien Kellems*], which reads as follows:

"This decision demonstrates the wisdom of our forefathers in guaranteeing to us the right of trial by jury. Twelve representative American men and women have decided that when a citizen in good faith and honest belief, questions the constitutionality of a law and asks for a test case in the traditional American way, that person is entitled to fair treatment. Phillip Murry and the CIO wrote the Taft-Hartley law and asked for a test case, the government immediately gave it to them." (1:44)

Perhaps before we discuss this, I better say that Miss Kellems, a Connecticut industrialist, refused to deduct withholding tax from her employees' salaries. Stating that collecting taxes is very properly a function of the government, and should be paid for by the government. The government then forcibly seized her money. The case came to trial and Miss. Kellems' was upheld, and the jury decided that the government seized her money illegally, and must return it. And that's the case, as uh briefly as I could put it mother, and I think it'd be interesting for you to, try to answer Mrs. Roth as best we can.

[ER:] Well, of course um the point was not uh whether she must deduct the withholding tax. Uh if she continues in business in the future like all other businesspeople do. It was whether the government had a right to seize her money eh and um the jury decided that you could not seize her money, apparently, whether that is a proper decision or not uh we will only know after an appeal, I suppose, to a higher court. But, um because such decisions are often changed as they go up through various courts. But, Miss. Kellems' position, um uh, I remember hearing her explain, eh is that everybody, uh should hold onto their own uh money, and lay aside what they are going to pay in taxes and so forth. Now of course this method of deducting from an employee's salary, a-a withholding tax, which is then applied to the employee's income tax uh is to make it easier for people uh to uh not find themselves suddenly confronted at the end of the year with a lump sum, which they have to pay-pay when they've forgotten on the way along as something seemed necessary they spent their money and they didn't save what was needed, perhaps sometimes they didn't even realize what they should save um for uh the tax that would be payable at the end of the year. Now, for every three or four months, whatever, however they chose to pay it [Elliott Roosevelt: um hm] or however they were asked to pay it. Um, now of course it does put on the employer a little more uh trouble, they have to keep books more carefully, they have to deposit the money in a

separate account in the bank and, in other words, they do the saving for their employees, and they make it sure that the government on what they are paying that employee, does get its money. So they are serving the government, and probably spending a little of their own um those a matter of fact, uh I don't think it amounts to much harm for any employer, because he probably deducts the expense as a business expense of the bookkeeper or whatever he has to do the job. So that really, what Miss Kellems was doing was not saving herself anything, it was just um an idea she had that she just wouldn't do that for the government and her employees. And so there it ended and I-I personally think that as long as the government had asked it um it would have been better to have complied with the government's request. (5:52)

[Elliott Roosevelt:] Yes, well now I think to, get back to uh the question. Uh as put by Mrs. Roth, in the first place, the statement made by Miss. Kellems was definitely intended uh [ER: to create--] to make the people believe--(6:10)

[ER and Elliott Roosevelt Overlap]

[Elliott Roosevelt:] in this country--

[ER:] that the tax-- that the tax uh [Elliott Roosevelt: that the--] I mean, the way of handling the tax is unconstitutional--

[Elliott Roosevelt:] no, no, she definitely challenged the withholding tax law's constitutionality, that's what she tried to make the public believe [ER: well that of course hasn't been decided] that she had done with this case. Whereas, in actuality, what she did with this case was to challenge not the constitutionality of the law, but the uh ability of the government to seize her money to uh be able to pay the tax that she was supposed to have paid. Now, uh she has--she is the one in her statement who compared it to the Phillip Murry CIO test of the Taft-Hartley law. Uh, which if I remember rightly uh ended in the Taft-Hartley law being ep-upheld as to its constitutionality. [ER: Yes.] What they were doing was testing the right of the Taft-Hartley law to make, uh ah ah the--

[ER:] to oblige.

[Elliott Roosevelt:] uh oblige unions and their leadership to sign a loyalty oath. [ER: um hm] Is that correct? (7:26)

[ER and Elliott Roosevelt overlap]

[ER:] I am not sure now--

[Elliott Roosevelt:] Well I think that's what that case was.

