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JULY 1, 1961 to JUNE 30, 1962

FREEDOM THROUGH DISSENT

AMERICAN CIVIL LIBERTIES UNION
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AMERICAN CIVIL LIBERTIES UNION
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"FREEDOM THROUGH DISSENT"

By John de J. Pemberton, Jr.

In social as well as in religious matters the prescription of an official orthodoxy is the converse of the proscription of heresy. Nineteen sixty-two could well be remembered as the year of this truth, if we are as sensitive to the meaning of the Supreme Court's judgment in the New York Regent's prayer case as we are to the emotional reaction it occasioned.

The movement toward an official orthodoxy (with its necessary concomitant, the definition and inhibition of dissent as heresy) has long been underway in the United States. Limited by specific constitutional provisions—and moving in varying directions according to the dominant attitudes in different communities—it enjoyed a kind of apogee (as to social and political matters) in the House Committee on Un-American Activities, whose exposures of various kinds of un-Americanisms have operated toward defining a social ideology of Americanism.

The so-called non-denominational prayer for public schools of the New York Board of Regents—which sought to enlist the simultaneous adherence of Jewish, Catholic and Protestant denominations (and, fortunately, failed) may have marked the theological counterpart of the House committee's Americanism.

Active suppression of dissent and promotion of orthodoxy manifested itself in nearly every field of the American Civil Liberties Union's concern and activity during the twelve months here reported. The previous year's Supreme Court decision holding valid the "Communist-action organization" registration provisions of the 1950 Internal Security Act unleashed a new round of activity at the federal level to identify and proscribe mid-twentieth century America's most hated heretics. These included the invoking of the 1950 law to gain new indictments of Communist Party officers, proceedings to revoke passports issued to certain of them, investigation of the Party's publications, and efforts to enforce the as-yet-untested "Communist-front" provisions of the Act. Eight persons, including several newspaper and radio-TV men whose contempt of Congress convictions for
refusing, on grounds of conscience, to answer questions of Congressional committees probing Communist influence, had been held invalid this spring, were re-indicted. The same governmental pressure was exerted to retry officers of the International Union of Mine, Mill and Smelter Workers, whose convictions for conspiring to sign false non-Communist affidavits under the Taft-Hartley Act had been reversed by a U.S. Court of Appeals. Meanwhile, Congress reinstated, with legislative sanction, the Post Office censorship of foreign political propaganda which the President had brought to an end in 1961.

An inclination to be comforted in the belief that such efforts are aimed only at the ultimate heresy of Communism is shaken by the echoes of this pattern in other directions—especially at the state and local level. Fifty-two unresolved academic freedom cases reported by the American Association of University Professors this year—a 50% increase over last year—reflect the penetration of heresy proscription into the heartland of our traditions of free inquiry and debate. A new wave of textbook censorship efforts has threatened to purge public school teaching of all controversy, as well as of the great ideas of world history memorialized in classical literature. Efforts in several states to introduce indoctrination courses in Americanism sought to supplant teaching about various political, economic and social philosophies with a catechism in political orthodoxy. The fearful days of international crisis arising out of the disclosure of Soviet missile bases in Cuba, during which Communist speakers were barred from college campuses and student advocates of the Cuban position were egged, produce fresh evidence that national security tensions always strain traditional civil liberties guarantees.

Suppressions of dissent—of widely varying directions—occurred in a host of forms, from the denial of public facilities for meetings and speeches (by opponents of Algerian independence, proponents of racial integration and equality, and Fidelistas) to the arrest of picketers and demonstrators (against nuclear testing, the showing of “Exodus,” or for redress of segregation grievances) on charges of disturbing the peace. The portent of such suppression as the temporary injunction obtained against the protests and demonstrations of the Albany (Ga.) Movement is to be seen in the ever more common, hyphenated invectives hurled at such dissenters: “Communist-integrationists,” “atheistic-Communists,” and “Communist-pacifists.” Meanwhile, an unprecedented number of signers put a constitutional amendment (the Francis Amendment) on the California ballot intended to impose loss of tax exemption and government employment, and other penalties, on individuals and associations to whom
such invectives can be made to stick—by action of any of a host
of governmental agencies and officials, including any grand jury
and even (as to the property tax exemption) a local assessor.

Fortunately, the Regents’ prayer decision was not the only
event of the year which militated against official orthodoxy or
the suppression of heresy. (Contentions that the Union’s support
of this litigation was anti-religious have tended to obscure the
decision’s real meaning: By enforcing the Constitution’s prohibi-
tion on establishment of religion the decision has buttressed the
guarantee of religious liberty and operated toward insuring that
the social order will be subjected to the independent moral
judgment of religious men and societies.) Appeals to reason fre-
quently limited the excesses of the textbook censors and the
baiters of school teachers. The Supreme Court’s denial of review
made final a New York Court of Appeals judgment that even
the hated ideologies of George Lincoln Rockwell’s American
Nazism could not be denied a forum by municipal officials. A
California court ordered the reinstatement of two International
Association of Machinists members expelled for public dissent
from their union’s official orthodoxy. (But organizational activity
by other unions was being harassed in the same state with
prosecutions for criminal trespass.) Each of the countless battles
over Henry Miller’s Tropic of Cancer was affording a forum for
fuller public understanding of the hazards of obscenity censor-
ship and several favorable censorship decisions, especially those
curbing police threats and intimidation, were won. Encourage-
ment can also be felt from the 1962 Congressional election re-
turns in which several public spokesmen for the John Birch
Society were rejected at the polls, giving hope that the divisive
community and anti-civil liberties effects of the ultra-right move-
ment have reached their peak. And the Francis Amendment was
defeated by California voters, following vigorous ACLU efforts,
a setback to those who thought of introducing a similar amend-
ment to other state constitutions.

Conscious as we are of the indivisibility of civil liberties,
courage, moreover, may be taken from more celebrated victories
in areas less immediately (or less apparently) associated with
official orthodoxy and heresy. The decision of the Supreme Court
that legislative apportionment was an equal-protection-of-the-
law constitutional issue within judicial cognizance presaged a
major revolution in legislative representation. New rules en-
larging the individual’s right of confrontation adopted by the
State Department (as to passport applicants) and by the Atomic
Energy Commission (in employee security proceedings) pro-
vided, incidentally, some expert judgment placing in more ra-
tional perspective the national security dependence on enforced
orthodoxy (hitherto thought to outweigh the importance of these due process guarantees). Enforcement of federal court orders directing the admission of one Negro to the University of Mississippi, required by tragic official myopia and accomplished with tragic consequences, established once again the universal applicability of the constitutional guarantees on which are premised the association of all 186 million Americans in their 186-year-old experiment in liberty and self-government.

However, our increasing awareness of the significance of government's activities—local, state and federal—in the perpetuation and extension of patterns of racial discrimination, identifies an aspect of the official orthodoxy that peculiarly blackens the image which this nation holds forth as an ideal to the world—and to her own people. Federal participation in housing, employment (civil service, government contracts and apprenticeship programs), aids to education at all levels, and hospitals—to mention only one level of government—has apportioned taxes taken from all citizens to the preferred benefit of white citizens, and often contributed to an intensification of patterns of discrimination in the course of doing so. If we applaud the adoption of an executive order dealing with the evil of discrimination in federally assisted housing, or a regulation of the Department of Health, Education and Welfare barring "impacted areas" aid to segregated schools after September, 1963, let us remember that the centennial year of the Emancipation Proclamation is a date long after all discriminatory practices by government should have ended.

A world providing hazardously increasing challenges to the ideals of the American Revolution tests our capacity to proclaim those ideals through our deeds. Every ounce of energy these ideals can mobilize for the preservation and extension of free institutions is needed in today's contest with the banners of totalitarianism, carried by those who seek to deny rather than extend individual liberty. But their inspirational content in the eyes of uncommitted peoples everywhere—and of our own citizens being called upon to ask only what they can do for their country—is limited by the extent of our practice of them.

Not only inspiration is required from our traditions of free belief and expression, due process and equality. Practical utility as well commands our perfection of these standards, now. A world which is changing through technological developments, population growth, and revolutionary movements (all proceeding on a rising curve of acceleration) threatens to bring us to our moment of truth (or apocalyptic judgment), far sooner than we can be prepared. With man's present possession of the power to destroy civilization, and perhaps himself in the process.
every resource for the discovery and application of legal, social and moral truth is immediately necessary. The great tragedy of our twentieth century resurrection of official orthodoxy and heresies, both social and theological, is their hopeless inconsistency with the achievement of such truth. It may even now be too late for all of mankind to yield sufficient wisdom for the avoidance of annihilation. But the greatest wisdom to be found in our common inheritance has taught us that only in unlimited inquiry and unrestricted debate—the antithesis of official orthodoxy—is truth to be found. Never before has Thomas Jefferson’s dictum on freedom of expression, in the Virginia Act for Establishing Religious Freedom, been more urgently relevant:

“... Truth is great and will prevail if left herself; ... she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; ...”

This report was written by Mitchell Levitas, a New York journalist, and supervised and edited by Alan Reitman, our associate director. The Union’s activity is carried on not only by the relative handful of people employed nationally and locally, 60 altogether, but by the thousands of volunteers who, day in and day out, demonstrate their commitment to civil liberties by assisting the Union in myriad ways. To our staffs, our hard-working boards and committees, our volunteers, our members, I express my heart-felt appreciation for their support as I assume the awesome task of directing the Union’s work. On behalf of all of them, as well as for myself, I add our word of gratitude to Roger N. Baldwin and to Patrick Murphy Malin for the inheritance we possess which so importantly equips us to meet today’s increasing challenges. Our struggle for human freedom may never be finally won, but the human spirit will ever be represented in the fire of our determination to maintain the struggle, always reaching toward that elusive goal.

This report covers the important civil liberties actions taken during the July 1, 1961—June 30, 1962 period—not only by the Union but other organizations as well as individuals. Legal citations are not included, only because of lack of space, but all information about a particular case available to the ACLU will be provided on request.
A three-year review by the Union of the technically complex, emotionally charged issues raised by the censorship of allegedly obscene material concluded that “limitations of expression on the grounds of obscenity are unconstitutional.” Free speech protections, said a statement by the ACLU Board of Directors, “apply to all expression.” The Union emphasized that it was neither urging the circulation of allegedly obscene material, nor was it evaluating such material. In addition, the statement recognized the real concern of parents, civic leaders and clergymen over the effect upon youths of such allegedly pornographic matter. Nevertheless, declared the Union, the right to free expression under the First Amendment is too often abridged by vague, uncertain standards of obscenity that now prevail.

Even under the 1957 U.S. Supreme Court decision in the Roth case (the Court’s definition of obscenity: “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”), said the ACLU, “courts and juries continue to differ over what constitutes obscenity, often including books which have won the world-wide acclaim. This is only natural . . . What may strike one man as pornographic may be a matter of complete indifference to another. What may be offensive to one person may be great art to another.” Thus, said the Union, despite the high court’s ruling that material without “redeeming social importance” does not have the protection of the First Amendment, it is impossible in practice to draw a precise line between “good” and “bad” literature, art, theater, cinema. “We do not say that every book or publication carries ideas of great importance to the community, but we do believe that every act of deciding what should be barred carries with it danger to the community,” the Union said. “Because of the special need in a free society to guard against the stifling effect of censorship no ban should
be placed on allegedly obscene material, even though such material may be intensely disliked by many persons."

"This is never a popular position," acknowledged the statement, "but we are convinced that it is the right one. The seeds of censorship have been planted in far too many areas of American life, usually with the intention of curing an evil. But rarely does the evil recede when censorship is imposed. The causes of such social problems as juvenile delinquency, which often prompt demands for censorship, are much deeper. Moreover, banning any expression only boosts interest in it and results in wider circulation of the offensive material. The experience of Prohibition, for example, proved this."

Though the Union advocated a strict no-censorship position, the statement conceded the fact that anti-obscenity laws are being invoked. Such prosecutions, said the Union, pursuing its traditional "clear and present danger" position on free speech, must meet the following yardstick: "Any governmental restriction or punishment of any form of expression on the ground of obscenity must require proof beyond a reasonable doubt that such expression would directly cause in a normal adult, behavior which has validly been made criminal by statute." Requirement of such proof will be difficult to meet, said the Union, but it would serve to provide "some definable criteria in an admittedly murky field. The mounting pressure for removal of offensive books and other materials in recent years has had as its basis the assumption that there is a clear connection between such material and anti-social behavior; actually, there is a wide difference of opinion among experts on what influences such material may have." The Union emphasized its long-held position that alleged obscenity should only be tested in the rational setting of a court of law, rather than as part of a vigilante drive for "action against 'dirty books.' There is no lazy man's way of preserving a cherished First Amendment guarantee," said the ACLU. "We must insist on strict standards of proof before such a vital right as freedom of expression may be curbed."

The Union statement took cognizance of the fact that most current pressures for censorship are prompted by groups that are anxious about the impact of such material on children. "This is an area of understandable concern," said the Union, "but here, too, the assumed danger to sensitive minds must be measured against both the actual evidence as to whether such danger is real, and the damaging effect that general proscriptions on distribution to children will have upon the availability of controversial reading matter to adults." Added the Union: where the target group of alleged pornography are children or youths, the legal test should be whether the effect of the material, proved beyond a reasonable
doubt, similarly would directly cause criminal behavior by members of the group.

In addition, the Union urged a powerful array of due process protections in the application of obscenity prosecutions. These included: a clear, statutory definition of the offense, the right to counsel, the right to a prompt, fair public trial by jury, and the right to appeal; "no action," said the ACLU, "should be directed against persons who are without knowing and substantial responsibility for the creation and distribution of the material in question." This latter protection, said the statement, would remove the fear of prosecution from the shoulders of the ordinary operators of book stores or drug stores who have nothing to do with the production or distribution of the questionable item, and place the responsibility where it belongs—on the author, publisher or distributor. The Union pointed out that this fear of prosecution on the part of the mere retailer "results too frequently in his deciding not to stock controversial books at all, including many dealing with social and political problems. Thus, people who wish to exercise their right to read books of their own choice are denied access to the material."

The Union also urged strongly that before a criminal prosecution is brought, the alleged obscenity of the book or magazine in question should be determined by an in rem proceeding which decides the alleged obscenity or the content of the publication rather than prosecuting the publisher, distributor or retailer.

The Federal Courts

Even the U.S. Supreme Court had difficulty applying its own definition of obscenity cited in the Roth case. Justice Harlan, writing the opinion of the court in a decision that reversed a U.S. Post Office order banning three magazines designed to appeal to homosexuals (the magazines featured photographs of nude and scantily-clad males), said that although the publications had "no literary, scientific or other merit," and appealed to the prurient interests of their readers, they were not obscene because they were not "patently offensive" or an "affront (to) current community standards of decency." Indecency, said Justice Harlan, must be "self-demonstrating," and by these standards Grecian Guild Pictorial, Trim, and Manual are not obscene. Among the concurring justices there was a wide divergence of opinion for lifting the postal ban. Another, equally significant reason cited for erasing the ban, was that Congress had not authorized the Post Office to censor mail by administrative proceedings, but could act only by means of criminal prosecutions. Administrative censorship has long been opposed by the ACLU. Although the high court decision suggested a strict definition of obscenity,
stricter in at least one respect than the Roth opinion, the tribunal refused to review the conviction of six Baltimore newsstand dealers found guilty of selling commonplace “girlie” magazines.

**Congress and the U. S. Post Office**

The ACLU urged the Senate Post Office and Civil Service Committee to reject an amendment to a House-approved postal rate revision bill on the grounds that the amendment would “establish unprecedented and dangerous censorship of our mails.” Under the so-called Cunningham Amendment no mail from abroad that the Attorney General determines to be Communist political propaganda may be “received, handled, transported or delivered” by the United States Post Office. “The plain effect of this,” said the Union in testimony before the Senate committee, “would be to permit the Attorney General to appoint people to examine all newspapers, books, periodicals and other literature coming into the United States via the mail from any country. Whenever, in the eyes of these designated officials, any of this material—be it a Moscow or a Paris newspaper—contained any expression which can be characterized as ‘Communist propaganda,’ they could seize it and destroy it.”

The ACLU testified that “while the limits of Congress’ power to deal with the Communist movement have been a matter of debate, it is clear that Congress is denied the power to set up an official agency to screen books and magazines and determine, on the basis of political content, which may be read and which may not be . . . When we begin censoring mail we censor speech—exchange of ideas between people.”

When the Cunningham Amendment reached the Senate Post Office and Civil Service Committee it was revised. The Committee re-instituted the program under which foreign political matter had been held up in 1961 when President Kennedy ended the entire program. Under this program the Post Office notified persons that foreign political propaganda was addressed to them and would be sent if the post card notice was returned, a procedure which in effect put individual names on a government list. The Senate Committee’s revision exempted government agencies, public libraries, academic institutions and their officials and subscribers to Iron Curtain publications, as well as material delivered in the United States under reciprocal international agreements which send an equal amount of mail to another country.

Despite the Union’s protest that the Senate Committee version was also patently unconstitutional by interfering with a person’s right to read, the amendment was voted by Congress and
approved by the President. The ACLU promised to challenge the new law in the courts.

Another basic principle of the First Amendment—the right to select one's own reading—was emphasized to Defense Secretary Robert S. McNamara by the ACLU when the commander of the U.S. Army in Europe conducted an investigation of The Overseas Weekly. The privately operated newspaper, aimed at U.S. servicemen, had been accused of disrespectful news treatment of military commanders in the wake of its disclosures concerning a biased political troop indoctrination program by now-retired Major General Edwin A. Walker, a firm supporter of the John Birch Society. The Senate Armed Services Committee requested the Army to conduct the investigation and the Army quietly complied. Even though an Army committee recommended ending The Overseas Weekly's use of distribution facilities, it was overruled by the U.S. Army general commanding troops in Europe. The report of the Defense Department to the Senate Armed Services Committee indicated, however, that future steps against the newspaper might be taken if its "standards . . . again fall to objectionable levels." The ACLU declared "This plainly subjects the newspaper to all the inhibitions that the threats of censorship presents. We urge you to disclaim any intention by the Department of Defense to act against The Overseas Weekly for any reason connected with its content and to make clear that such action taken in the field will not be approved." The Union said that although it recognized that persons serving the armed forces are in a different status from civilians, "we do not believe that this difference justifies the dictation to soldiers of the material they may or may not read."

The Congress passed an anti-obscenity bill for the District of Columbia which the President vetoed, at the urging of a wide number of organizations, newspapers and radio-TV stations and spearheaded by the local ACLU affiliate, on the ground that the search and seizure clause of the measure is unconstitutional. The bill would have given any police officer the right to confiscate everything involved in the distribution of obscene material.

**ACTION IN THE STATES**

From the legal, if not the literary point of view, the most talked-about book of the year was Henry Miller's novel about Americans in the Paris of the Twenties, *Tropic of Cancer*. Publication of the book by Grove Press in June 1961 inspired more than 60 cases in 21 states in which the publisher defended the novel against criminal obscenity charges, even though the Justice Department, in 1961, had lifted a 30-year ban on the book after
stating it was "not obscene within the meaning of the law (See last year's Annual Report, p. 7)."

The Supreme Judicial Court of Massachusetts read Tropic of Cancer and found it "dull, dreary and offensive" but did not find it obscene. The Civil Liberties Union of Massachusetts, in a friend-of-the-court brief that did not itself pass on the alleged obscenity of the book, argued that "a book which is considered significant by responsible literary opinion" is protected by the free speech and press protections of the First Amendment as well as by the state constitution. The Massachusetts high court, reversing a state ban on Tropic of Cancer, declared: "In the light of recent rulings by the U.S. Supreme Court the First Amendment protects material which has value because of ideas, news or artistic, literary or scientific attributes." The Massachusetts decision was the second ruling handed down by an appellate court following a rash of prosecutions against the novel on the state and local level. Earlier, the Maryland Court of Appeals reversed a six-months jail sentence imposed on a book-dealer for selling the Miller novel in a case in which the National Capitol Area and the Maryland Civil Liberties Unions had filed a friend-of-the-court brief. The brief declared that "where material challenged has even the slightest artistic or instructive importance, as may be shown by its critical reception in the community at large, the material is entitled to the full protection of the Constitutional guarantees of free expression."

A Superior Court judge in Chicago spoke the same sentiments, even more forcefully. Said the judge, in a test case brought by the Illinois Division of the Union: "Let the parents control the reading matter of their children; let the tastes of readers determine what they may or may not read; let each reader be his own censor; but let not the government or the courts dictate the reading matter of a free people. The constitutional right to freedom of speech and press should be jealously guarded by the courts." The controversial novel was the central figure in the case which established a new and unique principle that a private citizen—as a potential reader—has the right to challenge police censorship in the courts. A graduate student of Northwestern University, Joseph Ronsley, brought suit in a Lake County Circuit Court after a state's attorney requested the local sheriff to threaten booksellers with prosecution if they sold Tropic of Cancer. First off, the judge agreed with Ronsley that both officials had illegally engaged in "prior restraint" by not following the Illinois statute for bringing formal prosecutions against allegedly obscene material. Then he added: "The general public is interested in the free flow of ideas and the
constitutional safeguards are designed not only to protect authors and publishers but the reading public as well. . . . Where a complaint is made that public officials are exceeding their lawful authority, and the very officials charged are the law enforcement officers, the public is then left without a representative in court."

Among the many other Tropic of Cancer cases where ACLU affiliates played a role in defending the right of a free people to choose their own reading matter were: a Minnesota bookseller, freed after his arrest by a police morals squad; a ban against the book in South Bend, Ind., lifted after seven days; support for a North Platte, Neb. newspaper editor who argued that police had moved to ban the book without legally determining whether it was obscene; support for a San Diego bookseller arrested for violating a local ordinance against selling "obscene and immoral literature"; the accusation against Buffalo, N.Y. police that threats of prosecution against distributors were "a type of censorship"; a similar charge in New Jersey against the police practice of "literary blackmail"; the protests against the Philadelphia District Attorney, who reportedly tried to restrain a major distributor from filling orders for the book; strong backing for the Providence Public Library Board of Trustees, which voted to circulate its single copy of the book in defiance of an order by the state Attorney General; opposition to police departments in Louisville and Cincinnati which acted to obstruct or bar sale of the novel.

LOCAL PRESSURE GROUPS

Across the nation, professional educators were faced by a new wave of attempted censorship aimed at classroom reading lists, school and public libraries. The National Council of Teachers of English warned against a "rising tide" of emotionalism that projected a "danger of sterilizing our bookshelves at the high school level" of such classics as The Scarlet Letter, Candide, Of Human Bondage, and dozens more ranging from Plato to Orwell. To help schools and libraries resist such local pressures, the American Library Association adopted a program endorsed by the ACLU that urged a stand-firm policy by educational authorities, coupled with efforts to make public the criteria by which fiction and textbooks are chosen.

The Central Texas Affiliate of the ACLU vigorously opposed the "misguided piety and shallow patriotism" of local pressure groups, spearheaded by the Texans for America and the Daughters of the American Revolution. Both groups appeared before a state textbook commission hearing and objected to half the books recommended to the commission because they concerned such subjects as the United Nations, the Supreme Court, and the
federal income tax. A spokesman of Texans for America declared: "The stressing of both sides of a controversy only confuses the young. . . . Until they are old enough to understand both sides of a controversy they should be taught only the American side."

Replied the Central Texas Affiliate: "Our schools and textbooks . . . should educate, not indoctrinate; liberate not enslave; expand, not diminish those powers of the mind which have brought into being this free land, without conformity of thought or opinion."

The controversy in Texas spilled into Florida, where the list of books suggested for banning by the Texans for America was given to the State Department of Education. The action provoked a storm of protest from school superintendents denouncing such book-burning tactics.

The ACLU of Southern California urged that comments by citizens on books used in schools should be submitted in writing to the State Board of Education. Though public hearings are valuable, said the ACLU local affiliate, they lead to the temptation of playing to the galleries "and to rally what amounts to pressure." Occasionally, even written comments present problems. The Greater Philadelphia Branch of the ACLU protested the withdrawal of "controversial" material in a reading kit prepared by the Science Research Association, a nationally recognized publisher of educational materials, by the local school district. The district acted after three crackpot letters appeared in a local newspaper; the material was soon restored.

**Other Local Issues**

The best-selling novel, *The Carpetbaggers*, was banned in three Massachusetts communities, two in Connecticut, and in Warwick, R.I. and Nashville, Tenn.—by direct police action without a judicial determination of its alleged obscenity. A Nashville mother's protest that the book was too "filthy for an adult to read, much less a child" resulted in the arrest of two booksellers. The Warwick police chief said he read "parts" of the book and found it "obscene." In Connecticut, the Fairfield County Chapter of the CCLU protested that no public official "has the right to act as censor." In cases affecting other publications the ACLU of Michigan objected to the intimidation of a newsstand dealer by the Muskegon city prosecutor, who promptly ended his crusade. The Iowa Civil Liberties Union urged the state Attorney General to investigate reports that a Dubuque police judge ordered local constabulary to burn hundreds of books and magazines he believed were obscene.

**Handbills**

The Chicago Police Department, following repeated urging
by the Illinois Division of the ACLU, issued a new directive on handbill distribution that specifies clearly the right of anyone to distribute, without a license, tracts on any social, economic, religious or political issue. Only the distribution of advertising matter is prohibited under the city ordinance. The Mayor of Torrence, Calif., was enjoined from ordering the removal from newsstands of The Weekly People, official organ of the Socialist Labor Party, in a case brought by the ACLU of Southern California. The SLP also was confronted with municipal opposition in Columbus, Ohio, where police sought to prevent the party from distributing literature on the streets. The Florida Civil Liberties Union defended a man who was arrested for circulating anti-income tax tracts without a municipal license. The National Capital Area CLU asked the Secretary of the Interior to clarify whether non-commercial leaflets can be handed out in the vicinity of the Washington Monument. The adjoining sidewalk is Park Service land, but the thoroughfare is Constitution Avenue, a major street. The Secretary of the Interior replied that the regulations do not forbid the distribution of non-commercial handbills and expressed regret that a lack of clarity in the rules may have violated the constitutional rights of a group that tried to do so. He additionally pledged new regulations "giving full latitude to the rights of free speech."

**MOTION PICTURES**

**STATE AND LOCAL ACTIONS**

The Oregon Supreme Court invalidated the application of the state's anti-obscenity law to motion pictures. The tribunal said merely that the legislature did not intend to put motion pictures under the jurisdiction of the statute and did not rule on the constitutionality of the law itself. In an earlier opinion, the court set aside a Portland ordinance invoked against a theatre manager who refused to cut two scenes from the French film, The Lovers, and showed the movie without obtaining the required license. The ACLU of Oregon had urged in a friend-of-the-court brief that an "ordinance requiring administrative approval of motion pictures as a condition of exhibition imposes unconstitutional previous restraint upon freedom of expression." In Ohio, the legal situation was less clear. The Ohio Supreme Court reversed the conviction of a Dayton exhibitor for showing The Lovers because the section of the state law under which he was prosecuted makes mere possession of a film, without knowledge of its obscene nature, a misdemeanor. This, said the court, was unconstitutional. In a Cleveland case, however (also involving the same film), the court upheld the constitutionality of another
state law which does require knowledge of obscene content. Thus, the Cleveland exhibitor would have been subject to prosecution even if he did not show The Lovers, since mere possession and knowledge of such material constitutes a crime under the statute. The case is now on appeal to the U.S. Supreme Court and the Cleveland Branch of the Ohio Civil Liberties Union will support it with a friend-of-the-court brief.

Motion picture censorship in Atlanta, long a sore-spot, was eliminated in its old form when the Georgia Supreme Court ruled that the city ordinance requiring permits for the exhibition of movies was a violation of the state constitution. “All interference” with free speech or free press is absolutely forbidden, said the court, and “no interference, no matter for how short a time, nor smallness of degree can be tolerated.” City officials reacted swiftly to the order. They passed a new ordinance providing for the reviewing of all films and their classification as “approved,” “unsuitable for the young,” or “objectionable.” Furthermore, all such ratings must be prominently displayed in advertisements and box offices. The new ordinance was challenged in Superior Court by Columbia Pictures Corp. on the grounds that it violates the free speech protections of the state constitution and is too vague to meet the requirements of due process protections of the state and federal constitutions. A county Superior Court judge struck down the classification ordinance, ruling that Atlanta had no authority to enact the ordinance under the city charter. The city is expected to appeal. An additional setback for film censorship was recorded in Seattle, where a state court voided the city ordinance on the grounds that it violated free speech guarantees of the Constitution.

Chicago, like Atlanta, has been the locale for repeated outbursts of movie censorship aimed at improving the city’s moral tone. But in the wake of several court decisions that set aside the censors’ ruling (The Game of Love, Nana, Desire Under the Elms) the city passed a new ordinance under which the Mayor appointed a five-member “blue-ribbon” review board to which exhibitors may appeal when they are refused a license by municipal censors. The ordinance requires the appointment of “educated and experienced” members to the review panel—philosophers, sociologists, literati—but the quality of its members made no difference to the Illinois Division of the ACLU. The affiliate declared: “Censorship is no more defensible when practiced by learned people of good will than by cultured illiterates of bad will. The basic evil remains.” Also in Illinois, the Evanston City Council amended its censorship ordinance to permit film classification for those under the age of 17. The Maryland legislature killed two bills that would have labelled films “For Adults Only”:
the Maryland CLU opposed the measures as jeopardizing freedom of expression on the undocumented ground that indecent films corrupt youth.

**PRIVATE PRESSURE GROUPS**

The Protestant New York State Council of Churches, while expressing its concern with mass media "where it is used to excite prurient interest," opposed "well intentioned" legislation to control mass media. Such laws, said the Council, "may inhibit or restrict the free flow of ideas; or may tend to superimpose the values of a particular segment of the community upon the entire community." A somewhat different view was expressed by the Roman Catholic Episcopal Committee for Motion Pictures, Radio and Television, which urged the film industry to regulate itself through an industry-wide system of movie classification. An official of the Motion Picture Association of America, noting that Catholics have their own classification system prescribed by the Legion of Decency, wondered aloud why the bishops proposed a rating system for the entire population. "Perhaps," he said, "they are finding out it doesn't work."

When the NAACP San Francisco chapter of the group tried to suppress a high school musical version of *Huckleberry Finn* on the ground that Negro students were cast as slaves, the ACLU of Northern California objected on the grounds that the NAACP was committing an act of censorship. The NAACP chapter finally voted to boycott the high school show, but not to picket the performance.

**RADIO AND TV**

**DIVERSITY OF PROGRAMMING**

The U.S. Court of Appeals in the District of Columbia affirmed the power of the Federal Communications Commission to deny a broadcasting permit on the ground that an applicant had "made no inquiry into the characteristics or programming needs" of the community it intended to serve. The unanimous opinion of the three-member bench, which helped secure the power of the FCC to back up its demands for diversity of programming in the public interest, came in the case of an Elizabeth, N.J. FM broadcaster. The firm, Suburban Broadcasters, was legally, technically and financially qualified to operate a station, said the FCC, but this is not sufficient. "It must in fact provide a local outlet for community self-expression," said the government agency. The station operators had argued that the constitutional guarantee of free speech barred the FCC from considering programming or program content in deciding on whether to issue a broadcasting permit. The court disagreed.
Such FCC review of program service was strongly supported by the ACLU. The Commission, winding up a three-year inquiry into network television practices, provoked the usual dire warning from industry leaders about government “interference” and “censorship.” But the Union declared that the FCC “has an affirmative duty” to protect programming in the public interest, convenience and necessity. “The Commission’s aim,” said the Union, “is not to censor specific programs, but to insure a balance of categories” such as local interest, education, controversial, children’s. The ACLU statement emphasized the public’s growing dependency for information on the mass communications media. “When we talk of freedom of speech in connection with radio and television, we are talking about the right of each community to receive balanced, diversified and responsive programming, so that its citizenry may be best equipped to fulfill its function in a democratic society.” The Union’s views were issued in commenting on proposed new FCC rules that would require applicants for new or renewed licenses to give detailed information on the scheduling of commercial announcements, classifications of programs, and the retention of accurate logs for a period of three years.

The limits of the Commission’s power to review programming was raised in the case of a South Carolina radio station. The FCC refused to renew the license of WDKD in Kingstree, S.C. because it was deficient in its public service programming but chiefly because it broadcast “bucolic double-entendre” obscenities drawled by a disc jockey. The case is being studied by the Union’s Radio-TV Committee.

Congress passed and President Kennedy approved a bill requiring television set manufacturers to equip sets to receive 82 channels. The legislation, which the ACLU supported, will stimulate the growth of ultra-high frequency and thereby open new channels for public viewing and a corresponding diversity of programming, it is hoped.

Equal Time

The Senate Communications subcommittee heard arguments from the broadcasting industry demanding the outright repeal of the “equal time” provision of Section 315 of the federal communications law. The law guarantees all political candidates equal time over the airways. Pressure for repeal of the provision—or at least its suspension—followed congressional suspension of Section 315 during the presidential campaign debates of 1960. The ACLU opposed the repeal of the equal time rule on the ground that repeal would shut out from radio and television appearance minority party candidates who should be given, as
the Union first urged in 1960, at least equitable time. The alternative preferred by the subcommittee report was continuation of the equal time rule for at least another year until an intensive survey was made of the 1962 elections. Although the subcommittee found that during the 1960 campaign, radio and TV stations had been fair "in most cases" on a quantitative basis, it was reserved in its judgement of qualitative fairness. The panel suggested, for example, that politicians be allowed to set the format of their own appearances. In order to strengthen impartiality, said the subcommittee, the FCC should be empowered to direct a station to make time for an opposing point of view and should demand that stations present all sides of an issue, to non-renewal of a license.

The problems raised by the necessity to preserve fairness by presenting both sides of a controversy were illustrated by President Kennedy's televised speech in the spring of 1961 urging public support for the Administration's medicare bill. In his address, televised nationally by the three major networks, the President also castigated the American Medical Association for its opposition to the medicare bill. But with the exception of the radio network of the Mutual Broadcasting System, no network granted the AMA request for free, equal time to reply to the President. This refusal was criticized by the ACLU on the ground that the bill was before Congress at the time of the speech, and that the President attacked "one organization exclusively" for opposing the measure. The Union statement, issued by executive director John de J. Pemberton, Jr., recognized that the networks had featured panel programs on which medicare was discussed and debated. "But this type of answering time," said the statement, "is neither adequate nor equitable." The Union did not suggest that, apart from political campaigns for public office, the networks are obliged to provide mathematically equal time to organizations or individuals who may be attacked by the President over network facilities. The ACLU did suggest, though, that when the immediacy and national importance of proposed legislation or proposed policy warrants such action, "equitable time" should be provided. Following the ACLU statement, the Columbia Broadcasting System informed the Union that it was modifying its policy on free time to answer the President. Henceforth, said Richard Salant, president of CBS News, free time will be given when the following three conditions are met by a Presidential address over CBS: 1) the speech is on a single issue or a group of related issues; 2) there is significant domestic disagreement on the issue, and 3) when the speech involves a type of pending action, such as legislation. The change in CBS policy, said Salant, was in part prompted by the ACLU recommendation.
For several years during the 1950's, the television industry was governed by the hurtful policy of black-balling performers and authors who were charged, often falsely, with harboring Communist sympathies. The networks did not themselves initiate the policy—that was done by super-patriotic groups and individuals that flourished in the heyday of McCarthyism—but by willingly, even gratefully, absolving themselves of responsibility, the networks contributed to the common custom of blacklisting. The leading private organization in the bizarre business of blacklisting was AWARE, Inc. The influence of AWARE and the practice of blacklisting has, for some, been rapidly diminishing, but not until John Henry Faulk brought a libel suit against AWARE had the organization faced a legal test of its activities. Faulk, a $36,000-a-year radio and television commentator whose specialty was light talk, was blacklisted in 1956 by CBS on the basis of such vague innuendo as that he had appeared "at a function" with another blacklisted composer. Faulk's income dropped to virtually zero. He sued AWARE, its chief pamphleteer who made the false charge of pro-Communism, Vincent Hartnett, and a supermarket operator from Syracuse, N.Y., Lawrence Johnson, who circulated Hartnett's pamphlet to television sponsors. After a three-month trial the jury returned a record verdict of $3,569,909 against the blacklisters. Said the trial judge after the verdict: "This unprecedented award was evidently intended to express the conscience of the community . . . concerning a matter of fundamental rights deemed of great importance to the general public and the country."

Still, blacklisting continues. The Greater Pittsburgh Chapter of the ACLU censured the cancellation of a concert by folk singer Pete Seeger, who had refused to answer questions of the House Un-American Activities Committee, by TV station WQED and the local YM & YMHA. The Union chapter called the cancellation "a sacrifice of principle to expediency."

ACCESS TO GOVERNMENT NEWS AND PUBLIC RECORDS

The Federal Scene

President Kennedy, in a letter to Representative John E. Moss, chairman of the House subcommittee on Government Information and for the last several years a congressional thorn in the side of secretive bureaucrats, gave assurances that "executive privilege" can be invoked only by the President and will not be used without specific Presidential approval. Over the years, congressional committees have protested that executive department officials too often hide valuable and necessary information be-
hind the cloak of executive privilege. In small ways, some secrecy was lifted. The Rural Electrification Administration reversed its policy of secrecy on loan applications for rural power projects; the Interior Department promised to open to the public the reports of engineers on the value of public land. But on the whole, Moss insisted before a Cleveland Freedom of the Press Institute co-sponsored by Western Reserve University and the Ohio Civil Liberties Union, government agencies were hiding more information than they were releasing. Some federal officials, said Moss, “leak” security information for personal reasons, but wield the “secret” stamp on such “sensitive” weapons development as improvements in the bow and arrow.

**State and Local Issues**

A report by the national journalists’ fraternity, Sigma Delta Chi, found gradual improvement of freedom of information throughout the country, especially in the 35 states which have passed open records laws and the 25 states which have approved open meetings laws. Missouri and Nebraska were the latest to pass measures guaranteeing the right to inspect public records. California amended its open meetings law by providing fines of up to $500 and maximum jail terms of six months for violators. The law requires city officials, school boards, and local and state commissions to open their meetings to the press and the public.

**Academic Freedom**

**Loyalty and Security**

The American Association of University Professors and the ACLU of Washington continued their support of the long legal struggle of two University of Washington professors, Howard Nostrand and Max Savelle, against the constitutionality of the state loyalty oath for public employees. (See last year’s Annual Reports, pp. 20-21). After a seven-year legal battle the U.S. Supreme Court refused to review their appeal, but the professors filed a new suit in a Federal District Court charging that the loyalty oath “unreasonably abridges the freedom of inquiry, communication and dissent that are essential aspects of freedom in a university community.” Named in the suit along with professors Nostrand and Savelle were more than 50 other plaintiffs. They included three department heads at the University, instructors, and research workers. Whoever wins the latest round in the marathon controversy, it seemed certain that the U.S. Supreme Court would hear of it again.

The AAUP reported a 50% increase in the number of unresolved academic freedom cases, reflecting the upsurge of politi-
cal activity on the part of extreme right-wing groups. Among the
52 such cases, one of the most notable involved Grove City
College in western Pennsylvania and its History Department
chairman, Larry Gara. A Quaker and a pacifist, Gara was ar-
rested in 1949 on the charge of advising a student in an Ohio
college, where he then taught, not to register for the draft. He
appealed to the U.S. Supreme Court, which narrowly upheld his
conviction. This background was known to the President of
Grove City College when Gara was hired in 1957. But when a
campus debate broke out over pacifism and Gara took a lively
interest, he was fired on the grounds that he was an “incompetent
teacher.” College officials hotly denied that the dismissal was
the result of John Birch Society agitation. Following Gara’s dis-
missal, six other faculty members resigned.

The ACLU of Southern California is aiding the defense of
Wendell Phillips, Jr., a Fullerton welding teacher who was dis-
missed by the local school board. Phillips openly acknowledged
past membership in the Communist Party, but denied knowing
that the Party advocated the violent overthrow of the govern-
ment. He also agreed to testify concerning his own past political
affiliations, but refused to name other Communist Party mem-
bers. The ACLU of Northern California appealed to higher state
courts on behalf of three teachers who were denied credentials
on the grounds of their political beliefs. One case involved Wil-
liam and Rita Mack, who quit the Communist Party in 1957 but
who signed the state’s Levering Act loyalty oath (the Macks, like
Phillips, said they never knew the Party to advocate violence); the
other case involved John Mass, an English instructor at San
Francisco State College, who was fired after refusing to answer
questions put by the House Un-American Activities Committee.
The California Supreme Court ordered the school board to hold
a full hearing, but the board refused to do so. The ACLU of
Northern California successfully appealed the case of Jack Owens,
a Lassen Junior College teacher who lost his job in 1959 for writ-
ing a letter to a local newspaper criticizing the educational level
of the county public school system. School officials accused
Owens of “unprofessional conduct” but the affiliate persuaded a
district court of appeals that teachers are entitled to the same
First Amendment rights of free speech as other citizens. The
HUAC figured indirectly in the case of Henry St. Onge, a Wayne
State Teachers College (in Nebraska) English instructor whose
contract was cancelled by the state Board of Education after St.
Onge provided a forum in his back yard in Columbus, Ohio for
an anti-HUAC speaker who had been ruled off the Ohio State
campus. Both the ACLU and the AAUP protested the cancella-
tion of St. Onge’s contract and the AAUP has initiated a formal
investigation of the Nebraska State Board’s action. “We find it regrettable,” the Union wrote the Nebraska Board “that you should have yielded to public hysteria to the point of invalidating a contract with a well-recommended teacher who had done nothing more than exercise his rights as a citizen.” At the same time the Union congratulated Ohio State on having defended freedom. Despite the furor over the backyard forum, Ohio State renewed St. Onge’s contract for 1962-63. Four New York City public school teachers, including an elementary school principal, were reinstated after having been suspended for some seven years on charges of having falsely denied Communist Party membership. The teachers maintained they were being penalized for refusing to give the Board of Education the names of other Communist school teachers. Climaxing the prolonged case (See last year’s Annual Report, p. 21), the Board dismissed two other teachers accused of similar charges. The Board said these employees had “indicated a lack of candor and evasiveness” during their testimony. The president of Portland State College in Oregon circulated a memorandum to the faculty reassuring teachers of their right to “speak as clearly as they wish” on subjects of their own choosing outside the College, as long as they do not appear to be official spokesmen of the school. For its part, the administration pledged to resist outside pressures against an individual who exercises his right of free speech. In Congress, the disclaimer affidavit to the National Defense Education Act that had been opposed by the ACLU and scores of colleges and universities as a political infringement on academic freedom was eliminated. In its place the Congress tacked on a four-point program to the NDEA and the National Science Foundation Act: retention of the positive loyalty affirmation, disclosure of any criminal record after the age of 16, denial of any loan or fellowship to persons knowingly members of any organization ordered to register by the Subversive Activities Control Board; authority to deny any government aid when it is found to be “in the best interests of the United States.” The ACLU pointed out the broad and vague power the last provision gave the government and urged that full due process hearings at which an applicant can challenge the finding and explain his position be adopted.