[ER:] what it was or wasn't--

[Elliott Roosevelt:] and it was established by our Supreme Court, and by the-- by our courts rather, that uh it was perfectly legal to ask for such a uh loyalty oath of union leadership. Well, uh, what Miss. Kellems has done is, she is uh trying to uh imply that the government is pulling uh very illegal methods of collecting taxes whereas she hasn't tested it yet. She hasn't tested the legality, and she's also impugning uh the- uh the other people that she is opposed to, such as the CIO and Mr. Murray, and probably most of organized labor, whom she doesn't happen to agree with. But I think that Miss. Kellems' is uh, her whole case, uh this question that is asked here in the letter from Mrs. Roth uh she asks the question: "Why shouldn't thousands of other firms demand likewise, and just refuse to pay?" Well, I'd like to hear your comment as to what you think of such an uh of uh what would happen in this country if thousands of firms were to just say: "All right, we're gonna defy the law."(8:53)

[ER:] Well, uh I think it would be extremely bad. I think it's quite all right for um anybody to work to change the law if they honestly don't believe in it. I-I think that is your democratic right and freedom. But I think as long as it is on the books you should obey the law. And that is where I would differ with Miss. Kellems. I think she had an obligation to do as the law required, even though she went out and fought the law for which she had a perfect right to do. [Elliot: and its constitutionality] Yes, and then if she won her case, it would be won for everyone- one who didn't, uh, who felt with her against the law. Or if she lost her case uh it would just be too bad, uh she would have to go on complying with it. But as long as a law exists, I think we should comply with it. It was always my feeling that the people who disapproved to prohibition, but lived up to it, and went out and fought it as a matter of principle were stronger in opposition, I mean, stronger in their position against it than those who broke it [Elliot: Yes, that's right.] and were opposed to it. (10:17)

[Elliott Roosevelt:] Although I must say that uh I remember back into the days of prohibition and there were very few people--

[ER:] very few people who didn't break it--

[Elliott Roosevelt:] who didn't break it, in fact, some of uh, of the people who were ardent prohibitionists were in the forefront of those that broke the law--

[ER:] I know--

[Elliott Roosevelt:] But uh, I think that uh-- there is one other point about this particular lady, and uh her uh tactics in dealing with the government. Uh this letter states that she, uh that they suppose that uh "Miss. Kellems denounces Russia but that uh in her dictator tactics [ER: or the Soviets] to me she is in the same class." That's the words that they use in the letter.[ER: yeah] Actually, uh I think this lady has tried to set herself up as being above the law.

[ER:] Well I think she has, I think she has, but um she probably-- you know it's rather funny that um some people, when they feel that they are above the law or above anything else, it gives them a sense of power and they want a sense of power. Uh you really have to have a good deal of power, uh not to want to show off, so to speak. And I couldn't help feeling that part of her pleasure was in showing off. (11:40)

[Elliott Roosevelt:] [laughing] Well, I'm-I'm not entirely in disagreement there because I remember not so very long ago, I think it was not quite a year ago you had Miss. Kellems on to argue this tax question [ER: that's what I mean] with some experts on your television program. And I think in, maybe your criticism is justified [laughing]. But anyway, I see that our time for this particular part of the program is just about up, and so I'm afraid we'll have to go on and uh, we'll have a message now from uh, our sponsors who make this program, uh possible and uh make it possible for us to carry on these discussions. (12:23)

(Break 12:23-12:39)

[Elliott Roosevelt:] Mrs. Roosevelt's guest today is Mr. Weston Vernon Jr., Vice-President and Chairman of the Executive Committee of the New York State Bar Association. Unbeknownst to most people New York State citizens and particularly their legislators are constantly being served by members of the New York State Bar Association, and Mr. Vernon today will discuss these services. Mother, will you start the interview with Mr. Vernon? (13:10)

[ER:] Yes, I'm so glad to welcome you here today Mr. Vernon.

[Weston Vernon Jr.:] And I'm very happy to be here

[ER:] Now I know there are a great many questions so we must start at once. I understand that many judges adjourn their courts during the latter part of January while the New York State Bar Association had its annual meeting. Why is that Mr. Vernon, just what is the purpose of the State Bar Association?

[Weston Vernon Jr.:] Well the general purpose of the State Bar Association is to promote law reform and uh they're constantly discussing uh measures uh relating to the reform of- of laws that are on the books and propose legislation and the courts generally speaking in regard that as so important that they adjourn uh, while we're in session.

[ER:] Well that-- I can quite well understand that that would be well worth uh even the attention of the judges. I've been told that one of your resolutions recently passed concerns a revision in the tax law. (14:15)

[Weston Vernon Jr.:] Yes, there were several resolutions relating to changes in the tax law I think a good many people would be interested in one of them. It relates-- uh it relates to the uh fact that uh so many uh professional people, uh have a relatively short period of high earnings, and uh our idea is that perhaps we could beget some legislation that would level out the take of the government in taxes over a longer period so that there is something left.

[ER:] Does that uh effective only state legislation or--

[Weston Vernon Jr.:] No, we go into matters of federal legislation as well.

[ER:] You do? So it would affect federal and state taxes. I remember very well when uh Gloria Swanson came on my television program and was um-- I thought quite persuasive in her argument that she had to go such long periods without employment, and yet was taxed in one year on a picture that she would do, uh everything she made out of that picture and she might not make another one for five or more years.

[Weston Vernon Jr.:] Uh That's so Mrs. Roosevelt. I saw that program and I was very much impressed by her statement, that's an extreme example of a movie actress who made one movie, I think, in 14 years [ER: Yes] and was taxed at a very high rate.

[Elliott Roosevelt:] There's another, uh, type of citizen who has a bone to pick with our tax laws, and that's the poor author of uh books.

[Weston Vernon Jr.:] That's another example of a man who may work five or six years on a book, and uh, then be taxed all at once on the income from it.

[ER:] Yes, I-I-I'm very conscious of that, 'cause I having written two volumes of an autobiography I paid in one year all the-- [laughing] no I think I was able to have it over a little more than that, but not much. [laughing]

[Weston Vernon Jr.:] There are some provisions that uh give relief in some cases of that kind. But we think it ought to be extended to more people uh--

[ER:] I think particularly the athletes are a very good example; I am very interested that they are included because I think they are particularly held down to a short age group.

[Weston Vernon Jr:] That's so, and uh artists frequently work a lifetime and have only a short period when they really realize anything and sometimes never--

[ER:] Sometimes they don't realize it till after they're dead!

[Weston Vernon Jr.:] That's right. [laughing]

[ER:] Well I read something in the papers, Mr. Vernon, about the New York State Bar Association disapproving of the plan to have all lawyers sign a loyalty oath. What was your committee's reason for this?

[Weston Vernon Jr.:] The uh reason of the Committee was that in New York, at least in the State of New York, it may not be true in other places, but in the State of New York lawyers are officers of the court. They take what is known as a constitutional oath before they become lawyers, which is the same, exactly the same type of oath that the governor of the state takes, to uphold the constitution of the United States and uphold the constitution of the State of New York, they are bound by that and they are constantly subject to uh, to uh surveillance to see that they really live up to that. Moreover, our own committee on ethics and grievances has uh adopted the rule that anyone that aids the world Communist movement has violated his own oath of office already and might be subject to disbarment. Our objection to that oath was really that we regard it as unnecessary and superfluous, uh in the case of lawyers who take the oath before they're ever admitted to practice. (17:46)

[ER:] I'm-I'm very much interested um personally, I've always-- I've never objected to taking it, I take it each time I am appointed to the United Nations, but I've always felt it was somewhat foolish. For instance, in the um situation of, teachers I know of absolutely no Communist who wouldn't take the oath if necessary and go to jail with the sense that he was being martyred in a good cause. So that, from the point of view of just plain ethical efficiency, I mean whether it does what you want it to do I've often wondered about that. Now um--

[Weston Vernon Jr.:] Well I think there are those too, who felt that the oath really wouldn't accomplish anything because if someone is going to be disloyal, they will, as you say, take the oath anyway.