OTHER FACULTY ISSUES

The ACLU of Michigan urged legislative representatives to vote against an amendment which would eliminate the Labor and Industrial Relations Center at Michigan State University. The affiliate called the amendment a threat to academic freedom by invading the domain of the university’s authorities. In other
affiliate actions, the Illinois Division asked the Chicago school board to grant a hearing to a teacher who was dismissed from picketing a school on the double-shift system where the teacher’s daughter was a student; and the ACLU of Washington won the reinstatement of a Bremerton public school teacher who was ousted after his pupils sent a telegram to then-President Eisenhower over the U-2 incident.

**STUDENT RIGHTS**

The ACLU warned that disclosures by teachers responding to the growing number of inquiries about their students from government security agents and private employers, jeopardize the “privileged” relationship between teachers and students. The ACLU position was formulated by the Union’s Academic Freedom Committee after more than a year-long study and was published as an article in *School and Society*, the publication of the Society for the Advancement of Education. The Union warned that “the society which subordinates academic freedom to security precautions faces many more problems than it solves” and recommended to teachers to decline to reply to questions about their students’ patriotism, moral, religious or political beliefs, or about their private lives. “The student,” said the ACLU, “does not normally expect that his utterances or his written views will be reported outside the college or school community. . . . If he knew that anything he said or wrote might be revealed indiscriminately, the kind of relations in which he ordinarily felt free to make his pronouncement would, to all intents and purposes, cease to exist.” In so far as this relationship assumes elements of privacy, said the Union, it is comparable to the acknowledged privilege that exists between lawyers and clients, physicians and their patients.

“Habituation to this proliferating process of interrogation and response has tended to obscure possible dangers to education. . . . If probing, sharing and hypothesizing are regarded as essential; if education requires uninhibited expression and thinking out loud; and if tentative and spontaneous ideas are to be encouraged as conducive to learning, then disclosures of expressed opinion . . . can become a threat to the educational process.”

The Administrative Council of the City University in New York rescinded a ten-week ban on Communist speakers after the ACLU and the Bill of Rights Committee of the Association of the Bar of the City of New York submitted legal memoranda. The ACLU statement, signed by 28 leading attorneys, assailed as “clearly erroneous” the legal basis on which the Council had decided that it would violate the law if it permitted Communists to speak on municipally-owned campuses. The ACLU argued
that while the U.S. Supreme Court had upheld the registration section of the Subversive Activities Act, it explicitly said that the Communist Party is not an "illegal political organization," and that party members have a legal right to assemble, speak, think and believe as they will. The Union expressed its concern "not only with the rights of Communists to speak, but with the free speech rights of all proponents of extremist views, no matter how unpopular" and with "the rights of students, as well as the general public, to hear all viewpoints." The ACLU stand in favor of unrestricted political discussion on campus is integral to the Union's belief in the widest possible exercise of civil liberties by college students, free from administrative interference. These rights, detailed in a newly expanded ACLU pamphlet on "Academic Freedom and Civil Liberties of Students in Colleges and Universities," range from the unfettered operation of student newspapers and radio stations, to participation in off-campus political activities.

The legal wrangle in New York City over the right of Communist speakers to appear on campus was one of several instances in which college and university administrators—opposed by the Union and its affiliate—sought to restrict the rights of students to hear controversial speeches by controversial persons. University of California students, supported by the ACLU of Southern California, went into court to demand the right to hear speakers of their choice without interference from college officials. In Washington state, the ACLU affiliate protested the refusal of five state colleges to grant a platform to Gus Hall, Communist Party general secretary; at Ohio State University, the ACLU chapter and other groups condemned the cancellation of scheduled appearances by representatives of the Emergency Civil Liberties Committee and anti-HUAC speakers; in Michigan, the Lansing Chapter of the ACLU of Michigan strongly censured the cancellation by the Michigan State University Board of Trustees of a scheduled address by a Communist speaker while the Metropolitan Detroit Branch of the affiliate objected to the refusal by Wayne State University to grant permission for a speech by a spokesman for the conservative Young Americans for Freedom. The topic of the cancelled talk was the speaker policy of the university.

While such deplorable disputes flared into prominence, equally prominent were instances in which university officials withstood public pressure to cancel speeches by Communists and other unpopular persons. The president of the University of Minnesota resisted demands to call off an appearance by Communist Party officer Benjamin J. Davis, declaring that his university "is neither afraid of freedom, nor can it serve society well if it casts doubt
on the ability of our free institutions to meet the challenge of doctrines foreign to our own.” Similar sentiments were voiced by the president of the University of Oregon, one of several Oregon colleges at which Communist Party chairman Gus Hall spoke. When the Portland City Council cancelled a rental agreement for the city auditorium with a Reed College club, Hall spoke on campus.

ISSUES RAISED BY THE INTEGRATION CONFLICT

The ACLU and its Louisiana affiliate protested the closing of Southern University, the nation’s largest Negro college, following a demonstration in Baton Rouge by 2,000 students against discrimination in jobs and at lunch counters. In telegrams to the state Governor, the university president, and the chairman of the state Board of Education, the Union and the LCLU labelled the abrupt closing “a mass violation of civil rights” and warned against summarily expelling leaders of the demonstration. They pointed to the U. S. Court of Appeals for the Fifth Circuit’s ground-breaking decision in the Dixon case, handed down in June, 1961 and allowed to stand by the U. S. Supreme Court in January, 1962. The Dixon case was brought by the NAACP on behalf of six students who had been expelled from Alabama State because of their sit-in activities. The Court of Appeals had held that the Constitution requires a hearing before students may be expelled for misconduct from a tax-supported college.

RELIGION

CHURCH AND STATE: EDUCATION

THE COURTS

Rarely in recent years did public and congressional cries of outrage match the intensity provoked by the U. S. Supreme Court decision that held the so-called Regents’ Prayer in New York’s public schools unconstitutional. The Court found that the prayer violated the prohibition of the First Amendment against “an establishment of religion.” Roman Catholic clergymen confessed themselves “shocked and frightened;” Francis Cardinal Spellman said the decision “strikes at the very heart of the Godly tradition in America.” Protestant reaction was mixed; Methodists and Presbyterians approved the decision (the official magazine of the Methodist Church commented wryly that perhaps now “God can finally climb off the coins and into the hearts of the American people”) but Bishop Pike of the Protestant Episcopal Church said the decision “has distorted the meaning of the First Amendment,” and Billy Graham, typical
of evangelical clergymen, bitterly censured the opinion. Jewish religious leaders welcomed the decision as preserving the constitutional separation of church and state. In the Congress, bands of Senators and Representatives hastily opened, and then adjourned, hearings on legislation designed to abrogate the high court’s action.

Largely overlooked in the furor that surrounded the Supreme Court’s historic ruling was the fact that the tribunal remained faithful to the aims of the First Amendment, which was not designed to cripple religion but, on the contrary, to protect the practice or non-practice of religion from the encroachment of government. Said the Court in the 6-1 majority opinion written by Justice Black: “It is neither sacrificial nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. To those who may subscribe to the view that because the Regents’ official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, it may be appropriate to say in the words of James Madison, the author of the First Amendment: ‘It is proper to take alarm at the first experiment on our liberties.’” Also widely overlooked by those who condemned the Court’s opinion was a significant footnote by Justice Black which pointed that there was nothing inconsistent in the Court’s decision with the recital by school children of “historical documents such as the Declaration of Independence which contain references to the Deity” or with “singing officially espoused anthems which include the composer’s professions of faith in a Supreme Being,” or with “the fact that there are many manifestations in our public life of belief in God.”

The case was appealed to the U.S. Supreme Court with the support of the New York affiliate of the ACLU, on behalf of five Nassau County parents who objected to the non-denominational prayer as an infringement of constitutional protections guaranteeing religious freedom. (See last year’s Annual Report, p. 27). The prayer, recited daily at the start of the school day, states: “Almighty God, we acknowledge our dependence upon Thee and we beg Thy blessing upon us, our parents, our teachers and our country.” In its comment on the Supreme Court decision, the ACLU noted that, according to a survey in Religious Education, devotional homeroom services are held in half the public school systems in the country. Following the same procedure used whenever the Supreme Court hands down a major constitutional ruling, the ACLU called on its 33 local affiliates throughout the
nation to review religious practices in their public schools. A Union statement said that “since the opinion noted that the Regents’ Prayer, even though denominationally neutral and not compulsory, still offends the First Amendment principle of separation of church and state, we are confident that when more sectarian religious practices are brought to the Court’s attention, they likewise will be declared unconstitutional. Among these are Christmas and Chanukah observances, Bible reading, recitation of the Lord’s Prayer, and baccalaureate services.

Indeed, added the ACLU, two cases are already on their way to the U. S. Supreme Court for determination. A federal court in Pennsylvania ruled that Bible reading in public schools violates the separation principle, and the Florida Supreme Court upheld a lower state court’s decision which, in part, approved Bible reading and recitation of the Lord’s Prayer. (See last year’s Annual Report, pp. 26-27). “We hope,” said the ACLU, which is supporting both cases, “the Supreme Court next fall will make absolutely clear that the Pennsylvania decision is correct and the Florida decision is wrong.” The Union emphasized that a careful scrunity of religious practices by its local affiliates was in no way an attack upon religion. Rather, said the statement, “the best guarantee of religious freedom, as the U. S. Supreme Court said, is to keep that state out of religious affairs. Neither the public school or any other agency of government should be used to promulgate any or all religious faith. The practice of religion properly belongs in the church, synagogue and the home.”

SCHOOL PRACTICES

The ACLU of Northern California won the elimination of a prayer that had been used to open some student government activities in a Berkeley high school, and also prevented the circulation of Bibles in Tulare schools. The Attorney General of Washington state prohibited the distribution of Gideon Bibles in public schools, as well as the participation of school officials in planning baccalaureate exercises. In Bucks County, Pa., however, the Greater Philadelphia Branch of the ACLU threatened legal action to halt the distribution of Gideon Bibles. The Attorney General of Kentucky ruled that mere reading of the King James version of the Bible in public classrooms without comment does not constitute sectarian instruction.

Tension also continued in a number of communities over the holding of religious holiday observances in the public schools. After eight months’ study of this problem as well as of the display of sectarian symbols on public property, the Union’s Board
revised an earlier policy position and adopted the following statement:

"The American Civil Liberties Union believes that any program of religious indoctrination—direct or indirect—in the public schools or with public resources is a violation of the constitutional principle of separation of church and state and should be opposed.

"We believe the observance in public schools and on public property of such occasions as Christmas, Chanukah, and Easter as religious holidays to be contrary to the separation principle.

"Whether each and every observance that is believed to be in violation merits ACLU intervention depends upon the factors governing our participation in all classes of civil liberties matters. These include: (1) other civil liberties pressures commanding our attention—including other church-state matters, (2) our judgment of the general significance of the particular instance, and (3) the limit of our resources which are available at the particular time and place.

"Whenever the ACLU, through its national organization or an affiliate, does undertake to intervene in a religious holiday observance case, a clear-cut separation-of-church-and-state position should be taken, guided by the following considerations:

"1. The teaching of religion in the public schools is barred by the Constitution.

"2. The practice of regular Bible reading and organized prayers represents a form of indoctrination which should also be barred.

"3. The teaching of religion should be distinguished from teaching factually about religion as, for example, an element of world history or of social sciences. Even in teaching about religion, the younger the child, the more wary the teacher must be of indoctrination. Certainly, public schools may explain the meaning of religious symbolism should be opposed as a governmental which it is a part, but may not seek to foster a religious view in the classroom or otherwise.

"4. In cases where even non-religious attributes of a religious holiday (there are always borderline cases) may offend individual students, their privilege not to participate in such non-religious celebrations should be respected.

"5. The use of public funds or public property for the display of religious symbolism should be opposed as a governmental endorsement of religion."

AID TO PAROCHIAL SCHOOLS

The state Supreme Courts of Missouri and Wisconsin struck down laws permitting the use of public funds for the bus trans-
portation of public school pupils. In Missouri, public school buses were used to take parochial school children to class; in Wisconsin, annual grants ranging from $24-$36 subsidized the cost of transporting parochial school pupils to public school sites. The Union's Board of Directors, in the course of reviewing church-state educational issues, reaffirmed its belief that publicly-supported transportation of children attending church schools is unconstitutional. Finding that bus transportation is essential to the educational process, the Board declared, as the Union had in the 1947 Everson case, "Public money, coming from taxpayers of every denomination, may not be used for the help of any religious sect in education or otherwise." In Oregon the decision by the state's Supreme Court holding unconstitutional the provision at public expense of textbooks for church schools, a case backed by the ACLU of Oregon, was appealed to the U.S. Supreme Court, but the high court declined to review it. The Union's national Board of Directors, in reviewing the issue, held as it had previously that "a government committed to the separation of church and state may not finance religious schools either directly . . . or indirectly through a grant of textbooks or other supplies."

In other actions by ACLU affiliates, the Wisconsin CLU investigated the problem posed by Mennonite children in Muscoda who faced expulsion from public school because of their refusal to wear a prescribed gym suit uniform, and the Pennsylvania affiliate urged the state legislature to "correct an oversight" and provide medical and dental publicly administered services to private and parochial schools. The Pennsylvania legislation was passed. Subsequently the Union's Board of Directors found the provision of such services to children of church schools, as well as administration by public employees of psychological tests, not to be a violation of the separation principle.

CHURCH AND STATE: THE GENERAL PUBLIC

"Blue Laws"

The Indiana Civil Liberties Union supported a court test of the state Sunday closing law brought by four merchants which invalidated the statute on the grounds that it was "not explicit enough" and "does not apply to all citizens equally and is discriminatory." The verdict, appealed by a county prosecutor to the state Supreme Court, may clarify a legal anomaly that has made it unconstitutional for Indiana barbers to be required to close on Sunday, but has permitted automobile dealers to be shut down on the same day. The legal confusion over the enforcement of "blue laws" can be found in many other states, despite last
year's U. S. Supreme Court decision upholding such statutes in Maryland, Massachusetts and Pennsylvania (See last year's Annual Report, pp. 29-30). Kansas and Missouri have almost identical "blue laws," but Missouri's law barring all but "essential" Sunday sales was upheld as constitutional by the state Supreme Court, while Kansas' highest court found the state law too vague to meet constitutional requirements. Despite the U. S. Supreme Court decision, Massachusetts lifted the ban on a number of goods that could be sold on Sunday—a pattern of relaxation that was more or less followed in Rhode Island and Vermont.

USE OF PUBLIC FUNDS

The National Capital AreaCLU engaged in lengthy correspondence with officials of the U. S. Department of the Interior over its permission to a Roman Catholic group to erect a Nativity scene on national park land in Greenbelt, Md. Departmental officials contended that permission to construct the creche was merely "an aspect of freedom of expression" as long as the public was free to ignore the display and the creche did not interfere with public safety. The NCACLU and the Union, which believe that the issue has important implications for the entire federal parks and public land system, said that the policy is a clear violation of the First Amendment's separation of church and state and prepared to take further steps if the policy of the Interior Department was not reversed.

Following a protest by the ACLU of Northern California, the Berkeley city attorney ruled that it was an unconstitutional violation of the separation of church and state to use public funds to erect an Easter cross in a public park. The affiliate also investigated a situation in Albany, Calif. in which the city council approved the construction of a Nativity scene on municipal property. In Los Angeles, the ACLU of Southern California was successful in barring the spending of $30,000 in county funds to finance a Biblical pageant. The Illinois Division of the ACLU objected to the decision of the village board in Skokie, a Chicago suburb, to permit a Nativity scene on village hall grounds.

PROBLEMS OF CONSCIENCE

Congress, late in the session, passed a bill amending the oath of allegiance for enlistment in the armed forces. It added a clause to defend and support the Constitution, as well as the closing words, "So help me God." When the measure came before a subcommittee of the Senate Armed Forces Committee, the ACLU testified that it had no objection to the proposed changes as long as they are not intended to exclude enlistees who do not believe in the existence of God or who desire to affirm their
allegiance instead of swearing it. The subcommittee’s report and the Senate debate made clear that the Union’s position was correct. The Union cited the U. S. Supreme Court’s 1961 decision in the case of Maryland Notary Public Roy R. Torcaso, which held that it was unconstitutional to declare a belief in the existence of God as a condition for holding any public office. Previously, the Air Force, rather than requiring the swearing of allegiance by its enlistees, amended its rules specifically to permit such affirmation by Air Force ROTC cadets. The Greater Philadelphia Branch of the ACLU supported legislation to exempt members of the Amish religious sect from paying a Social Security tax on the grounds that the Amish conscientiously object to receiving benefits from anyone except God.

**Rights Of Prisoners**

ACLU affiliates in three states took steps to protect the religious freedom of prisoners. The Niagara Frontier (Buffalo) Branch backed a test case in a federal court on behalf of Black Muslims who charged that the right to practice their religion while in Attica State prison had been obstructed; the St. Louis Civil Liberties Committee inquired into the charge that penitentiary inmates had been denied the right to buy anti-religious pamphlets and books; and the Maryland Branch protested the rule of the Baltimore County Jail requiring prisoners to attend two religious services on Sunday or face solitary confinement. Roman Catholic church officials joined in the protest, observing: “This kind of force is against Catholic teaching and against the civil rights of every American.”

**General Freedom Of Speech And Association**

**Right Of Movement**

The ACLU praised the State Department for a “major civil liberties” advance by recognizing the right of persons denied a passport on the grounds of their known or suspected Communist Party membership to an administrative hearing at which the accused may confront and cross-examine their accusers. “Ever since 1947,” said the Union. “when the first federal employee loyalty-security program was instituted ... the failure to provide direct confrontation and and cross examination has encouraged the use of faceless informers, hearsay evidence, rumor, and vague and irrational accusations. The consequences of these arbitrary
proceedings have been to instill the idea that constitutional standards of fairness can be circumvented when it is claimed that there are countervailing interests which justify their dilution." While congratulating the State Department for its overdue change, the Union reaffirmed its belief in the constitutional right to travel freely and served notice that at the first appropriate opportunity the Union would support a legal test of the Subversive Activities Control Act, which, among other things, makes it a crime for a member of the Communist Party to apply for a U. S. passport. Another improvement noted by the ACLU was the decision by the State Department to eliminate a question on the passport application which asks whether the applicant is or was a member of the Communist Party. Instead, the new application merely includes the warning of the law on the subject of such applications by Communists. The change is a "vast improvement" said the Union, because many Americans considered the specific question regarding membership as an invasion of freedom of political opinion and the right to maintain the privacy of such beliefs against government pressure.

Political chaos in the Congo, and its echoes in the U. S. prompted the ACLU to issue protests to the State Department on two occasions. In a letter to Secretary of State Dean Rusk the Union deplored the refusal of a visa to Katanga President Moise Tshombe as an interference with the right of a foreign visitor to express his views and with the right of Americans to form their own judgment on the tangle of issues involved in the Congo dispute. In another letter to Secretary Rusk, the ACLU objected strongly to the revocation of the visa of Michael Strulens, a registered agent of the Katanga government in the U. S., as a clear infringement of free speech and due process of law. The government claimed that Strulens had falsely entered the U. S. as a newspaperman rather than as a propagandist, but denied him a hearing to present evidence that his propaganda activities were legally conducted.

The ACLU, which last year criticized the State Department for adding Cuba to the list of countries U. S. citizens could not visit without special permission, (See last year's Annual Report, pp. 31-32), was instrumental in obtaining such permission for four individuals who sought to enter the country for journalistic purposes. In each case, the State Department reversed an earlier refusal after the ACLU protested the denial on the grounds that the American people had the right to receive a variety of reports, some of whom from persons hostile to U.S. foreign policy, on an issue of major public importance. The Union had pointed out that the original decisions "leave themselves open to the interpretation that they (were) made on discriminatory grounds in-
consistent with our free institutions." The four were: Lyle Stuart, publisher of *The Independent*; General (ret) Hugh B. Hester, a contributing editor of *The Churchman*; Miss Sue Anderson, of the *Hispanic American Report*; and Jesse Gordon, who was gathering material for *The Nation*. In another case involving a reporter's travel to Cuba, newsman William Worthy was convicted on criminal charges under the Immigration Act of 1952 for re-entering the U. S. without a passport. He had gone to Cuba without a passport, having lost it in 1961 as the consequence of a long legal battle in which he had been defended by the ACLU for traveling to Red China and Hungary in defiance of government restrictions.