[ER:] (18:40) It just didn't seem to me, that it was really going to accomplish what you wanted it to accomplish. But um I-- it was one thing that I often wondered about uh lawyers' fees, as a rule, are pretty high, and I wondered if you had any, um arrangements of uh, for serving all the people of low and moderate incomes who could not afford um legal services ordinarily.

[Weston Vernon Jr.:] (19:09) Uh, yes we do and a great deal of attention during the past few years, and I think perhaps the most important subject that lawyers are going to deal with in the-- in the future, is the general problem is providing legal services for the sixty or seventy percent of the people in the United State who either can't afford anything, or who can't afford, uh let's say uh high rates for lawyers. Now that's accomplished in two ways. The uh State Bar Association and as a matter of fact all Bar Associations are uh undertaking programs of legal aid in which they help uh citizens who can't afford to pay any- uh-thing for lawyers. In those cases they will be, their matters will be handled free of charge. The other development is the lawyer's referral service for people of moderate incomes. Um, we realize that ah many people can uh afford to pay a small amount for legal services but uh, they either don't know a lawyer or they're just afraid to go to a lawyer with their problems. And uh since we are a government of laws and run by laws, many people aren't really getting their rights sufficiently protected and aren't getting what they are entitled to because they do not have the services of a lawyer. Uh the Lawyers' Referral Service is supposed to cure that, I think today it's operating in about sixty cities in the United States and over the next few years we may see that extended.

[ER:] What do you mean? You refer people to lawyers or how do you, eh?

[Weston Vernon Jr.]: The plan works this way. The Bar Association in the city uh sets up what it calls a referral service in which they have lawyers serving there to interview people. First to find out whether they're, they really have a legal problem. A good many people worry about legal problems when they don't exist, but that's the first step. And, uh, if the person does not know a lawyer, they then refer them to a panel of people, of lawyers who have given their names to the association as indicating that they are willing to serve. All of this for a very nominal amount so that the preliminary advice uh could be obtained for maybe three or five dollars. Then, if the matter goes further than that, most of the Bar Associations go still further in so that they supervise the amount of the fees that can be charged, and are sometimes made the final arbiter of those fees, so that uh people with small amounts, but with matters that are important to them will be given the maximum of protection with the minimum of cost. (21:46)

[ER:] Well that is very interesting, I know here in the city I've always heard of the Legal Aid Society and I suppose that's listed in the telephone book, but how do-- where are places that people go for these services?

[Weston Vernon Jr.]: The uh Bar Association is the place to go for the Lawyers' Referral Service, and the Legal Aid Society, of course, is in the telephone book as well.

[ER:] And would that be so in every city where this was--

[Weston Vernon Jr.]: Where the Lawyer's Referral Service is working, its now working in Rochester and Syracuse and um Binghamton, and New York City, It's uh, working very well in New Jersey and in many other of the larger cities. It's sometimes not in operation yet in some of the smaller cities, 'cause that problem doesn't exist uh in a good many of the smaller cities, the lawyers do their-- the work free of charge without uh, for people who can't afford [ER: mhm].

[ER:] The do it just personally?

[Elliott Roosevelt:] Mother I think I must interrupt here for just a minute uh we will come right back to the interview, but I think we should hear a message from our sponsors.

[ER:] All right

(Break: 22:56-23:12)

[Elliott Roosevelt:] Now Mother I think we can return to our interview with Mr. Weston Vernon Jr. who is Vice-President and Chairman of the Executive Committee of the New York State Bar Association, but before you get on to your questions I've been interested in listening to the uh questions that have been asked so far and in as much as this program is heard in many other states besides New York State, I'd like to ask Mr. Vernon whether the program which you are outlining, sir, on, uh, this interview, uh as being that of the New York State Bar Association, whether that program in general is followed by all state bar associations throughout the United States?