THE VOTE: MINORITY PARTIES AND THE RIGHT TO FRANCHISE

Reapportionment

A landmark decision by the U. S. Supreme Court held that federal courts have the authority and the obligation to review the fairness of the distribution of seats in state legislatures. The Court ruled that unfair apportionment violated the Fourteenth Amendment’s guarantee that no state can deny “the equal protection of the laws.” Ever since 1946, the high court had held that the issue of reapportionment was too “political” an issue for consideration by the federal judiciary. But the ACLU, in supporting suits brought in Tennessee and Michigan, asserted that where legislatures had violated their own state constitutions by failing to reapportion legislative districts on the basis of the decennial federal census, causing situations in which a mere 10 percent of the population controlled one branch of the legislature (as is the case in Connecticut, for example), far more than a political issue was at stake. Declared the Union in a public statement supporting the Tennessee test case, *Baker v. Carr*: "The equal protection clause of the Fourteenth Amendment is infringed by the dilution, as well as the denial, of the right to vote and malapportionment by the states raises a civil liberties issue." The high court did not pass on the recommendation of the Union that state electoral districts should be based on population alone in order to insure that all voters receive equal representation (*See last year’s Annual Report*, p. 32). The ACLU said it would continue to press for recognition of this issue. But by clearing the way for federal courts to examine the equity of legislative apportionment, the tribunal rendered a historic verdict that bids fair to provide urban residents a voice in their state governments that has long been drowned out by rural representatives. This change will, in turn, boost the chances for new civil rights legislation on the state level, where it has been obstructed for years by more conservative rural politicians.
Though the case in Tennessee was a glaring example of unfairness—a single legislator represented as few as 2,300 constituents or as many as 78,000—the Supreme Court set no rules to govern in advance the issue of whether a specific apportionment was constitutional or not. This will be up to the lower federal courts, subject to a final appeal to the Supreme Court. Even before the high court acted, the ACLU and its affiliates were active in several states where suits had already begun or were being considered.

LITERACY TESTS

The ACLU supported a bill introduced in Congress that would forbid the denial of the vote to anyone with at least a sixth grade education. The Union noted that while voting qualifications ideally should be based solely on age, residence, confinement or criminal conviction, even these equitable standards could be—and have been—abused. The ACLU supported the single standard of a sixth grade education as the least corruptible of currently proposed legislative remedies. Congressional power to protect voting rights, said the ACLU, was based primarily on the guarantee of the Fifteenth Amendment that "the right to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In another effort to extend and protect voting rights, the Union joined with several other national organizations in condemning a disingenuous proposal to use a constitutional amendment as device for eliminating the poll tax. Such a process would insure the perpetuation of the poll tax, since the amendment would have great difficulty in being ratified by three-fourths of the state, the organizations agreed. Moreover, it would set a precedent for subsequent efforts to write new civil rights legislation—an area in which Congress is fully competent to act in the first place. The measure passed the Congress and is now on its way to the states for ratification.

RIGHT OF ASSEMBLY IN PUBLIC FACILITIES

PUBLIC MEETINGS

In 1953 and again in 1954 the Indiana Civil Liberties Union tried vainly to hold a public meeting in the Indianapolis War Memorial Building. The building, though erected with public funds, was operated by eleven war veteran commissioners closely associated with the American Legion who decided that the ACLU affiliate did not meet its super-standards for loyalty. The original rejection of the ICLU's application was the basis of a nationwide television program by Edward R. Murrow, who was credited with launching one of the earliest public efforts to counter
the then-prevalent atmosphere of fearful suspicion fostered by McCarthyism. In 1962 the ICLU again applied for permission from the Commission to hold a public meeting in the War Memorial Building—was refused—and again launched off a new round of the old controversy.

The renewed debate began when the Commission announced a fee schedule for groups using the Memorial, but singled out the ACLU and the NAACP as "specifically barred" from the building. Governor Matthew E. Welsh immediately declared that the Memorial "is available for use by any reputable public or private organization. The fact that we may or may not agree with the objectives or purposes is immaterial," he declared. "The constitutional right of freedom of speech was especially designed to guarantee the discussion of controversial points of view. If we are to make mistakes, let's make them on the side of expanding freedom of discussion, rather than restricting it." The Governor further supported the ACLU by agreeing to address the affiliate's scheduled meeting in the hall and by receiving a formal assurance from the U.S. Attorney General that neither the Union nor the NAACP had ever been listed as a subversive group.

Despite such support for the ICLU application, the commissioners turned it down and at a hearing called to consider new rules governing use of the Memorial refused to allow ICLU officials to offer any rebuttal testimony to their accusation that the Union was involved in support of Communist causes. The new regulations deny the use of the Memorial to any organization "designated as subversive by the Attorney General of the United States . . . ; and the Commission shall consider any report and recommendations issued and/or made, by the Senate Internal Securities [sic] Subcommittee and the House Un-American Activities Committee." The new rules also require an organization's representative who files the application to submit a affidavit swearing that "Neither I personally nor the organization I represent . . . is now a member of any organization . . . listed on the most recent list of subversive organizations prepared and maintained by the Department of Justice. . . ." In answer to the Commission, the ICLU announced it would file a new application in order to assert its right, under the First Amendment, to use the public facility.

Issues related to the precarious international situation prompted several actions by ACLU affiliates. The Connecticut CLU criticized the Weston Board of Education for refusing to allow an official of the Committee for a SANE Nuclear Policy to speak at the local junior high school; the National Capital CLU protested the police treatment of two young men whose camera and address book were confiscated after they were ar-
rested during a "Turn Toward Peace" student demonstration in front of the White House; the New York CLU defended individuals arrested while demonstrating peacefully against nuclear testing but declined to defend those who were arrested for interfering with traffic by sitting in the street (as some of the British ban-the-bombers are prone to do) because of the affiliate's policy not to intervene in cases involving civil disobedience; and the ACLU of Washington criticized the arrest of an attorney on charges of vagrancy when he took part in a group demonstration against a civil defense meeting in Olympia.

Street-corner preaching, one of the classic forms of free speech, involved ACLU affiliates in Denver and San Francisco when practitioners of the custom were arrested by police for "disturbing the peace." The New Mexico CLU offered its services to the Albuquerque city attorney to revise the city's vague vagrancy ordinance, under which public speeches and assemblies could be declared illegal.

USE OF PUBLIC SCHOOLS

With the legal support of the New York CLU the conservative weekly, The National Review, won the legal right to lease the auditorium of New York City's Hunter College for public meetings. The publication had held forums and lectures at the school since 1954, but when it sought to sponsor a speaker who opposed Algerian independence, school officials decided the magazine was a "political group" and therefore "enjoined" from using Hunter's facilities. A state judge noted, however, that the school had previously allowed political events that commemorated newly independent African nations and the 1956 Hungarian revolt and concluded that the administration was simply exercising its own political bias. The school's standards, said the court, were "either unconstitutionally vague or else they embody an unconstitutional principle of selection."

Even though the U.S. Supreme Court refused to review a decision that ruled the Los Angeles and San Diego school oath laws unconstitutional, both cities stubbornly wrote new laws that set the stage for a renewed legal contest. The new regulations by the school boards demand a "statement of information" requiring an applicant seeking to use a school for a public meeting to declare that the proposed program does not seek to topple the government by force or violence. Similar regulations were invalidated by the state Supreme Court as unconstitutional "prior restraint" on the rights of free speech (See last year's Annual Report, pp. 34-35). Equally stubborn was Houston, whose requirement for a non-subversive oath by groups using school facilities was challenged in a Federal District Court suit by the
Greater Houston Affiliate of the ACLU. The National Capital Area CLU urged the Board of Commissioners to clarify ambiguous, restrictive regulations governing the use of public facilities for private groups in order to encourage "as wide a range of social, political and cultural activities as possible." The affiliate declared that library and school facilities may not constitutionally be denied to private groups on the ground that their nature, purposes or their beliefs are undesirable.

STATE AND LOCAL CONTROLS

RIGHT TO LICENSE

The ACLU of Southern California appealed the case of a law student who was denied the right to take the bar examination for failing to answer questions concerning membership in the Communist Party or supporting advocacy of violent overthrow of the government. The affiliate argued that the bar association's refusal is a violation of the right to freedom of association guaranteed by the Fourteenth Amendment. In a separate case the U.S. Supreme Court let stand California's loyalty oath for public officials, challenged by the affiliate's counsel, A. L. Wirin. Wirin took the case to court when he was denied the office of notary public because he refused to subscribe to a portion of the oath requiring the applicant to swear that he does not advocate the violent overthrow of the government. Wirin contended that the non-disloyalty section of the oath violated constitution protections of free speech, religion and thought. Although he refused to take the oath, Wirin testified in the trial court that he was not a member of any group seeking to overthrow the government by force or violence.

The Delaware Chapter of the Greater Philadelphia Branch of the ACLU intervened with Wilmington policy officials and succeeded in removing the phrase: "I am not a member of the John Birch Society" from the police cadet oath and the application forms of the Bureau of Police. The requirement, said the affiliate, violated an applicant's right to keep his political beliefs and associations to himself. A Maryland city court upheld the Taxicab Bureau's refusal of an operator's permit to A. Robert Kaufman, head of the local branch of the Young Socialist Alliance, because "a taxicab operator makes many contacts (and Kaufman) is inclined to circulate his beliefs among others."

CONGRESSIONAL ACTION

THE COURTS

The U.S. Supreme Court set aside the contempt of Congress convictions of nine men who had refused to answer some ques-
tions of congressional committees investigating Communism on the grounds that the First Amendment protects the privacy of their political beliefs and associations from government inquiry. The high court, which heard each of the cases separately, did not pass on the constitutional issue but overturned the convictions on the grounds that the indictments were faulty because they did not state the subject under inquiry at the time each man was questioned by the committee. The opinion noted that under the indictments the men were charged with refusing to answer questions "pertinent to" the subject under inquiry, but had failed to identify the subject. The necessity of pertinancy of unanswered questions to a valid contempt conviction goes back to an 1867 statute. In the 1957 Watkins case, the high court held that if a witness challenged an investigating committee, the committee must make clear the subject it is investigating. The latest decision goes a step further by making it a primary responsibility of the investigating committee to define clearly the subject of inquiry. Said the court: "A cryptic form of indictment in cases of this kind requires the defendant to go to trial with the chief issue undefined. It enables his conviction to rest on one point and the affirmance of the conviction to rest on another. It gives the prosecution a free hand on appeal to fill in the gaps of proof by surmise or conjecture. . . . It is difficult to imagine a case in which the indictment's insufficiency resulted so clearly in the indictment's failure to fulfill its primary office—to inform the defendant of the nature of the accusation against him." However, this victory in the Supreme Court did not end the case. The Department of Justice obtained new indictments.

At the same time the high court ruled for reargument in the case of Edward Yellin, who had appeared before the HUAC in 1958 in Gary, Indiana and refused to answer questions about the alleged planting of Communists in the local steel industry. In 1961 Yellin was awarded a $3,800 fellowship by the National Science Foundation, which was revoked after inquiry by the HUAC. (See last year's Annual Report, p. 19).

The U.S. Court of Appeals set aside the contempt conviction of folk singer Pete Seeger, who declined to answer HUAC questions on First Amendment grounds. Four others indicted for contempt of Congress have yet to come to trial. Twelve Puerto Ricans who refused to testify at HUAC hearings in San Juan in 1959 on the ground that the committee was not authorized to hold hearings in the independent Commonwealth of Puerto Rico have had their indictments dismissed on that ground.

**HOUSE UN-AMERICAN ACTIVITIES COMMITTEE**

The Cleveland CLU strongly protested the publication of the
names of 16 witnesses summoned before the Committee some three weeks before their trial appearance. Not only did such publication by newspapers violate the HUAC's own rule against disclosing the names of witnesses before they appear, charged the affiliate, but some subpoenas were served at the witnesses' place of business "loudly and publicly calling the attention of people present to the names of the witnesses in connection with the hearings of the committee." Such blatant violation of discretion, which presumes the individual to be guilty before they have a chance to defend themselves, violates constitutional safeguards. "Such denials of due process, often called conviction by subpoena, is one of the major causes for the CLU's long-time opposition to the HUAC and our desire for the abolition of the Committee," the affiliate declared. The HUAC, in a telegram to the Cleveland CLU, denied that any member of the Committee or its staff had disclosed the names of the prospective witnesses and asked the affiliate for information on how the press obtained the names. The HUAC also said it had asked the U.S. Attorney General to enter the investigation, presumably because the U.S. Marshal's office is responsible for serving subpoenas. To the Committee's request for further information, the Cleveland CLU replied that it had no special facilities to obtain the information and suggested "that the proper authorities go directly to the newspapers and ask them. . . ." Further checking disclosed that the names were filed in a dispatch from Washington correspondents to Cleveland newspapers, casting doubt on the local origin of the leak via the U.S. Marshals. Subsequently, when the hearings were held in Washington, D.C., the ACLU and the National Capital Area CLU provided attorneys for eight Cleveland witnesses. The legal assistance provoked an attack on the Union by three Committee members who said the ACLU's legal activity focussed particularly on "Communist causes." This oft-repeated charge was denied on the spot by an ACLU lawyer, and was followed by a strong letter from the Union outlining its traditional role in defending constitutional rights for all persons, including the right to counsel.

The ACLU of Southern California is supporting a $540,000 damage suit filed by three University of California students who were involved in the May, 1960 demonstrations against the HUAC in San Francisco. The students charge that police violated a state law prohibiting the use of police information by private persons by allowing circulation of "mug shots" of the demonstration at public hearings. The mug shots are also included with excerpts of a pamphlet by FBI Director J. Edgar Hoover that are often circulated at such meetings, which feature the HUAC-supported film Operation Abolition (see below).
"Operation Abolition"

Widely shown at meetings of the American Legion and by school boards and other local and state agencies, the film Operation Abolition purported to be an authentic report of the demonstrations in May, 1960 that protested an HUAC public hearing in San Francisco. The chief polemical thrust of the film's version of the riot was the charge that opponents of the Committee were Communists or Communist dupes. Such an accusation, typical of the political irresponsibility which frequently characterizes HUAC pronouncements on complex issues of loyalty and security, was effectively challenged by the ACLU and its affiliates through most of 1961 by means of sponsoring dozens of public debates on the film's contention that those who questioned the work of the Committee were somehow subversive. (See last year's Annual Report, pp. 40-41). In late 1961, the continuing public protest against the HUAC that found expression in these debates was further aided by the release of a film prepared by the ACLU of Northern California entitled Operation Correction, which refutes point by point the HUAC's interpretation of the events in San Francisco.

ACLU affiliates in many states showed the film Operation Correction at dozens of public meetings either alone, or as an educational double-bill with Operation Abolition. Both films, for example were shown in Lawrence, Kan., Austin, Texas, and Detroit, Mich. In Maryland, two organizations, the Farm Bureau and the Flag House Association (both supported in whole or in part by public taxes) cancelled scheduled showings of Operation Abolition when the Maryland CLU proposed that Operation Correction be included on the program. In Keokuk, Iowa, the ICLU learned that the HUAC movie was being exhibited in the public schools and asked that the same privilege be extended to Operation Correction. In Rochester, N.Y. and Dayton, Ohio, public libraries accepted copies of Operation Correction to balance their audio-visual programs. Despite such educational efforts, showings of the HUAC film without an opportunity to rebut its bias continued to draw the protests of ACLU affiliates.

The Far Right

One of the avenues by which the newly blossoming radical right invited public controversy was the frequent appearance of high ranking military officers at unofficial, private "seminars" and "strategy conferences." Following several protests by the ACLU and its affiliates in California and Illinois, the Defense Department issued a directive restricting such appearances, which often turned into partisan political attacks. Military participation, said the directive, "must not lend an air of sponsorship to statements
of others which may be either partisan in character or contrary to established national policy.” Reviewing the directive, the ACLU found that although it was loosely worded and thereby open to abuse, it does not violate the civil liberties of military personnel. Similarly, the Union concluded that no civil liberties issues were raised by government restrictions on the speeches of the military, a debate that was the subject of hearings held by a subcommittee of the Senate Armed Forces Committee. Such restrictions on matters involving national policy, said the Union, are necessary to avoid giving the public or a foreign power the impression that the military speak for the government on domestic or international issues. The military may express their disagreements within the government—as high-ranking civilians do—or they may resign and state their disagreement publicly. If a high-ranking officer chooses to dispute government policy while still on active duty, said the ACLU, then the possible reprimand or dismissal that follows raises no issue of free speech. “The problem is not substantially different from a subordinate publicly disagreeing with his superior in business life or in a membership organization,” said the Union. The Union cautioned, however, against using the same principles to justify restrictions against junior officers or enlisted men, who cannot resign, nor are their remarks apt to “exert the kind of influence in diplomacy and civil policy which justifies the monitoring of high officers’ speeches.” The Union statement also discussed the policy decision—of the Eisenhower Administration (which has subsequently not been cancelled by the Kennedy Administration, to the best of the Union’s knowledge) to employ “military personnel and facilities to arouse the public to the menace of the cold war.” While the wisdom and efficacy of the policy may be questioned, the ACLU said, “it is doubtful that it creates a civil liberties problem.” As applied to the indoctrination of military forces, such indoctrination—“to make men better soldiers, not necessarily better citizens”—has always been recognized as a primary responsibility of military command, the Union declared. “As long as this is, like all other military functions, exercised in conformity with the superior policies of the civil government, its content appears to present no civil liberties issue,” the Union said. “A citizen may feel that indoctrination of troops in sound principles and practices of democratic citizenship will make better soldiers out of them than indoctrination in extreme anti-Communism,” added the ACLU, “but it is difficult to see how this view can be sustained on civil liberties grounds.” Troop indoctrination programs that include partisan political comment, raise a different issue, the Union said. Thus, the Union supported the Defense Department’s admonition of Major General Edward
A. Walker, who indoctrinated his troops "with extreme radical right politics . . . found to be contrary to existing laws and regulations which properly bar partisan indoctrination."

Though the activities of extremist private groups such as the John Birch Society becloud the climate in which free discussion can flourish, the ACLU and its affiliates vigorously opposed the desire of some to suppress the right to free speech of these groups. In large measure, the containment of the radical right is due to the willingness of groups such as the ACLU and its affiliates to raise their voice in opposition to the tactics and the anti-civil liberties purposes of the extremists. This airing of opposition, often occurring in debate by Union members with members of the John Birch Society, was a feature of discussions in many cities and on campuses across the nation. In California and Texas, two strongholds of the ultra-conservatives, violence punctuated the public debate. In Los Angeles, bombs damaged the homes of two ministers who were appearing in a panel discussion of the radical right; in Midlothian, Texas the print shop of the local newspaper was gutted by a fire bomb after the editor publicly opposed the use of compulsory high school assembly periods for speeches espousing the aims of the John Birch Society.

**INTERNAL SECURITY ACT**

Following the U.S. Supreme Court decision upholding the constitutionality of the registration section of the Subversive Activities Control Act (See last year's Annual Report, p. 41), the Department of Justice renewed a full-scale legal attack upon the Communist Party and many of its leaders. The ACLU opposed the government actions, not out of the least sympathy with Communists or their totalitarian ideology, but on the grounds that the government moves violate the First Amendment freedoms of speech, press, travel and assembly. One step taken by the Department of Justice was an especially severe violation of constitutional standards: filing petitions against ten alleged members of the Party for failing to register under the Subversive Activities Control Act. Although the U.S. Supreme Court has upheld the constitutionality of the Act’s registration section, it has not yet decided whether the Party or its officers can actually be compelled to register. Because the Smith Act makes membership in the Party a crime, the requirement that its officers or members register raise the issue of possible self-incrimination in violation of the Fifth Amendment.

Other moves taken by the government included: obtained an indictment against the Party for failing to register as a Communist-action organization; convened a grand jury to investigate whether *The Worker* and *Political Affairs* violated the SACA by
failing to be labelled as Communist publications; began pro-
cceedings to revoke the passport of Elizabeth Gurley Flynn, na-
tional chairman of the Party, and four other alleged Party
members, pursuant to the SACA prohibition against issuing pass-
ports to members of organizations required to register under the
Act. The Department of Justice also began contempt proceedings
against the national organizational secretary of the Party and—
in a flagrant violation of the freedom of the press—the editor of
The Worker for refusing to testify before a grand jury after having
been granted immunity. Both contempt citations were reversed
on appeal, not on constitutional grounds, but because the gov-
ernment failed to comply with the terms of the 1954 Compulsory
Testimony Act. The government also moved under the Act
to enforce Subversive Activities Control Board orders against
eleven “Communist-front” organizations. The Union, in a friend-
of-the-court brief filed on behalf of five organizations that have
been labeled Communist-fronts, again challenged the consti-
tutionality of the Internal Security Act under which the govern-
ment action was taken. Acknowledging that the U.S. Supreme
Court has upheld the registration section of the Act, the brief
pointed out that the pertinent decisions “are narrowly drawn
to hold constitutional only the provisions respecting Communist-
action organizations, as applied to the Communist Party of the
United States.” But sections defining Communist-front organiza-
tions are “so vague and uncertain,” said the Union, that they
violate the due process clause of the Fifth Amendment and the
free speech and association guarantees of the First Amendment.
The ACLU brief was filed on behalf of the Veterans of the Abra-
ham Lincoln Brigade, the National Council of American-Soviet
Friendship, Inc., the American Committee for Protection of
Foreign Born, Louis Weinstock, for the United May Day Com-
mittee, and the Jefferson School of Social Science.

The ACLU urged members of the U.S. Senate to refer back to
the Judiciary Committee a bill to amend the Smith Act by defining
“organize” to include recruiting activities. The Union asked for
full and complete hearings on the bill, since more than three
years had intervened between the present and last time such
proposals were made in Congress. However, the bill passed both
houses of Congress and was signed by the President.

LABOR

WORKERS RIGHTS

On the federal scene, the National Labor Relations Board
reestablished the equal time rule for unions engaged in organi-
zational activities that had been in force before the NLRB during

the Eisenhower Administration reversed it. The original doc-

trine, enunciated in the 1951 Bonwit-Teller case, held that where

the employer barred union solicitation on company time and

property—but made an anti-union speech himself—he must give

the union the right to answer on company time and on company

property. The return to the so-called "fair play" rule came in the

case of another department store, the May Company of Cleve-

land, whose officials had made speeches opposing the organiza-
tional drives of the Retail Stores Employees Union and the Office

Employees Union during business hours within the store, but

refused to allow the unions to answer them on the same basis.
The NLRB majority in the Kennedy Administration held that

May Company policy was a "glaring imbalance in opportunities

for organizational communication" that resulted in restricting

the free speech rights of its employees.

The conflict between individual rights and union membership

continued to stir interest, and provoke controversy. The Interna-
tional Association of Machinists called it quits after trying for

three years to oust two California members because they campa-

igned publicly in favor of a state right-to-work law (See last

year's Annual Report, p-44). The IAM argued that the men

should be prevented from taking a public position contrary to

union policy on an issue of such grave importance. But the

ACLU of Southern California successfully contended in a friend

of the court brief that the IAM claim was an improper restriction

on the members' rights to enjoy freedom of speech. The union

pledged at one point to carry the case to the U.S. Supreme Court,

but decided not to continue the battle any longer after the state

Supreme Court refused to hear its appeal from a lower tribunal.

In one sense, though, the victory for the union members was

pyrrhic: neither one has collected any part of their joint claim

for $100,000 in damages. Two Chicago tool-and-die makers

dropped their suit for damages and reinstatement in their union,

the International Association of Machinists. The pair, Irwin Rap-
paport and Marion Ciepley, were expelled after successfully oust-
ing a corrupt administration in their local and had sued under

the "Bill of Rights" section of the federal Labor-Management

Reporting and Disclosure Act. The case was lost on technical

grounds in the Federal District Court and money was lacking to

carry an appeal (See last year's Annual Report, p. 44).

LOYALTY

AND SECURITY

The non-Communist affidavit required by the Taft-Hartley

Act before a union can use the offices of the NLRB came under

scrutiny in federal court. In Denver, a U.S. Court of Appeals
reversed the convictions of nine current or former members of the International Union of Mine Mill and Smelter Workers who had been convicted in 1959 of conspiring to file affidavits with the NLRB falsely denying their membership in or affiliation with the Communist Party. Proof of such falsity requires a showing of current membership in or affiliation with the Communist Party at the time the affidavit is sworn. The appeals court found in the case of one defendant that mere knowledge of the alleged conspiracy did not make him a conspirator; another defendant was acquitted on the grounds that there was no evidence he was a Communist at the time he made his affidavit; finally, the court held that testimony by a key witness was hearsay and was not sufficiently linked to the conspiracy charge. The court ordered that two of the indictments be dismissed and directed that the remaining seven defendants receive new trials.

In a detailed letter to the U.S. Attorney General, ACLU Executive Director John de J. Pemberton Jr. urged that the government abandon the new prosecutions. The letter traced the legal history of section 9 (h) of the Taft-Hartley Act requiring the non-Communist affidavit, including the fact that its constitutionality was upheld by the U.S. Supreme Court in 1950 by an evenly divided Court with only six Justices participating. The doubtful constitutionality of the section "should be reason enough" to drop the prosecutions, the Union said. In addition, the letter noted that not one of the three legal actions taken against the Mine Mill and Smelter Workers by the government during the last ten years has been sustained by the U.S. Supreme Court. Thus, said the ACLU, "a decision not to prosecute would go a long way to encourage the belief that trade unions, regardless of the policies they advocate, need not fear prejudicial government treatment. Unfortunately, the impression has been created that the United States government is treating Mine-Mill in just this prejudicial fashion . . . No matter how this case is examined," concluded the ACLU, "it essentially concerns the wisdom of compelling trade unionists to hew to orthodox politics or suffer the consequences of criminal prosecution. Our government ought not to stand guilty of diminishing our political freedoms by these indirect methods." The government rejected the ACLU plea and new prosecutions were started.

Bias

Dissatisfaction by the NAACP with anti-discrimination efforts by the AFL-CIO appeared to be heading for a showdown in the courts. The NAACP pledged to compel unions legally to admit Negroes to membership on the theory that unions are not voluntary organizations, and therefore do not have the legal right
to decide whom they may admit to membership. The NAACP legal campaign, described as a “last resort,” is based on the claim that unions are not voluntary organizations because they are certified as exclusive bargaining agents by the NLRB, their role in collective bargaining, and their control of jobs under some circumstances, through hiring-hall agreements with employers or through apprenticeship programs. The legal attack will aim not only at unions that exclude Negroes from membership, but at the segregation of Negroes into separate locals, discrimination in apprenticeship programs run jointly by unions and employers, segregation of Negro workers by labor-management contracts into a separate unit.

EQUALITY BEFORE THE LAW

THE FEDERAL SCENE

THE COURTS

The U.S. Supreme Court’s first decision arising out of sit-in demonstrations in the South resulted in the acquittal of 16 Negroes convicted of disturbing the peace by sitting at lunch counters in Baton Rouge, La. Each had been sentenced to 30 days in jail, plus a $100 fine. The scope of the Court’s ruling was limited. The opinion simply said that there was an absence of specific evidence that public disturbance had been caused by the demonstrators. Answering the argument of the state that because of racial tension the sit-ins could have led to commotion, Chief Justice Warren said it was improper to make such an assumption. Backed by the NAACP, the student demonstrators had based their plea on the grounds concurred in by the Court, but also on the broader constitutional argument that their conviction was a denial of their First and Fourteenth Amendments rights to freedom of expression. Though the opinion was narrowly based, it may prove to have a bearing on other cases in which civil rights demonstrators have been jailed on charges of disturbing the peace, such as the 300 freedom riders jailed in Jackson, Miss.

The other principal category under which sit-in participants have been arrested and jailed—the charge of trespassing on pri-
vately owned property—has broader constitutional implications. This issue may be decided by the Court in some of seven cases it accepted for review developing out of sit-ins in North and South Carolina, Maryland, Louisiana, Alabama and Georgia. A total of 44 persons are involved. They base their appeal on the argument that it is a violation of the Fourteenth Amendment’s guarantee against racial discrimination by states when state police officials enforce racial segregation, in effect, by using the criminal laws to support discrimination. This takes place, they assert, when police arrest demonstrators at the request of proprietors who do not wish to serve them because of their race. A similar position was taken by the ACLU in urging the high court to accept for review the convictions of ten Virginia Negroes convicted of trespassing when they sought lunch counter service at a Lynchburg pharmacy. By licensing the owner who agrees to the state custom of racial discrimination, said the Union petition, “Virginia made the company’s refusal to serve petitioners its own, and thereby denied (them) the equal protection of the laws.” The convictions also violated the Fourteenth Amendment by arresting the demonstrators and convicting them of criminal trespass under “emergency” legislation enacted to preserve lunch counter segregation, the Union declared. Thus, “Virginia used its full executive, legislative and judicial power to enforce the company’s racial discrimination, again denying petitioners the equal protection of the laws.” In addition, said the ACLU, the defendants were forced to stand trial in a segregated courtroom, before a judge who exhibited “constant hostility” and were tried by a jury chosen from lists that were marked Negro and white. The Union said that any one of these conditions is sufficient ground to reverse the conviction on the grounds that the defendants did not get a fair hearing. Yet, said the Union petition, these conditions are “common of thousands of trials of Negroes in many parts of the country” and present novel constitutional questions that have not been legally resolved.

The fact of a racially segregated courthouse that “mocks the judicial process” was cited by the ACLU in a friend-of-the-court brief submitted to the U.S. Court of Appeals on behalf of Willie Seals Jr., a Mobile, Ala. Negro convicted in 1958 of raping a white woman. The court reversed the conviction on the grounds that the jury excluded Negroes. Seals was denied a fair hearing under the Sixth Amendment and deprived of due process of law under the Fourteenth Amendment, argued the Union, because the courtroom spectators were segregated by race, the court attendants were white, and the entire building was segregated. Moreover, Seals’ trial was not “public” in the fullest sense of the word because discriminatory seating discouraged Negro at-
tendance. Moreover, added the Union, the presence of segregation made it more difficult for the jurors to maintain proper objectivity in a case in which all the prosecution's witnesses were white and all the defense witnesses were Negro.

Legal difficulties are commonly placed in the paths of attorneys defending Negro clients in the South. Indeed, the lack of competent Negro attorneys and the refusal of white attorneys to accept civil rights cases has jeopardized the right to adequate counsel in the South. Alarmed by the mounting difficulties, the ACLU urged national, state, and local bar associations to take the lead in providing proper counsel to defend civil rights clients. At the same time, the bar associations should educate local communities to the "fundamental right of all persons, regardless of color or economic status, to competent, fearless legal representation." Such representation, the public must be told, is a professional obligation rather than an expression of sympathy for the view of clients. The Union suggested that if local and state bar associations cannot improve the situation, the American Bar Association should act through state and federal courts to provide such representation, by out-of-state lawyers if necessary.

In the lower federal courts, a three-judge panel in Georgia ruled unconstitutional the state's laws providing for bus segregation; and a trio of jurists in Mississippi declared unconstitutional three state laws requiring segregation in transportation stations. Surveying bus and railroad terminals in the South, the Department of Justice reported that official segregation such as waiting room signs and tagged water coolers have been almost entirely eliminated. The removal of such obvious testimony to segregation has not, however, inclined Negroes and whites to mix freely in long-separated waiting rooms and restaurants.

**JOB DISCRIMINATION**

The President's Committee on Equal Employment Opportunity was reported ready for an overhaul after a relatively short career in its old form. Under the prodding of the NAACP and other civil rights groups joined in the Leadership Conference on Civil Rights (of which the ACLU is a member), the President's committee will be reorganized to give precedence to enforcement powers to end job discrimination by federal contractors rather than relying heavily on a voluntary approach. Although 85 major industrial concerns voluntarily signed the "Plan for Progress" pledge not to discriminate against Negroes in their hiring, promotion or apprenticeship programs, the four-man staff assigned to follow up the pledges was considered too small to be effective. Instead, the committee received an executive director
who will coordinate the drive for voluntary compliance with the efforts of the 33-man enforcement staff.

The ACLU testified at a hearing of the House Education and Labor Committee on a bill, later passed, guaranteeing equal pay for equal work for women. The statute applies to most private businesses engaged in interstate commerce. The ACLU position was delivered by Miss Dorothy Kenyon, a former NYC Municipal Court judge, the first U.S. delegate to the UN Commission on the Status of Women, and an ACLU Board Member for more than 30 years. "This is a simple question of fair play," said Miss Kenyon, "based on the constitutional principle of equal treatment and due process of law . . . Whether black or white, men or women, no difference is tolerable . . . Women have suffered from this evil long enough. They are in industry to stay. They deserve to be treated like all other human beings in a land of freedom and equality."

In another appearance before a House subcommittee, the Union urged enactment of a federal equal opportunity law to insure equal job rights that would "fix fair safeguards for the nation. Federal law alone," said the ACLU, "will serve notice to the world that our democracy means in fact what we profess in principle." Answering certain objections to a federal equal opportunity law, the Union pointed out Congress has the right to legislate in matters affecting interstate commerce, that states' rights are protected by the Constitution as well as by eliminating employers not engaged in interstate commerce from the bill, and that fears of compulsion by employers has not been borne out by the experience of state FEP commissions.

VOTING

The Justice Department opened its first sweeping attack on discrimination against Negro voters in Mississippi by moving the Federal District Court to strike down two sections of the state constitution and six state laws. One of the constitutional provisions requires an applicant to interpret any section of the constitution to the satisfaction of a local voting registrar. This was similar to a requirement for voting applicants in Louisiana, which the Justice Department also sought—in a separate set of legal actions—to invalidate. The Justice Department said that the Louisiana law was being used to deny Negroes the right to vote since its adoption in 1921 as a successor to the invalidated "grandfather clause," under which only those voters whose grandfathers had voted were entitled to cast their ballots without passing a literacy test. In another Louisiana voting case, a federal judge ordered state courts and state officials to stop blocking the registration of Negro voters in East Carrol Parish. More than
two dozen Negroes had previously passed a voter qualification test held by a federal judge in the first proceeding of its kind under the Civil Rights Act of 1960. The group was among 53 Negroes who had applied to become the first of their race to vote in East Carroll in 40 years. The attempt by voters in Terrell County, Ga. to exercise their franchise provoked some of the worst violence the South had seen in years. Since the late fall of 1961, when members of the Atlanta-based Student Non-Violent Coordinating Committee entered the area and tried to organize a series of rallies for prospective eligible voters, there have been many cases of assault, intimidation and harassment; night riders sprayed gunshots into homes; and eight Negro churches were destroyed by fire. The mounting tempo of fear and lawlessness prompted the Justice Department to file a suit against 16 Terrell County law enforcement officials who themselves were accused of disrupting Negro voter registration rallies and with other acts intended to intimidate Negroes from registering or voting. The wave of church burnings led the ACLU to ask the Justice Department for an intensive, large scale effort to find the arsonists-racists. A Union telegram to the Attorney General called the burnings “a vicious attack on the First Amendment right of American citizens to vote and to practice their religious freedom” and urged a large-scale FBI hunt for the perpetrators of the crime, especially “because of past failures to arrest persons responsible for assaults on Negroes’ civil rights” in the South and elsewhere. So far, the FBI has tracked down four white men, one a juvenile, who pleaded guilty to setting fire to one Negro church in Terrell County.

The Rev. Martin Luther King, in the first address by a Negro to the National Press Club, called on the Justice Department to use the Civil Rights Act “extensively, and seek court-appointed referees in thousands of communities” in a drive to gain Negroes the right to vote. The ACLU appealed to the Justice Department to investigate the repeated arrest and alleged beatings of Eric Weinberger, a pacifist from Norwich, Conn., who was retraining Negro shareholders in Haywood and Fayette Counties, Tenn. The Negroes had been evicted from their farms after trying to register as voters and were living in “Freedom Village” tent communities. Within a period of ten days, the Union reported, Weinberger was arrested four times and beaten in jail by police each time.

The Justice Department obtained a consent decree in a Federal District Court ordering an end to reprisals against the 80 Negro families who live in “Freedom Village.” The original complaint was brought under the 1957 Civil Rights Act, which allows the federal government to seek judicial relief when persons
are denied the right to vote. In addition to molestation by whites, there were efforts to stop food and supplies from reaching the tent community, as well as a boycott of Negro voters by large food and fuel oil companies. The injunction by the court forbid economic penalties, job dismissals, evictions, or interference with the right to vote.

STATE AND LOCAL ACTION

While the problem of racial discrimination is a national evil, though one practiced more subtly in the North, the main battleground remained in the South.

Ever since the remarkable Montgomery bus boycott of 1956 revealed that organized, peaceful protests can result in reshaping the historic pattern of segregation in the South as effectively as courtroom maneuvers, Negroes have used a variety of techniques to force change upon a stubborn population. Economic sanctions produced change in such cities as Montgomery and Birmingham, mass sit-in demonstrations at lunch counters opened previously restricted restaurants and chain stores in Dallas, Memphis, Nashville and other cities. Courageous Freedom Riders opened the way to officially desegregated interstate bus and railroad facilities throughout the South, according to spot checks by the Southern Regional Council and the Congress of Racial Equality. Though the South is far from equality, it is remarkable how far it has come in recent years towards desegregation. Yet the arsenal of peaceful weapons that Negroes have thus far successfully used—boycotts, mass marches, sit-ins, and plain bravery—failed for many months to shake the manufacturing, commercial and military center of southwestern Georgia, Albany. When President Kennedy found it “wholly inexplicable” that city officials would not even sit down and discuss racial problems with Negro citizens, he was ignored.

In the stubborn struggle in Albany, more than 1,000 Negroes were arrested, but there was remarkably little violence. Police officials were firm, but not brutal in enforcing segregation, depriving both Negroes and white moderates of rallying points to support their cause. The Rev. Martin Luther King and other leaders of the South organized repeated protest demonstrations to desegregate the city’s parks, swimming pools, libraries and other facilities, but wholesale arrests left the situation unchanged. King was arrested for his role in the demonstrations and served two weeks before receiving a suspended sentence. When small groups of Negroes and whites tried to use the city’s parks and libraries, they were abruptly closed down "indefinitely in the
interest of public safety." The city also sought a federal court injunction to stop the demonstrations; the Negroes—with backing from the Justice Department in a friend-of-the-court brief—sought an injunction to prevent the arrest of peaceful demonstrations. Among such demonstrators who were jailed were 70 Protestant, Catholic and Jewish clerymen and laymen from the North and Midwest who came to Albany for a "prayer vigil." All but 19 of the group were white. The ACLU played an active role in the various legal proceedings. A cooperating attorney argued against the city's bid for a temporary restraining order to halt the protests which was dissolved; argued for a similar order to block the city from arresting the peaceful demonstrators; and filed writs of habeas corpus to free the 70 ministers and other out-of-state protestants against segregation. Gradually, the stalemate turned the battle to new directions: the Albany Movement attempted, as before, to maintain economic boycotts of white stores and to continue its legal offensive, but increasingly the emphasis of the campaign moved to the polls. Albany Negroes sought to register as many voters as possible in the hopes of unseating at least two segregationist City Commissioners.

At least in Albany, the Negroes had a chance. Far more typical of the racial climate existed in Sasser, Georgia; 51 Negroes are on the rolls, out of a total of 8,209 in Terrell County. More than half the white population of 4,533 is registered. But when a handful of Negroes attended a voter registration rally, Sheriff Z. T. Matthews made no secret of his disapproval. "I tell you, cap'n," he told a visiting reporter, "we're a little fed up with this registration business. We want our colored people to go on living like they have for the last one hundred years." Attempts to speed the process brought reprisal under the cloak of law: two members of the Student Non-violent Coordinating Committee were arrested on vagrancy charges. The possible penalty: $1,000 in fines, a year in jail, or both.

**Freedom Rides**

Following the series of largely successful, but often violent, Freedom Rides to such cities as Birmingham, Montgomery and Jackson, the strategy shifted toward desegregating restaurant facilities along the South's major highways. An early victory on this front was scored by the NAACP when a Federal District Court in Florida ordered the state to end discrimination at restaurants along the Sunshine Highway from Miami to Fort Pierce, which lease their land from the state. Since most restaurants are privately owned the decision lacked major applicability.

The last major incident involving Freedom Riders took place in McComb, Miss. where five Negroes were beaten by a white
mob yelling “Kill 'em, Kill 'em.” The five, three youths and two girls, had tried to use the Greyhound bus station, after a federal court had ordered the removal of racially discriminatory signs. A few days later police held back angry mobs while six Freedom Riders managed to achieve the first desegregation in the recent history of the state. The mob would not be denied, however: furious whites set upon a local newspaper editor, knocking him to his knees, and assaulted other reporters and cameramen. A Federal District Court judge promptly banned further tests of desegregation in McComb on the grounds that they provoked violence. The ACLU joined in contesting the action before the U.S. Court of Appeals. The injunction had been sought by the Mayor of McComb and the manager of the bus station “to circumvent federally protected rights,” declared the ACLU. “If temporary restraining orders and preliminary or permanent injunctions can be freely used in this manner then important federal rights become a little more than mere platitudes. The fact that violence by others might ensue from entirely lawful conduct . . . is not grounds for injunctive relief.” Noting that the Interstate Commerce Commission had issued an order barring segregation in interstate bus terminals, the Union commented further that the injunction granted by the lower federal court “pits one arm of the government against another.”

SIT-INS

A potentially-far-reaching test of the legal means to enforce segregation was begun in Louisiana by the ACLU, the NAACP and CORE. To be challenged is the charge of criminal anarchy levelled against four young civil rights leaders on the grounds that they were members of the Student Non-violent Coordinating Committee, an organization which they knew “to advocate, teach and practice opposition to the government of Louisiana by unlawful means.” The issue is broader than the guilt or innocence of the defendants. It opens the question of a state’s right to employ such extraordinary legal devices to enforce segregation in opposition to groups and individuals holding opposite views. If the state is upheld in its contention, it will undoubtedly possess a powerful weapon against active integrationists.

Ronnie Moore and Weldon Rougeau, former students at Southern University in Baton Rouge and officers of the local CORE chapter, were arrested on the campus while demonstrating against the closing of the University because of alleged disruption caused by wide student participation in anti-segregation activities. Moore, along with another CORE official, also face trial on the charge of “defaming” a grand jury by offering to testify in be-
half of a CORE and NAACP official charged with "defaming" a judge and district attorney at a local mass meeting. Robert Zellner (who is white) and Charles McDew, officers of the SNCC, were later arrested when they brought fruit and books to another SNCC officer in the Baton Rouge jail. The books, *Scottsboro Boys*, *The Ugly American* and *Eight Men* were declared by police "contrary to Louisiana's policy of segregation of the races." Zellner and McDew are defended by the ACLU and the NAACP, which received endorsement of their position from national Negro leaders, noted theologian Reinhold Niebuhr, and New York Senator Jacob K. Javits.