[Weston Vernon Jr.]: It is- it is not only followed by all state bar associations and there is one in each state, uh there are also a good many county and city Bar Associations which have the program. And in addition to that it is one of the major items of the American Bar Association. We had with us at our meeting recently the uh- President of the American Bar Association who spoke quite effectively on that

subject, and uh has been touring the country urging that the local and county and state Bar Associations set up similar programs. (24:29).

[Elliott Roosevelt:] And are they, uh the reciprocal programs between the various Bar Associations advising each other of their activities so that they can be integrated?

[Weston Vernon Jr.:] That is so because the American Bar Association is made up of uh representatives. Uh its House of Delegates, of which I am a member, is made up of representatives of all the uh larger bar associations of the country so it all converges there and the program is, the programs are integrated and coordinated and views are exchanged and methods are compared to uh, get the maximum effectiveness.

[Elliott Roosevelt:] I see.

[ER:] I am uh very much interested. Eh I didn't realize the close connection between the States and the American Bar Association. I um have had some interesting letters from members of the American Bar Association in connection with the Human Rights Declaration. They seem to have an erroneous idea that that is legally binding, a great many of them. And [laughter] that as long as, it was, it-- they can't-- haven't had a chance to do anything about it, but when it comes up for ratification in the Senate, then they will and I've had to explain a number of times that not being legally binding [laughing] it does not come up for ratification. That it is just a statement of aims and objectives and aspirations of people in the world as a whole. Oh, but now when we come to a covenant, I expect to be deluged, [Elliott Roosevelt: but] because!

[Elliott Roosevelt:] But mother, hasn't uh um haven't there been some decisions in law actually made which uh ah intended to give force and effect to the declaration?

[ER:] No, only some judges have mentioned certain things that were in the declaration in making their decisions, but nearly always on a um on the basis of moral values, you see. Or of um the values that were on the side of-of moral and spiritual values. It has, at from one point things in it have been included in the, in for instance, the new uh constitutions of India and of Indonesia, both have taken things out of the declaration and included them in their constitutions and um, but it has no legal binding. And no country has to change its laws because of the declaration. But that seems to have been a-a uh little misapprehension because they were afraid it had, would have um, an effect of communizing the United States.

[Weston Vernon Jr.:] Well I've--

[ER:] so--

[Weston Vernon Jr.:] listened to many hours of debate on that topic in our House of Delegates and, uh I think the people from New York, the delegates from New York at least are very favorable to your position, Mrs. Roosevelt. [ER laughs]

[ER:] But now I remember reading an interesting article about the tremendous delay in the New York City courts, and I suppose its not only New York City that suffers this way but are you lawyers doing anything about this delay? (27:46)

[Weston Vernon Jr.:] I think that is one of the um most important functions of the lawyer, and the purposes of the bar associations uh to promote and speed up the administration of justice and cooperate with the judges in doing that. Uh Judge Vanderbilt in New Jersey has recently done a-a remarkable job in

modernizing the court procedure there. As you know he was formerly a President of the American Bar Association and very active in Bar Association work. Bills are before the legislature, I believe, in New York today to uh accomplish, perhaps, some of the uh reforms, at least in New York City where the delay seems to be the greatest.

[ER:] Well that would be, um a wonderful achievement. And um as I've listened to what you've said I think that the lawyers um do a good deal of uh um well public work um although they are private practicing lawyers and they do it on behalf of the public generally. I wonder besides this legal aid and referral service and the-the more important uh work which they do on helping to modernize laws, and to modernize the courts in a way, what other things um does your association promote?

[Weston Vernon Jr.]: Well I think one of the most important things and perhaps which uh, which receives the least attention is the vast amount of work we do for what we call our unseen clients who never pay us. [Elliott Roosevelt: hm.] That is the people who are served by the fact that the bar associations are constantly working over and looking at the laws that are on the books and propose legislation to try to see that uh reforms are made in the laws and that bad laws don't get on the books. Uh, we have a great many committees in the association, they divide up into as sections in committees that deal with tax matters, with labor laws, with uh judicial reform and uh international law on various topics and let there be offered in the legislature, for example, in the State of New York practically every bill that is introduced is examined by one of the committees of the association and its effect on the rest of the body of the law is determined and a report is submitted, either to the governor or to the legislature and uh even after bills have been adopted by the legislature the governor frequently requests a report from the bar association committee as to whether it will really accomplish what the legislators set-set out to do.