The first test of a new Virginia law that prohibits persons from joining "willfully and maliciously" to injure another's business ended inconclusively in its first court test. An Arlington County Court dismissed charges against five picketers, represented by attorneys from the ACLU and the National Capital Area CLU, who marched in front of a movie theatre on the grounds that no evidence had been presented to show that the theater's business had been affected. A challenge to another section of the new law that bars "maliciously compelling another from doing or performing any lawful act" ended in another acquittal and a judicial finding that no malice was intended. A massive march by New Orleans Negroes on the city hall was blocked by police who arrested 292 demonstrators on the grounds that they did not have a parade permit.

**NAACP Harassment**

After more than five years during which the state of Alabama banned the NAACP from doing business in the state on the basis of a temporary restraining order, the state held a hearing on a permanent injunction. After a brief trial, the permanent injunction was granted on the grounds that the NAACP was not registered as an out-of-state corporation and was fomenting racial strife. The U.S. Supreme Court had already twice set aside a $100,000 fine imposed by the state on the grounds that the group could not be compelled by law to identify its members. But the high court ordered a separate hearing on the issue of an injunction. The state court's decision will be appealed. The U.S. Supreme Court heard argument but delayed decision on two other cases involving the NAACP. In one, the NAACP challenged the constitutionality of Virginia laws that prohibit organizations from encouraging litigation or paying defendants' legal fees. The Court said the statute should first be interpreted by the state courts. In the other, the president of the NAACP's Miami branch, Rev. Theodore R. Gibson, appealed a contempt conviction imposed
for refusing to name 14 alleged Communists who were said to be NAACP members. The demand was made by a state legislative investigating committee.

The ACLU asked a Richmond, Va. Federal District Court to extend legal protection to three Norfolk attorneys whose activities on behalf of desegregation have been obstructed by a state legislative committee. The committee investigated friends, relatives and clients of the Negro lawyers and on one occasion were accompanied by police while committee agents tried to seize notes and papers on anti-segregation cases. Such actions, said the Union, violate not only lawyer-client relationships, but violate the First and Fourteenth Amendments. The ACLU asked for a court order against "further harassment, intimidation and other unlawful acts—done under color of law—as part of a conspiracy to prevent those who oppose Virginia's state-enforced and condoned racial segregation from opposing that segregation through the use of the courts."

OTHER CASES

The ACLU and its Minnesota Branch filed a friend-of-the-court brief in the state Supreme Court on behalf of four Chippewa Indian children who were denied local public assistance because they are wards of the federal government and live on an Indian reservation. A lower court held that to grant the children county poor relief would be "in effect, a judicial determination that the federal government is no longer responsible" for them. But the ACLU brief declared that the verdict denied the children the equal protections of the laws, guaranteed by the Fourteenth Amendment. "We believe," said the Union, "that the Beltrami court has chosen to impose special conditions . . . to relief . . . only because of the tradition of discrimination to which American Indians historically have been exposed. We impute no malice . . . but we do say that endemic discrimination against Indians has been taken for granted for so long that it has become institutionalized and therefore invisible." The Ohio Civil Liberties Union filed a friend-of-the-court brief in the case of a Cleveland couple who were denied the adoption of a two-year-old child on the grounds that the mother was of Japanese ancestry. The OCLU argued that it is unconstitutional to use race or the mixture of races in a marriage as the sole criteria in deciding the merits of an adoption. An appellate judge in Vermont reversed a lower court judge who had refused a white couple permission to adopt a young Negro girl. The couple already had adopted a boy of Puerto Rican background. The Arizona state legislature passed a law, vigorously supported by
the Arizona CLU, repealing the existing anti-miscegenation statute.

Educators and public officials in the South and elsewhere are divided over the question of whether public records should include the mention of an individual’s race. Some feel that such identification can be used for discriminatory purposes while others, such as the U.S. Civil Rights Commission, point to the value of such statistics for research and study. All of the 17 southern and border states keep some racial statistics, but the pattern varies widely. Oklahoma, Missouri and West Virginia have not kept school records by race since the 1954 U.S. Supreme Court decision on desegregation, but Oklahoma does gather racial statistics for the purpose of annual surveys on the number of biracial school districts and the number of Negroes enrolled in each integrated school. Kentucky had started to delete some racial information after desegregation was begun, but resumed its former practice in the belief that the information is essential. Florida dropped racial records for college eligibility examinations, but some admissions officers oppose the change. Delaware and Maryland still keep separate records but the information is available only for special research. The ten Deep South states, plus the District of Columbia, still keep complete public school records by race. This question is now being studied by the Union.

GENERAL DEVELOPMENTS

Education

The glare of international attention focused on Oxford, Miss. when the legal battle of James Meredith to enter the University of Mississippi exploded into a bloody free-for-all that pitted federal marshals and government troops against die-hard segregationists headed by Governor Ross Barnett. Though the outbreak was the most serious clash between federal and state power since the Civil War, it underscored the power of the federal courts to impose change, however slowly, in the universities and public schools of the South. Within a year, the number of Negroes attending school with white children increased by 13,479 to a total of 246,988, the authoritative Southern Education Reporting Service said. The figures represent 7.6% of the total number of Negro schoolchildren, a slightly higher percentage than the previous year and 1.6% higher than the percentage of Negroes enrolled in integrated schools since May, 1960, when the first statistics were gathered. In September, 1962, 46 public school districts in southern and border states opened their doors to
Negro students for the first time and with the exception of Louisiana, the openings were generally quiet. In New Orleans, crowds gathered to jeer outside some of the 16 public schools which accepted Negroes for the first time under federal court order; south of New Orleans, at Buras, a boycott by whites and threats of violence forced the closing of a parochial school. Roman Catholic schools throughout the Archdiocese of New Orleans were desegregated by church directive.

Obviously, it is with great reluctance that the South is accepting the inevitability of desegregated schools, but the mere fact that it is beginning to accept the inevitable, rather than defying it, is a step forward. Said Dr. Leslie W. Dunbar, executive director of the Southern Regional Council: “The chances of playing around with the law are pretty well extinguished.” Only three states have yet to accept a single Negro child in an all-white public school—Alabama, Mississippi and South Carolina—but a change may be on its way in South Carolina. Two state legislators, one a candidate for the lieutenant governorship, suggested the possibility of allowing local school districts to decide for themselves whether to permit desegregation. Governor Ernest F. Hollings agreed, noting the state’s “firm policy of flexibility.” Despite these statements current state laws, at least, require that funds be cut off from schools that lose or gain students as a result of complying with court orders.

In Virginia the State Pupil Placement Board assigned 317 Negroes to seven previously segregated school districts, but the major development was a federal court order to reopen the Prince Edward County schools “without regard to race or color.” The schools have been shut down since 1959, depriving Negro children of an education and forcing white children into a privately-financed, makeshift educational system. The court, rejecting the county’s claim that its action was local and therefore beyond the jurisdiction of the Fourteenth Amendment, declared: “At least in the area of constitutional rights, specifically with respect to education, a state can no more delegate to its subdivision the power to discriminate than it can itself directly establish inequalities.” While public schools remain closed in Prince Edward County, said the court, the other other public schools in the state cannot remain open. In another significant court action in Virginia that may well affect dozens of other communities in the South, the Justice Department filed its first suit to end segregation in public schools that receive federal aid under the “impacted area” program. The program assists local areas in which educational facilities are heavily used by the children of parents serving in nearby military bases. Immediately affected was Prince George County, which has received $2,556,548 in government
aid, largely due to the presence of 1,881 children—117 of whom are Negroes—whose parents are assigned to Fort Lee. "It makes no sense," said Attorney General Kennedy, "that we should ask military personnel to make sacrifices . . . and at the same time see their children treated as inferiors by local requirements that they attend segregated schools."

In other local communities, there were these important developments: the U.S. Court of Appeals in New Orleans ordered the city to accelerate and expand its desegregation efforts. The court demanded an end to racial restrictions in the first three grades and a gradual end to the city's system of separate-but-equal school districts. Other progress towards desegregation was reported in Florida, where Negro placement was expected to be doubled, including two major Miami high schools and the first desegregation in Pensacola; Maryland and Kentucky, where state officials used their not inconsiderable influence to spur integration efforts, and Atlanta where 44 Negro students will attend eleven all-white or predominantly white high schools. On the grade school level, attorneys argued in the Federal District Court for a speed-up in Atlanta's grade-a-year integration plan to accomplish complete desegregation by 1964. North Carolina, which has held desegregation to a token minimum, although it was one of the first states to abide by the U.S. Supreme Court decision, assigned about 700 Negro children to previously all-white public schools—more than triple the number the previous year.

On the federal scene, the Department of Health, Education and Welfare reported that after September, 1963, the federal government will no longer regard segregated schools as "suitable" for federal grants that defray the cost of educating children whose parents live and work on federal installations. If necessary, said the Department, the government will set up its own schools for these children. A situation that is typical of the issue discussed by HEW concerned more than a dozen Negro children whose fathers are airmen at a base in northeast Arkansas. The Negro children travel eight miles each day to a segregated school while the children of white personnel attend a school just outside the base. The ACLU sought to break down the same discriminatory pattern at the Shaw Air Force Base in South Carolina.

**Schools Up North**

From coast to coast, in more than 60 cities, organized Negroes stepped up their drive against segregated schools that are the result of segregated housing. The campaign pitted the traditional neighborhood school concept and the desirability of enabling children to walk to class from their homes against the
harsh reality that the practice too often leads to schools that are all Negro or all white. In the case of all-Negro schools, facilities are often run down and teaching is frequently on a lower level. Nine cities, the largest of which was Newark, N.J., solved their dilemma by voluntarily abandoning the neighborhood school system and desegregating their schools through an open enrollment system. The New York Department of Education completed a racial census of public school enrollment as the first step in a planned effort to end de facto segregation. The Connecticut Commission on Human Rights urged Stamford to accept a redistricting plan to end alleged "racial, economic and ethnic imbalance" in the city's two high schools. Stamford did.

Cities that were slow to act were deeply divided. California's state board of education recommended that schools oppose de facto segregation "with the full thrust of our legal authority and moral leadership"; but San Francisco's Superintendent of Schools replied: "I have no educationally sound program to eliminate the schools in which the children are predominantly of one race."

In Chicago, a federal judge dismissed a suit—backed by the Illinois Division of the ACLU—on technical grounds, but added: "Chicago cannot deny the existence of de facto segregation or excuse it on the pretext of a benign indifference." Moving toward an open enrollment plan, Chicago followed New York City's two-year-old system and permitted 900 Negro and Puerto Rican children from overcrowded schools to attend schools in white neighborhoods that were under-used.

Many organizations, including the ACLU, criticized Dr. James B. Conant for opposing the open enrollment plan. Such programs, he said, are "on the wrong track"; he recommended improving all-Negro schools by spending more money for better staffs and facilities. This expression of the separate-but-equal doctrine was outlawed by the U.S. Supreme Court, said the Union. "This means that school segregation per se must go." Englewood, N.J., the scene of a sit-in by 100 Negro parents, was the focus of much "must go" pressure in several New Jersey communities, but when the case was taken into a Federal District Court, the court ruled that it could not act until state remedies had been exhausted.

New Jersey Governor Richard F. Hughes urged that the neighborhood school policy must be sufficiently flexible to prevent de facto segregation and Englewood named a Negro to head its badly-divided school board, but a solution still proved hard to find. When the Board of Education proposed renovating a school that could be used for fifth and sixth graders of both races, the Board of School Estimate refused to vote the funds. The U.S. Supreme Court refused to review lower court orders to compel
New Rochelle, N. Y. to open a single high school to transfers from outside a gerrymandered school district.

HOUSING

More than two years after President Kennedy promised, while campaigning for election, that a mere "stroke of the Presidential pen" could wipe out discrimination in federally aided housing, the nation still waited for the executive order. It had been written and presented to the President, but he decided not to act then. The ACLU urged the President to lead public opinion by issuing the executive order promptly. "It is not generally realized," said ACLU Board Member J. Waties Waring, a former Federal District judge in South Carolina, "that the United States government is the greatest segregationist in housing. This unlawful, untimely, immoral and shocking situation should continue no longer." Other leading members of the ACLU also urged the President to take immediate action, pointing to the difficulty of eliminating segregation in other areas as long as segregation in federally aided housing persists.

On the legislative front, Alaska became the first state in the nation to bar racial and religious discrimination in all housing offered for sale or rent, whether built with public or private funds. Violators are liable to maximum fines of $500, 30 days in jail, or both. The Supreme Court of Massachusetts ruled that the state's fair housing law barring bias in private housing was a proper exercise of the state's police power. The decision was the first by the highest court of a state to pass squarely on the constitutionality of such legislation, and may carry weight in other states where the same issue is under court test. Said the opinion: "Neither property rights nor contract rights are absolute; for the government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest." Additional judicial support for fair housing legislation was written by the New Jersey Supreme Court, which for the second time upheld the law barring discrimination in publicly-assisted housing, and by the California Supreme Court, which upheld two laws forbidding discrimination in housing supported by public funds and in all business establishments. All business establishments includes real estate brokers and salesmen. The California verdicts were handed down in four test cases, involving three Negroes and a Mexican, supported by the Northern and Southern California affiliates of the ACLU. In Michigan, a regulation of the state Corporation and Securities Commission
which forbids discrimination by licensed real estate brokers is headed for a test in the state Supreme Court, accompanied by a friend-of-the-court brief by the ACLU of Michigan. A lower court held that the Commission had exceeded its powers by promulgating Rule 9, which was adopted following the exposure of the "point system" used by brokers in chic Grosse Point. The system rates prospective buyers by points according to their race, religion, accent, complexion, grammar, clothes and friends. The Florida CLU agreed to aid a Sarasota broker who was expelled from the local realtor's association soon after selling a home to a Negro; the affiliate will help the broker prepare an appearance before the state Real Estate Commission.

EMPLOYMENT

The Colorado Anti-Discrimination Commission appealed to the U.S. Supreme Court a state Supreme Court ruling that the state FEP law does not apply to airlines in interstate commerce. The state court held that Continental Airlines was not required to employ Mahlon D. Green, a Negro pilot. The Michigan Fair Employment Practices Committee ruled that Northwest Airlines must hire a Negro clerk, Marlene White, as a stewardess. The Nevada Attorney General reversed a previous opinion and decided that the state Gaming Commission and Gaming Policy Board have the power to pass on the fairness of hiring by gambling establishments. A Federal District Court has issued an injunction forbidding the Kansas State Employment Service from accepting and filling discriminatory job orders, or from refusing to refer or place Negroes. The California FEP Commission, in its second formal public hearing in 20 months, ordered a photographic supply house to pay $2,175 back pay to a Negro shipping clerk, Clarence Ramsey, because the company told him he was not old enough for the job. Ramsey was then 33 and the company later filled the vacancy with a 19-year-old. Dean Joseph O'Meara of the University of Notre Dame Law School resigned from the Indiana FEP Commission, charging that the Governor did not include strong enough safeguards in an executive order barring discrimination by firms doing business with the state.

PUBLIC ACCOMMODATIONS

Faced with a Federal District Court order to end segregation in all its public recreation facilities, the city of Birmingham decided to shut them down—almost. Though the parks, playgrounds, and golf courses are officially closed, they have remained open to anyone wanting to use them. The only thing that is missing are personnel to enforce segregation. Also in Birming-
ham, the Justice Department filed suit to desegregate the airport restaurant. The Montgomery, Ala. airport was ordered by a Federal District Court to desegregate its waiting room. The response of city officials was to remove all the seats from the waiting room. Carl T. Rowan, an Assistant Secretary of State, was refused service and asked to leave a restaurant at the Memphis Municipal Airport.

The Kentucky CLU urged the state legislature to pass a state law barring discrimination in privately owned places of public accommodation. The Ohio Civil Rights Commission, in its first report, found that discrimination is practiced in the state despite a law on the books outlawing bias; the Commission asked for a strict law that could enforce equality. Subsequently a new law was passed, requiring places of public accommodation to post notices of nondiscrimination conspicuously. A Yellow Springs, Ohio barber was found guilty and charged a $1 fine for refusing to cut a Negro’s hair in violation of a village ordinance barring discrimination. The fine was paid a year later. A bartender in Grand Forks, N.D. was convicted of violating the state’s anti-discrimination law by charging a Negro airman $5 for a Coca-Cola. The barman was fined $100, the maximum under the law. A Long Island, N.Y. branch of the Vic Tanny Gym and Health Club avoided court action by paying $40 to the state president of the NAACP, who had been denied membership in the club. Four Negro youths who stood in line for the only swimming pool in Cairo, Ill. were fined $50 each on charges of disorderly conduct. The day before, 17 students were found guilty of “mob action” when they tried to obtain admission to a skating rink. Following summer-long sit-ins in Cairo, the proprietors of the roller-skating rink, a restaurant and the town’s leading hotel said that henceforth they would accept Negro customers.

DUE PROCESS UNDER LAW

FEDERAL EXECUTIVE DEPARTMENTS

CITIZENSHIP AND DEPORTATION

CITIZENSHIP

The U.S. Supreme Court decided that a native-born American who was deprived of his citizenship while he was out of the
country does not have to return to this country as an alien in order to contest the action. The high court thus held with the ACLU, which had submitted a friend-of-the-court brief in the case of Joseph Henry Cort, a Massachusetts-born physiologist who was judged by administrative decree to have forfeited his American citizenship for having stayed outside the country from 1951 until 1960 to avoid the draft, a charge which Cort denied. A Federal District Court had held that the section of the Immigration and Nationality Act of 1952 under which Cort's citizenship was withdrawn was unconstitutional. The government appealed on two grounds: that the courts of the United States are not open to expatriated citizens who remain abroad; and that the statute is constitutional. The U.S. Supreme Court ruled against the government on the first ground and ordered reargument on the constitutional issues. The high court put off for a third reargument the case of Francisco Mendoza-Martinez, who also lost his U.S. citizenship for allegedly leaving the country to avoid the draft. The Union's contention in both cases is the same: to force a person whose citizenship has been taken away by administrative decision of the Secretary of State to apply for entrance and a hearing like any alien first arriving to the U.S., and then to apply for a writ of habeas corpus to determine the legality of his detention by the Attorney General "is egregiously wrong." To do so would be contrary to the Administrative Procedure Act, guaranteeing judicial review of any action by an agency, and would "constitute a taking of life, liberty and property without due process of law in violation of the Fifth Amendment." On the constitutional issue, the ACLU argued that deprivation of citizenship for draft evasion was cruel and unusual punishment, and unrelated to the exercise of the war and foreign affairs powers.

The ACLU appealed a Federal District Court decision holding that American-born Herman Marks had forfeited his citizenship by virtue of his service in the Cuban rebel army of Fidel Castro, and later when Castro became the government. The unusual importance of the case lies in the fact that the U.S. Supreme Court has never ruled on the constitutionality of expatriation because of service in a foreign army. The ACLU contended that no American can be stripped of his citizenship involuntarily without violating the due process protections of the Fifth Amendment and the protection of the Fourteenth Amendment that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the states in which they reside. (See last year's Annual Report, p. 55).

In a letter to Attorney General Robert E. Kennedy, the ACLU
suggested that a revised application form for United States citizenship be changed to protect due process rights. One question, which asks if the applicant ever "knowingly" committed a crime or broken any law for which he was not arrested, requires the applicant to waive his constitutional privilege against self-incrimination. The Union suggested that the scope of the question would be properly reduced if it asked whether the applicant had committed offenses that became the subject of official action. Another question to which the Union raised a protest required the applicant to say whether he ever "knowingly" was a member of the Communist Party or connected even remotely with it, whether he ever gave the Party anything of value, or whether he advocated Communism or believed in Communism. The Union pointed out that the questions are so broad that literally truthful answers would require an applicant to answer affirmatively if he ever took part in a campaign in which the Communist Party also participated or if he ever bought a copy of the Daily Worker, since that too, consists of giving something of value to the Party.

DEPORTATION

The Union asked for the reversal of an "unwise and unconstitutional" deportation order against George Scythes, 53, a former member of the Socialist Workers Party who came to the U.S. from Canada 28 years ago. The Union, in a friend-of-the-court brief filed with a U.S. Court of Appeals, noted the tiny membership of the SWP (600) and the fact that it is neither "outlawed nor under frontal attack by the government." Said the ACLU, "Expulsion of an alien for membership in the organization is arbitrary and therefore violates the due process clause" of the Fifth Amendment, which "requires that the constitutional objectives of deportation be met by reasonable means. All that (Sythes) believed," declared the ACLU brief, "was that the First Amendment meant what it said and that our free institutions were what was said of them. The Immigration and Naturalization has destroyed both of those beliefs. This court must make them whole again." The Court of Appeals reversed the deportation order, but not on the constitutional grounds cited by the ACLU.

ALIEN RIGHTS

The ACLU sharply criticized the Immigration Service for questioning a magazine editor about his political beliefs and associations after a newspaper erroneously reported that his magazine was "Communist." The case involved M. S. Arnoni of Passaic, N.J., a citizen of Israel and a permanent resident of the
United States since 1954, who described his magazine, *The Minority of One*, as “liberal, anti-chauvinistic and frequently challenging the cold war policies of both the United States and the Soviet Union.” Although the immigration examiner lacked evidence that Arnoni was in fact a Communist or “subversive” he sought to find out from Arnoni’s own testimony whether the false accusation, published in the Newark *Star-Ledger*, was true. “This was both the exercise of the poorest judgement and a flagrant violation of the Constitution” and its safeguards against the invasion of private political opinions, said the ACLU.

The ACLU of Northern California defended the rights of two persons involved in deportation proceedings. They were a Chinese-American who refused to answer a subpoena of an Immigration Service investigator on the grounds that only a hearing officer or a special service officer has the power to compel testimony in proceedings that are quasi-judicial; and another Chinese who faces deportation to Taiwan where he may face physical persecution because of his alleged Communist sympathies. The Florida Civil Liberties Union looked into the plight of some Cuban refugees who were illegally flown to the U.S. If they cannot convince immigration officials that they are anti-Castro, they are held indefinitely for a hearing, the affiliate reported. Together with more than 40 other religious, union, foreign national and community service groups, the ACLU addressed a petition to members of Congress urging the elimination of the national origins quota system from U.S. immigration policy. The petition favored the selection of immigrants on the basis of their health, morals and security, but not so as to “reflect discrimination against persons because of places of birth.”

**CONFINEMENT OF MENTALLY ILL**

The U.S. Supreme Court ordered the release from a federal mental hospital of Frederick C. Lynch, who had been committed to St. Elizabeth’s in Washington, D.C. He was involuntarily committed by a judge after being found not guilty of passing bad checks by reason of insanity, despite Lynch’s wish not to enter an insanity plea. The ACLU joined in Lynch’s defense by filing a friend-of-the-court brief in the first case involving insanity that the U.S. Supreme Court has reviewed since 1954. The high court’s decision may offer a standard for the nation’s 11 federal judicial circuits (*See last year’s Annual Report*, p. 57). The opinion held that the District of Columbia law which makes mandatory the commitment of those acquitted of a crime by reason of insanity, applies only to those who voluntarily plead insanity in their own defense, and not to those acquitted of insanity over their objections. In such cases, said the Court, civil
proceedings which provide "elaborate procedural precautions" should be instituted. The Union argued along similar lines. The ACLU said that the trial judge had exceeded his powers by raising the insanity issue and that a person adjudged competent to stand trial has the right to avoid indefinite commitment and the stigma of being declared insane by pleading guilty.

The ACLU testified at a hearing of a Senate Judiciary Subcommittee on Constitutional Rights, which was considering a proposed bill dealing with the hospitalization of the mentally ill. While commending several features of the measure, which would establish a new code for the commitment and treatment of mental patients in the District of Columbia, the Union termed "a critical omission" the lack of a provision for a jury trial for those subject to indefinite commitment. Endorsing the bill's provision for voluntary hospitalization, the Union proposed two amendments: that the voluntary patient be advised at the time of his admission of his right to release and the procedure for securing release; and that since the bill allows persons under 21 to be placed in a mental hospital by a parent or guardian, a patient between the age of 16 and 21 should be asked whether he wishes to enter or leave the hospital and be allowed to leave if he so desires. On the subject of emergency hospitalization, the Union suggested a more rigorous standard for those found in a public place and judged of unsound mind; a five-day limitation on an emergency commitment basis; and that in the case of persons taken from their homes, at least one psychiatrist should certify to the need for hospitalization. Praised by the ACLU was a "Bill of Rights" included in the bill which protects the rights of mental patients, unless judged incompetent, to vote, execute documents, buy and sell property, etc. It also welcomed provisions for periodic examination of hospitalized mental patients.

Following an investigation of Cook County mental commitment procedures, the Illinois Division made the following recommendations for reform: that individuals should be informed of their rights under the mental health code; insuring legal aid for those who need it; maintaining stenographic records of procedures; providing interpreters for persons not speaking English; indication in the official record whether drugs were administered. Following release of the report, officials of the clinic proposed an expansion of facilities and improved forms of service. However, clinic officials also proposed dropping the present statutory requirement guaranteeing due process rights for persons facing involuntary commitment. Commented the Illinois Division: "There can be no question that the result of involuntary commitment is the deprivation of an individual's liberty. To
permit such a deprivation without careful judicial hearing with full due process would be a flagrant violation of constitutionally protected liberties."

After a two-year study, a commission appointed by Governor Edward Brown of California suggested eliminating as "too narrow" and "medically unsound" the M'Naghten Rule, under which criminal insanity is tested by the defendant's ability to tell right from wrong. The ACLU has long held that the rule ignores accepted medical findings that severe and dangerous mental sickness may exist side by side with the ability to tell right from wrong. The recommendation of the California commission, which will be presented to the legislature, recommends that a person should be found "not criminally responsible" if he could not be law-abiding because of a mental disorder.

LOYALTY AND SECURITY

THE FEDERAL SCENE

The U.S. Supreme Court unanimously invalidated the non-Communist loyalty oath required of Florida state employees on the ground that "the extraordinary ambiguity of the language" violated the due process protections of the Fourteenth Amendment. The decision was handed down in the case of David Walton Cramp, Jr., a school-teacher whose case was supported by the Florida CLU. (See last year's Annual Report, p. 21). The high court found objectionable the requirement of the law upon all public employees to swear: "I have not and will not lend my aid, support, advice counsel or influence to the Communist Party." In striking down the oath, the opinion commented that it would be foolish "not to acknowledge that there are some among us always ready to affix a Communist label upon those whose opinions they violently oppose." The opinion continued: "Indeed, could anyone honestly subscribe to this oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?" The Court also noted the absence in the law of any "objective measurement" such as Communist Party membership or advocacy of the violent overthrow of the government. The Supreme Court of Florida has tended to correct the flaw by amending the law to meet the Court's criticism. The new language did not, however, satisfy the criticism of the FCLU, which still regards the oath as an unconstitutional abridgement of free speech, thought and association.

The Atomic Energy Commission became the first federal agency to grant its employees and job applicants the right to confront accusers in security cases. The reform followed years of attempts by the ACLU and other organizations to obtain a
basic due-process right for such individuals. In 1959 the U.S. Supreme Court had ruled against the government practice of denying employees of defense contractors the right to cross-examine their accusers, and in 1960 a presidential Executive Order granted the right of confrontation to employees of private contractors doing business with the government. The AEC procedure limits the practice of confrontation where the informant is a government intelligence agent whose identity cannot be disclosed, or for other unusual reasons such as sickness or death. In such cases, however, the accused individual will be given a comprehensive summary of the charges within the limits of national security, as well as consideration of the fact that his defense was hampered by the lack of opportunity to cross-examine witnesses against him. While the basic right of confrontation was somewhat limited, the ACLU noted that the AEC action was an important first step in this controversial area. The Union also was heartened by the fact that in the Defense Department's industrial security review programs in only 11 out of 500 cases was the right of cross-examination denied.

Objecting to the rush parliamentary tactics of the HUAC, the House of Representatives refused to give the necessary two-thirds majority to an HUAC-sponsored bill that would have seriously undermined the fairness of the industrial security program for private employees working under government contract. The bill, strongly opposed by the ACLU, would have allowed the Secretary of Defense to deny due process protections to some five million workers in the program by eliminating their right to confront and cross-examine their accusers in a security hearing. The HUAC brought the bill to the floor under a suspension of the rules, which limits debate to 40 minutes and precludes amendments. 

STATE AND LOCAL ACTIONS.

Bills to outlaw the Communist Party provoked debate in several states. The Michigan legislature passed such a measure, strongly opposed by the ACLU of Michigan, which was vetoed by Governor Swainson. Nebraska passed a law outlawing the Communist Party, which also declares that anyone who joins a group that seeks to topple the government by force is guilty of sedition. In New Jersey the state Attorney General's office, answering a complaint by the ACLU of New Jersey, ordered that gubernatorial candidates were no longer required to file a 165-word loyalty oath. The oath was declared unconstitutional in 1950 by the state Supreme Court, but its persistent use was disclosed when the candidate for the Socialist Workers Party complained to the ACLU affiliate.
The fiercest debate over a state proposal to ban the Communist Party took place in California, where both the ACLU of Southern and Northern California assailed a suggested amendment to the state constitution as a “wholesale attack” on free expression and association. The proposed amendment authorizes any Superior or Appellate Court judge, the state Attorney General, every grand jury, or any “duly constituted body or officer of the federal government” to declare any person or organization “subversive.” Once that finding is made, there is no provision for legal redress. Organizations listed as subversive would be barred from ballots and forbidden to function as political parties. Members of such organizations could not hold state or local office and would be disqualified from claiming tax exemptions.

California, among several other states, debated the wisdom and necessity of introducing classes on Communism in the public schools. California established a committee to suggest a specific course of study; Virginia has an authorized course since April, 1961; the New York State legislature amended a state law to authorize courses on Communism. The Civil Liberties Union of Massachusetts opposed a bill, which was defeated, to teach a course on “Communism vs. Americanism” in the schools; the ACLU of Michigan also opposed such a proposal in the legislature, which was also defeated. The affiliate campaigned against the proposal on the grounds that it violated academic freedom by requiring teachers to adhere to a previously determined course of study, thus increasing the danger of indoctrination. Two states that require classes on Communism in every high school are Louisiana and Florida.

The Cleveland Chapter of the Ohio CLU filed a friend-of-the-court brief in the state Supreme Court on behalf of a person whose parole was allegedly denied solely on the grounds of his political beliefs. The voters of Detroit, by a margin of 11,000, votes out of almost 100,000, voted to abolish the city’s Loyalty Commission and Loyalty Investigation Committee, which had been in a limited sort of business since they were created in 1949. The committee conducted 66 full investigations during its lifetime, in which 34 employes were cleared and 32 resigned before the case was brought formally before the quasi-judicial five-member commission. The Commission never got a chance to decide a single case.

**MILITARY JUSTICE**

Testifying before the Senate Subcommittee on Constitutional Rights, the ACLU reiterated its often-argued position that military discharges should be based only on a man’s actions while on active duty. The Union noted that two cases decided by the U.S. Court
of Appeals held that the military services "are wrong in (their) assumption of statutory power to hold . . . hearings, particularly in the security field, without procedural safeguards." Among these safeguards, said the ACLU, were the right to know the accusers, and the right to cross-examine them. In another congressional appearance, before a special subcommittee of the Senate Armed Forces Committee, the Union made several recommendations concerning a bill that would increase the powers of commanding officers to impose disciplinary punishments for minor offenses without courts-martial. Among the proposals by the ACLU were: opposition to the imposition of 30 days of correctional custody; the right of the accused to choose a court-martial in lieu of nonjudicial punishment (absent in the Navy and Coast Guard but available in the Army and Air Force); the elimination of bread and water punishment as cruel and unusual punishment; elimination of discriminatory "confinement to quarters" that officers may enjoy in contrast to enlisted men, who may be tossed into the stockade. The Committee did accept the Union's recommendation about a choice of court-martial.

**WIRETAPPING**

**THE COURTS.**

A three-month investigation by a New Orleans federal grand jury resulted in the indictment of a state official, a prominent businessman and a private detective on charges of violating the federal law against unauthorized interception or divulgence of telephone conversations. The alleged wiretapping recorded private conversations of religious leaders opposing racial segregation, with the intention to play back the conversations to church laymen in an effort to force the ouster of more than 50 Baton Rouge ministers.

**CONGRESS.**

In separate testimony before Senate and House committees considering an Administration bill that would permit federal wiretapping without a court order, the ACLU condemned the proposed measure as a violation of the Fourth Amendment's specification that "no Warrants shall issue, but on probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." The bill, said the Union, would violate the Amendment's protections by permitting a tap on all phone calls for a given period of time. Under the Administration measure, the Attorney General would be empowered to issue wiretap orders in national security cases such as espionage, treason, sedition, subversive activities and un-
authorized disclosure of atomic information. "A hallmark of totalitarian societies," warned the Union, "is that the people are apprehensive of being overheard or spied upon." In addition to lowering the bars against wiretapping in national security cases, the bill also called for court-authorized wiretapping by federal agents in investigations of murder, kidnapping, gambling, and narcotics; moreover, state law enforcement officials might be allowed to obtain court orders to investigate such crimes. The ACLU was particularly concerned over permitting state officials to conduct wiretapping, in view of the overwhelming opposition by states to indulge in the practice. Thirty-three states have outlawed wiretapping completely, and if the federal bills passed, the existing prohibitions could well be diluted. Coincidental with the Union's testimony before the Senate Judiciary Committee, the ACLU issued a new pamphlet which warned against the "staggering blow to the right of privacy" embodied in new permissive legislation or judicial sanction of wiretapping. The pamphlet noted that in a recent Senate inquiry only 13 out of 45 state Attorneys General called for wiretapping authority.

STATE AND LOCAL ACTIONS.

A New York State joint legislative committee renewed a drive to bar the use in criminal trials of evidence obtained by illegal wiretaps. During the terms of two previous Governors such bills passed by the legislature were vetoed in the Executive Mansion. The CLU of Massachusetts supported a bill to establish a commission to investigate the uses and abuses of wiretapping. In other actions by ACLU affiliates, the ACLU of New Jersey testified in opposition to a bill that would allow law enforcement officers to tap a phone number for up to two months after obtaining permission from a county judge without restriction as to the crime that is suspected; the ACLU of Northern California demanded a hearing for a San Francisco turf information service operator whose establishment was raided by the local telephone company and the phones ripped from the wall after police found his phone number in the hands of a bookmaker.

ILLEGAL POLICE PRACTICES

BRUTALITY.

The U.S. Supreme Court declared unconstitutional a California law which made drug addiction a crime punishable by a maximum penalty of a year in jail. The law required no proof that the accused had bought drugs or had narcotics in his possession, merely that he was an addict. The high court ruled that the
statute violated the Constitution's Eighth Amendment, which prohibits cruel and unusual punishment. "We hold," said the majority opinion, "that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the state or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment. . . . The question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." The unusual use of the Eighth Amendment to reverse a criminal conviction occurred in the case of Lawrence Robinson, who was arrested by Los Angeles police because they discovered needle marks on his arm, and sentenced to 90 days in jail despite his denial of the use of narcotics.

The U.S. Supreme Court denied an appeal, backed by the ACLU, to grant a rehearing to Kelly Moss, a convicted murderer who was awaiting execution in a Kentucky state prison when guards suddenly—and without provocation—fired tear gas into his cell. The Union argued that the federal courts "had the power and the duty to delay the state execution of a litigant, so as to guarantee a full and fair trial of a pending federal Civil Rights Act case in which he is the complaining party." The ACLU also asked the high court to review the conviction of Gerald Pate, convicted of murder in Oklahoma, on the grounds that he was denied due process because his confession was coerced. Following Pate's arrest in 1959 he was questioned by police daily for a week, usually late at night, and twice for at least six hours. At the end of the week the prisoner's mother and twin brothers were jailed and Pate was told they would be kept there until he confessed. After his tearful mother urged him to confess, he did, but repudiated the confession at his trial.

In the states, ACLU affiliates were active in a number of cases where police brutality was an issue. The Hampden County Chapter of the CLU of Massachusetts forced a local investigation into the death of Robert F. Jette, whose lifeless body was found in an isolation cell in the county jail. Manacled and naked, Jette had been placed in the "sweatbox" two days before he died for attacking a guard. The cause of his death was hyperthermia, a form of heatstroke caused by environmental factors. But because a local pathologist testified at the inquest that there was a slim chance that Jette had died because of an unknown virus, a District Court judge found that the fatality did not result from "any unlawful act or negligence." The Hampden County Chapter first sought action from the county commissioners, then demanded an investigation by the state Attorney General. But because the investigation was put in the hands of the same local District Attorney whom the Chapter had previ-
ously accused of bias, the Chapter prepared a petition requesting the intervention of the U.S. Attorney General. The Colorado Branch appealed to a U.S. Court of Appeals on behalf of a miner who was beaten by a state patrolman who stopped his car. The suit for damages is being brought under the federal Civil Rights Act, following the U.S. Supreme Court decision in the Monroe case (supported by the Illinois Division) that law enforcement officials could be sued for damages in the federal courts (See last year’s Annual Report, p. 61). The Greater Kansas City CLU discussed with the local police chief the practice of using a canine corps in the city’s Negro community.

Illegal Search and Seizure.

Two cases supported by the ACLU of Southern California reinforced the U.S. Supreme Court decision that police officers are not immune from liability for illegal searches and seizures. A U.S. Court of Appeals held that Los Angeles police officers must stand trial for alleged abuses inflicted upon Mrs. Irene Lucero, a housewife whose home was raided by police without a warrant in search of narcotics, and Russell M. Smith, an evangelist. In two other court tests brought by the affiliate, a federal judge, in an initial ruling upheld the legality of searching automobiles north of the U.S.-Mexican border; argued on behalf of a Fresno attorney, Vincent D. Todisco, that the theory requiring physical trespass as a precondition for invoking the Fourth Amendment’s protections against illegal search and seizure was obsolete. Todisco’s conviction for bribery was obtained by an Internal Revenue agent who secretly recorded conversations with Todisco in his law office. The Arizona CLU, Northern Area, won dismissal of charges of illegally possessing liquor lodged against a young woman who was arrested in front of a movie theatre by policemen who found a half-full bottle of liquor in her purse, then destroyed the evidence. The Greater Philadelphia Branch campaigned vigorously, and successfully, for a legislative bill that provides a summons for the arrest of any person charged with a crime punishable by two years or less imprisonment or larceny of less than $200. Previously, persons were held in jail on such charges until they could raise bail. Some 150 years of jail time was served under this system of persons later acquitted. The St. Louis Civil Liberties Committee brought suit on behalf of a young industrial worker who lost a job because of a previous record for having been arrested as a murder suspect (he was later released). The affiliate sought to have the record destroyed, but the judge merely ordered the record placed in a private file of the police department. The District Commissioners of Washington, D.C., prompted in part by the ACLU, ordered capital
police to destroy the record in police central files of anyone arrested solely “for investigation.” Such records will remain in precinct files, however, until Congress (which governs the District) passes a new law. Also remaining on the books until Congress acts are the records of anyone arrested in error on a specific charge.

**Illegal Detentions**

The New Mexico CLU supported a change in a pending new state Criminal Code to limit detentions to a reasonable time. The affiliate was prompted by the abuse of detention, in some cases far longer than the 72 hours the courts usually consider reasonable. The New Mexico CLU also offered to help revise the Albuquerque vagrancy ordinance employed to limit public speeches and assemblies regarded as detrimental to public safety and morals. The Supreme Court of Rhode Island increased damages to which two migrant farm workers were entitled from $2,500 each to $3,750 each. The migrant workers were unlawfully imprisoned for 158 days as witnesses to a homicide. Said the court: “To the innocent even a momentary deprivation of liberty is intolerable; 158 days is an outrage.” A vigorous campaign by the New York *Herald Tribune*, backed by the NYCLU, brought quick and much needed reform to the detention in jail, often overnight, of minor traffic violators who could not raise bail. Among the improvements: such offenders were kept in an unbarred jail separated from hardened criminals; there was a 99% decrease in the number of traffic violators held overnight.

**Vagrancy and Disorderly Conduct**

A Des Moines, Iowa anti-loitering ordinance, passed to combat roving gangs of youths, was declared unconstitutional by a municipal judge. The ordinance barred the congregation of crowds “for any purpose, and no person shall wander the streets without being able to give a satisfactory account of themselves or a reasonable excuse for being so found.” Under this vague formulation, argued a lawyer challenging the ordinance, an insomniac or a man who had a fight with his wife would be liable for arrest. Minnesota and Southern California affiliates intervened in cases in which police used vagrancy and vice laws to combat prostitution. The Minnesota Branch won a new trial for a woman convicted of being a prostitute when the state Supreme Court ruled that her character was not an issue in her trial; the ACLU of Southern California filed a friend-of-the-court brief in behalf of a woman whose conviction under the vice law was reversed by the state Supreme Court, which also ordered a re-hearing. The affiliate argued that the law violates due process by allowing those
suspected of illicit sex conduct to be arrested and tried as prostitutes without proof of prostitution. The Colorado Branch, ACLU condemned the use of the Denver vagrancy ordinance for a police crackdown of suspected drunks that resulted in mass arrests.

Police Review Boards

ACLU affiliates in Colorado, Michigan, Washington State and Southern California urged the establishment of impartial police review boards to investigate abuses of civil rights by law enforcement officials. As usual, such campaigns prompted some police officials to condemn the ACLU in general and its determined efforts to create review boards in particular, even though the Union’s proposals are not intended in any way to undermine effective law enforcement. In Portland, Ore., where the ACLU of Oregon has not been actively engaged in pressing for a public review board, the local police chief declared that the ACLU effort has helped increase the national crime rate. The affiliate replied: “The ACLU supports all legislative and law enforcement efforts directed towards detecting and prosecuting those who are engaged in criminal activity, for we know that freedom cannot flourish in a society where crime is unchecked. We are equally convinced that efforts to rout out crime should not resort to unconstitutional methods to achieve the desired goal. If shortcuts are taken around constitutional freedoms, we are weakening the democratic structure we seek to protect.” The closest approximation of a model police review board was established three years ago in Philadelphia, which, in the opinion of the then police commissioner “has not only aided me, but has aided the police department.” In Congressional testimony, the Union denied allegations by the current Philadelphia Police Commissioner that it was obstructing law enforcement. The charges, made during a hearing of the Senate Permanent Investigations Subcommittee, distorted the expressed willingness of the Union to defend eleven persons “arrested on sight and without a warrant by members of the Philadelphia police force, in the absence of evidence that they were currently engaged in illegal activity.” As a result of efforts by the New YorkCLU, the police department distributed to all its precincts English-Spanish placards advising prisoners of their right to make three phone calls without charge.