[ER:] Now keeping bad laws off the books is what I suppose you would call a preventative law in a way.

[Weston Vernon Jr.]: That is and that is one of the most important things we think because, uh of the great, uh body of law that has gone on our books in recent years. It's very difficult to avoid someone who has an idea at the moment that seems to be good from putting it onto the books when-whe and not examining all the rest of the laws to see how it fits in.

[ER:] Now do you ever find, even after a law has been passed, um that as it works out it is a bad law and then are you ever able, or do you ever make an effort to have it removed or changed?

[Weston Vernon Jr.]: Well frequently, practically every year we are recommending changes in existing law, either complete repeal or modification of the law to really accomplish what they intended in the beginning. Its sometimes difficult to see just how, eh administrative officials or judges will interpret the language of the statute.

[ER:] Yes I've-I've learned, I used to be very impatient about what I called legalities, but uh having worked on the Human Rights Commission, I've learned that the way you say things is very important, which I would never have known otherwise [laughter], eh you must find that over and over again because if someone interprets a wording differently from the way it was intended, it must lead to entirely different results in how the law is actually functions. (39:08)

[Weston Vernon Jr.]: Yes we find that even the bills that were drawn by ourselves that sometimes the judges don't agree with uh our own language [laughter].

[ER:] Exactly! What would you say is the most important thing for all people to do, relative to putting- to putting their private affairs in order?

[Weston Vernon Jr.:] If I had to pick one matter I suppose it would be that they should uh, see that they have a will. Each person has a will which leaves whatever property they may have to the person they want to have it.

[ER:] Well I was amused the other day to be told of a very, um good lawyer, one of my husband's trustees, and who is quite uh-uh dependable and-and meticulous person, and he died without a will.

[Weston Vernon Jr.:] Well is that so? One of my partners recently died without a satisfactory will. Uh but uh of-- and course it is possible uh to uh avoid that because the laws of the state provide the way a property will go if you die without a will. But if--

[ER:] so that if you are satisfied with the laws of the state you don't need to make a will?

[Weston Vernon Jr.:] that's right, he may of--

[ER:] Probably that might be the case.

[Weston Vernon Jr.:] That might be the case--

[ER:] certain things. I wonder too, if it isn't apt to be that most of us don't think the moment has arrived when we need to put our own house in order, and so we just delay and, uh it just um overtakes us sometimes. (33:38)

[Weston Vernon Jr.:] That's frequently so, and lawyers are frequently telling others to do it, but they don't do it themselves.

[ER:] [laughter]

[Elliott Roosevelt:] How is it that so many of uh what are known as the old blue laws that were written in the early days of the history of our various states that they have managed to remain uh in force and effect on the statutes?

[Weston Vernon Jr.:] Well--

[ER:] Ah They're not really enforced, Elliott, I don't think, for instance I keep being--

[Elliott Roosevelt:] well sometimes they're dug out and enforced--

[ER:] I keep being told in-in uh Massachusetts that you're not allowed to kiss your wife on Sunday, but I don't see that observed, particularly. [laughter]

[Weston Vernon Jr.:] I suppose lawyers in that respect are rather practical and if they see a law that perhaps would stir up a considerable amount of criticism if they tried to repeal it, and it is not being enforced, they would uh perhaps duck the issue.

[ER:] Just duck the issue! [laughing]

[Elliott Roosevelt:] Well mother, I think our time has just about come to a close, so I'm afraid that we have to bring the interview to a close at this time.

[ER:] Well I want to thank you so much for being with us, and--

[Weston Vernon Jr:] Thank you and I've enjoyed it.

[ER:] and how kind I think you were.

Transcribed from holdings at Franklin D. Roosevelt Library (FDRL)

File(s): 72-30(98)

Transcription: Pre-2015

First Edit: Isabel Maier

Final Edit: Andreas Meyris

The Eleanor Roosevelt Papers Project