Other Issues

The New York City Police Commissioner rebuked two policemen who forced two alleged murderers to pose for news photographers after the NYCLU protested the involuntary stag-
The *Texas Observer*, a weekly publication, reported the increased use of lie detector tests by Texas employers in hiring, to prevent pilferage, and to guard against giving out business secrets. Some 5,000 Texas firms now require their workers to undergo lie detector tests periodically.

**COURT PROCEEDINGS**

**Right To A Fair Hearing**

The ACLU sharply criticized the investigatory hearings of the Federal Trade Commission, which are analogous to a grand jury investigation, but which are held in public and do not permit counsel for companies which are under investigation to participate fully in the hearing. In a letter to FTC chairman Paul Rand Dixon, the Union's executive director, John de J. Pember-ton Jr. called on the regulatory agency to revise its rules and regulations to provide greater due process safeguards. "In the absence of such action," the ACLU said it "will offer support to any individual or company that declines to produce documentary evidence at a public investigatory hearing of the Commission."

The Union's review of FTC procedures was prompted by a hearing in Indianapolis into the pricing and sale of milk at which the Kroger Company and other food chains were summoned to testify. Counsel for the Kroger chain was not permitted to object to questions on the grounds of relevance or materiality, to introduce or cross examine, or to make any statement for the record. The Union said that because the FTC serves as investigator, grand jury and judge, it should take special pains to afford all the due process protections of a judicial hearing. But by holding its hearings in public and by denying the full participation of opposing counsel, said the ACLU, the FTC creates "a breach of safeguards embodied in the idea of due process of law . . . which should be especially respected in the relationship between government and citizen." The Union particularly noted the dangers involved in a public hearing at which the right to privacy is abrogated. In such cases, said the Union, the individual or the company is put in the position "where the search for information about them is secondary and primarily they are regarded as having been charged with committing an offense. The experience of congressional investigating committees probing Communist influence in the last 15 years amply illustrates this. These inquiries made crystal-clear that in a hostile, accusatory atmosphere created by such hearings, persons brought into the investigation are stigmatized and regarded as having been involved in some kind of wrongdoing."
The ACLU filed a friend-of-the-court brief with the U.S. Supreme Court that urged the invalidation of a second-degree murder conviction of a Florida woman on the grounds that the all-male jury which tried her "was not a true cross section of her peers and she was in consequence deprived of the equal protection of the laws" guaranteed by the Fourteenth Amendment. The brief sought to test the constitutionality of a Florida law which allows jury duty only to women who volunteer. The Union asked: "Where is that equality of protection guaranteed by our Constitution if a woman defendant accused of a dreadful sex murder must be judged only by men"? The ACLU, joined by its Florida affiliate, raised the issue in behalf of Mrs. Gwendolyn Hoyt, who had a history of epilepsy and emotional instability and in a moment of "rage and frustration" hit her Air Force officer husband over the head with a broken baseball bat when he announced that he was finally going to leave her and her eight-year-old son for good. The marriage had been marked by years of discord, including frequent unfaithfulness on the part of the husband.

In a unanimous decision the Supreme Court held the Florida statute constitutional. Though the Court found that Florida had not arbitrarily excluded women from jury service, it said in addition, that it is not "constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities."

The ACLU and its Washington D.C. area affiliate challenged the unique Maryland rule that permits the jury to be the judge of the law as well as of the facts. Over the years the once-common rule, which dates from early English practice, has been eliminated by all the states except Maryland. A friend-of-the-court brief to the state Court of Appeals noted that under the law the judge merely told the jury that they could choose among three possible verdicts—guilty, guilty without capital punishment and not guilty—in the case of two youths charged with rape, but did not define the crime of rape or possible defenses against the charge. This procedure violates due process safeguards of the Fourteenth Amendment, said the brief, because it puts a premium on not telling the jury what legal standards to apply in reaching its verdict. The Court of Appeals affirmed the conviction in the case, however, and the affiliate planned to take the case to the U.S. Supreme Court. A Federal District Court judge freed a Vermont man, Frank Brown, on a writ of habeus corpus because his rights to a fair trial, protected by the Fourteenth Amendment, had been violated by "inflamed public opinion,"
and because the Vermont Supreme Court denied him due process of law by refusing to hear his appeal because his notice of appeal was filed one day late. The U.S. Court of Appeals reversed the lower court decision. The ACLU had filed a friend-of-the-court brief after sensational newspaper and radio publicity broke around Brown's case. He was convicted to life imprisonment for arson and death resulting from arson. New York state's highest court, the Court of Appeals, upheld the criminal conviction of Gabriel Genovese for acting as a professional boxing manager without a license despite the fact that members of the jury admitted reading "inflammatory" newspaper articles about Genovese during the trial. Hope mounted for the release from prison of Edwin Codarre, whose 1943 murder conviction when he was 13 prompted the passage of a New York state law ending the classification of any child under 15 as a criminal (See last year's Annual Report, p. 67). After setbacks in the lower court, the Court of Appeals granted Codarre the right to a new hearing on his charge that he was denied due process at his trial. Codarre, backed by the ACLU, said that as a 13-year-old epileptic at the time of his trial, he should not have been allowed to plead guilty to murder.

The U.S. Supreme Court agreed to review a New York state court decision affirming the constitutionality of a procedure whereby property owners of land that will be involved in government action receive notice merely by publication and posting, rather than by also receiving individual written notice. The ACLU filed a friend-of-the-court brief in the case of Mrs. Madeline C. Schroeder, who never saw the local newspaper publication or local notice of the state's intention to divert the waters of a river from land on which she had a summer home. The high court has agreed to review the ACLU-supported case of a recreational supervisor at the U.S. Air Force Academy in Colorado Springs, who was suspended after 16 years in the Civil Service on charges of attempted homosexual assaults. The Union charged that the refusal by the Air Force and the Civil Service Commission to grant the employee the right to cross examine his accusers violated the Fifth and Sixth Amendments, which guarantees procedural safeguards at trials. In addition, said the ACLU, the denial violated prior federal court rulings upholding the cross-examination privileges of suspended government employees. A charge of homosexual offenses also brought about the intervention of the Florida CLU in behalf of a man who had been asked to incriminate himself by a local judge.

The ACLU appealed unsuccessfully to the U.S. Supreme Court in a friend-of-the-court brief to review the conviction of Robert Soblen, convicted of spying for the Soviet Union, on the grounds
that the government had not told the jury that its chief witness, his brother, Jack Soble, was suffering from an organic brain disease that affected his memory and from a serious psychiatric disorder; the Court ruled that a federal prisoner might not challenge his sentence on the ground that he had not been asked before sentencing if he had anything to say.

In testimony before Congressional committees, the ACLU opposed a bill for the transportation of gambling devices in interstate and foreign commerce because it provided for grants of immunity for prosecution, which the Union believes undermines the Fifth Amendment privilege against self-incrimination. The bill passed the Senate and the House and when it reached the stage of conference between committees of both houses of Congress the ACLU contradicted its objection to the immunity provisions of the bill. "We are convinced," said the Union, "that efforts to rout out crime should not resort to methods or laws which weaken or undercut constitutional guarantees to achieve this desired goal." Apparently heeding such considerations, the conferees eliminated the objectionable portions of measure in what was regarded as a rare realization by the lawmakers that the Fifth Amendment was not merely an often abused shield behind which guilty persons hide with impunity, but a necessary and valuable protection for all men.

RIGHT TO COUNSEL

Swift reform by the U.S. Department of Justice followed a complaint by the ACLU that the confidential relationship between lawyer and client had been violated in the Atlanta federal penitentiary. After ACLU voluntary attorneys discovered that a hearing officer of the U.S. Parole Board had a copy of a letter sent by an attorney to an inmate in the penitentiary advising him of what position he should take in a new parole violator hearing, the ACLU took the matter to the Justice Department which promptly issued a warning to all of its institutions that the lawyer-client relationship must be respected. The U.S. Court of Appeals extended the confidentiality of the lawyer-client relationship to include an expert hired by a defense lawyer; in the case at issue the expert was an accountant. The U.S. Supreme Court was asked to review the case of John Simon, who was convicted in Pennsylvania after pleading guilty without counsel to five major felonies. Simon, who was 18 at the time and had an IQ of 59, claims he could read and write only a few words and had not been advised of his right to counsel. The high court was also petitioned to review the murder conviction of Henry Anderson, who killed a psychiatrist but was, in the belief of the Kentucky CLU, legally unable to conduct his own defense. The
affiliate will file a friend-of-the-court brief in the case. The
ACLU of Pennsylvania and the NAACP cooperated to obtain
counsel for Nathaniel Hatcher, a fugitive from an Alabama road
gang who was apprehended in Erie ten years after his escape.
Hatcher was sentenced to five years in prison for stealing an
automobile, a crime he said he could not have committed since
he was in jail at the time on another charge. The ACLU of Wash-
ington commended the Mayor of Seattle for his order permitting
prisoners in the city jail to confer with their lawyers at any time.
The step was taken after an attorney complained that his client
was held for six days without charge and refused permission to
obtain counsel.

ILLEGALLY OBTAINED EVIDENCE

The Supreme Judicial Court of Massachusetts acquitted a
Smith College instructor for possession of obscene pictures and
literature because the evidence against him had been seized in
an illegal search of his apartment. The decision was an example
of the application of the U.S. Supreme Court verdict in the Mapp
case, which held that “evidence obtained by searches and sei-
zures in violation of the Constitution” is inadmissible in a state
court (See last year’s Annual Report, p. 65). In a parallel case
which for technical reasons is still undecided, theCLU of Massa-
chusetts had filed a friend-of-the-court brief which contended
that the search was illegal because the warrant did not specify
the exact nature of the material being sought. The admissibility
of illegally seized evidence was also an issue in two other cases
in which ACLU affiliates took part: the Greater Philadelphia
Branch helped a prisoner prepare a writ of habeus corpus on the
partial grounds that he was not on the premises during an illegal
search and seizure; the ACLU of Michigan submitted a friend-
of-the-court brief for Horace Roquemore, against whom charges
were dropped after the judge suppressed the illegally seized evi-
dence at the trial.

RIGHTS OF JUVENILES

A death sentence given to Preston Cobb Jr., a 15-year-old
Georgia youth, focused international attention over the right of
a state to execute a child, even though the guilt may be beyond
question. In Georgia and two other states, the death penalty can
be issued to a child as young as ten but in 16 states it is legally
possible to execute a child as young as seven and in three other
states the death penalty could legally be given to eight-year-olds.
In the 19 other states the minimum age for capital punishment
ranges from 12 to 18. Ironically, the very protection that a child
receives in being tried through juvenile court systems (not as
criminals) often result in the denial of legal safeguards such as prompt arraignment, notice and cross-examination of witnesses that the child would have if he were tried as an adult criminal. The National Capital Area CLU, for example, protested the police treatment of a 16-year-old rape suspect who had been extensively interrogated by police without the presence of parents or counsel and the ACLU of Philadelphia intensified its efforts to win equal procedural protections for juveniles that would safeguard constitutional standards of due process. One glaring example of the treatment of juveniles that has moved the affiliate to seek revision of the state's Juvenile Court Act has been the activities of the chief probation officer of Montgomery County, who arrested a 17-year-old for blasphemy because he said "Jesus Christ" to a housewife, fined the youth $25, fined him another $25 three days later on the same charge, and ordered the youth committed. When an ACLU affiliate lawyer telephoned to inquire about the commitment, there was no record of it. The probation officer had convicted, fined and committed the youth entirely at his own discretion. Another example of such abuse, accompanied by intense newspaper publicity, occurred in the case of 15-year-old Cheryl Jolls, suspected of a kidnap-slaying by Buffalo police. The Niagara Frontier (Buffalo) Branch of the ACLU, together with the local bar association, protested police questioning of the girl without counsel. The affiliate's objections were later corroborated by a state court judge, who issued an injunction forbidding such questioning.

Other Cases

A decision by the Maryland Court of Appeals had the effect of subjecting government employees to libel and slander cases as long as they were acting outside the scope of their official duties. Citing a U.S. Supreme Court precedent which involved statements made in a government press release, the court dismissed a suit brought by a former guard at a Naval Ordnance Laboratory against a Naval security officer who spotted him in a new job as a shopping center guard and told the management the guard had been fired by the Navy for drunkenness and "molesting kids." The suit had the ACLU's backing. The Municipal Court of Appeals in Washington, D.C. issued its "strongest disapproval" of a traffic court judge who set a $200 bond appeal for a $5 traffic conviction. In another incident involving a traffic conviction, the Iowa CLU protested strongly the arrest and 30-day sentence of a 17-year-old Dubuque boy for having committed six traffic violations. State highway patrolmen removed the youth from the jurisdiction of city police. The Ohio CLU opposed the extradition to North Carolina of Mae Mallory, one of three Ne-
groes indicted for the kidnapping of a white couple who were released unharmed after two hours. In a friend-of-the-court brief, the affiliate questioned whether Mrs. Mallory could get a fair trial in her home state. The U.S. Court of Appeals granted Communist Party leader Henry Winston the right to sue the government for $1,000,000 in damages for an allegedly wrongful diagnosis of a brain tumor that Winston developed while serving a prison sentence for violation of the Smith Act. The New York state legislature created a commission to study the issue of releasing grand jury presentments that did not contain criminal indictments. The NYCLU opposes publication of such presentments. The Colorado Branch, ACLU participated actively in winning the adoption of new rules of criminal procedure in the state under which the court system will be held more strictly to follow constitutional safeguards incorporated in the federal rules of criminal procedure.

NEWS MEDIA AND THE COURTS

The Hawaii Supreme Court ruled that the constitutional freedom of the press does not give reporters the right to conceal news sources during court trials. The decision was in connection with a Honolulu Advertiser story concerning the firing of a city official. A state court in Louisiana took the same position regarding reportorial privilege and ordered a State-Times reporter to disclose the source of her information for an article about construction work on a Baton Rouge high school. A Pennsylvania law giving reporters the right to protect their news sources in court proceedings is being tested in the case of a Reading Times reporter who refused to testify during a civil case arising from a series of articles he wrote concerning organized prostitution. The 25-year-old state law was extended in 1959 to include radio and television reporters. The long debated problem of radio and television reporting of court proceedings remained an issue between news media and the American Bar Association, whose Canon 35 prohibits the practice. At a hearing before a special ABA committee considering revision of Canon 35, newspaper, radio and television industry spokesmen were supported in their opposition to the rule by FCC chairman Newton Minow.

INTERNATIONAL CIVIL LIBERTIES

The preoccupation of the United Nations with the cold war and the rise of colonial peoples to independence has blocked the
efforts to create treaty law to implement the Universal Declaration of Human Rights. The United States, while the original chief advocate of extending the principles of democratic liberties by treaties, is still in retreat under the hostility of the Senate to any such inroads on national sovereignty. Not even the crippling Connally amendment to U.S. adherence to the International Court of Justice, whose repeal is urged by both Republican and Democratic platforms and by the American Bar Association, has any present chance in the Senate.

Lacking American support or pressure from any other influential member State, the United Nations' activities for civil and political rights continues to be limited to studies, seminars, surveys and reports. They all add up to preparations for future law when world conflicts subside.

The Union has exerted its efforts in this program at the United Nations and with the U.S. Mission through its accredited representatives. Roger Baldwin, who has for twelve years represented the ACLU, has given up that post in order to confine his work to representing the International League for the Rights of Man with which the Union is affiliated.

Unfavorable aspects of U.S. policy toward the United Nations still remain such as loyalty screening of all U.S. applicants for jobs—a formal procedure by a special board not duplicated by any other member State—and in the restrictions placed on the freedom of travel of certain foreigners having business with the United Nations. Those held to be inadmissible to the U.S. for Communist views of associations are restricted to the United Nations area, enlarged this year to 25 miles in place of a tiny area in mid-Manhattan, a ridiculous limitation against which the Union had long protested.

The Union carefully examines the U.S. Dependent Peoples annual reports made by the U.S. to the United Nations on the dependent peoples of the Virgin Islands, Guam, Samoa and the Pacific Trust Territory, and follows the debates on them in the Trusteeship Council and General Assembly. On the whole the U.S. reports are favorably received. The Union has found no occasion for serious criticism.

But self-government still remains an issue in the Virginia Islands and Guam particularly, where bills for an elective governor and a resident delegate in Congress were introduced, backed by the Administration. The Union supported them, but it became evident that serious attention to them would await another session. Samoa and the Trust Territory need further time to formulate their positions on autonomy. The Union is in touch with representatives in all the territories.
U.S. MILITARY GOVERNMENT

The only two foreign territories under U.S. military rule, the Panama Canal Zone and the Ryuku Islands (Okinawa the chief) have had the Union's attention—Panama by a visit by Roger Baldwin on a trip to South America and Okinawa continuously through contacts in the island, in Japan and in Washington. No issues of civil liberties in the Canal Zone appeared in Mr. Baldwin's conferences with lawyers and officials, despite frequently delicate adjustments that are required between the jurisdictions of the U.S. and Panama.

In Okinawa definite and reassuring progress was made toward self-government and civil rights as a result of the task force sent to the islands by the Administration. A new executive order—the only law—liberalizes army rule. A civil administrator has replaced a military man under the High Commissioner, with an evident intention of separating civilian from military functions, though the High Commissioner, a general, exercises final authority. The Okinawan chief executive is to be nominated by the majority party in the legislature, not selected by the High Commissioner from several suggested candidates. Cooperation with Japan, now definitely assured of eventual sovereignty of the Island, has been promoted by a joint liaison body. Increased aid by Congress to bring Ryukuan levels of living up to Japan's is pledged.

Agitation continues, however, in the islands for reversion to Japan now or for Japan's assumption of administrative authority in all civil life. Unsatisfactory still to the Union are the political security restrictions on travel between Japan and the Ryukus, confused jurisdiction between U.S. and Ryukuan courts, licensing controls of press and association and a quite anti-civil liberties penal code, fortunately not enforced.

A committee of the Japanese Civil Liberties Union with ACLU help made an on-the-spot two week study of law and rights in the fall of 1961. Published in Japanese and English, it was widely distributed. The Union endorsed most of its recommendations.

In Puerto Rico, an autonomous commonwealth ("associated free state" in Spanish), the Union maintains close relations with lawyers concerning the administration of federal law.

The issue of the Island's status is to be submitted for popular vote in 1963 with choices between the present Commonwealth system, with presumably larger autonomy, statehood or independence.
AFFILIATES

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Utah: ACLU OF UTAH—John Beyers, Chairman. Mrs. Pat Coontz, Executive Secretary, 2974 Morningside Drive, Salt Lake City.


Wisconsin: WISCONSIN CIVIL LIBERTIES UNION—2212 Hillington Green, Madison 5. Professor William Gorham Rice, Chairman. Louis Kaplan, Executive Secretary. Chapter in Milwaukee.

* Indicates a full-time office is maintained.
† Part-time office maintained.
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MEMBERSHIP AND FINANCE

Fiscal Year April 1, 1961 through March 31, 1962

At the beginning of April, 1961, the ACLU and its 29 integrated affiliates had an enrollment of 54,719. By April, 1962, the total had risen to 57,528, for a net increase of 5%. A total of 8,424 new members was added to the roster, and 5,615 were dropped for failure to renew their membership. The ACLU of Northern California, with separate membership and finances, had about 5,177 members, some of whom also belonged to the national organization. Allowing for such overlap, the Union had a total enrollment of approximately 61,000 on March 31, 1962. During the year, four new affiliates were recognized: Austin, Dallas and Houston in Texas, and the District of Columbia.

Contributions from members totalled $533,946, an increase of 10% over the preceding twelve months. Miscellaneous national organization receipts of $9,142, plus bequest receipts of $19,365, brought total unrestricted receipts to $561,553. Despite the highest operating income in its history, an operating deficit shown on the financial statement at $54,790 was incurred (a change from cash to accrual accounting of affiliate transfers distorted this figure by the inclusion of $13,636 paid in April, 1961, but accrued during the prior year, so that for comparative purposes the deficit should be regarded as $41,154). Net worth, exclusive of restricted-purpose trust funds, declined from $78,614 to $39,726, by reason of this deficit, together with a $3,462 securities loss, offset by the bequest receipts.
The Robert Marshall Civil Liberties Trust made a grant to the Union of $33,947 in securities, to be used exclusively for legal work. This grant is designated as the Robert Marshall Fund, and it is managed by the Union's Directors as a separate fund distinct from the organization's other assets.

The ACLU continued supervision of the Roger N. Baldwin Escrow Account, administered by the Fiduciary Trust Company. It is from this account that Mr. Baldwin's part-time salary as International Work Advisor is paid. During the year the Account's book value rose from $31,785 to $40,155. Market value advanced from $69,212 to $78,389.

The average contribution during the year was $11.02. About 11% gave less than $5, 40% gave from $5 to $10, 38% from $10 to $25, 7% between $25 and $50, 2% between $50 and $100, 1% gave $100 or more. The following members gave $200 or more during the fiscal year:

Joseph W. Aidlin, Miss Ruth Allen, William Prescott Allen, Amalgamated Clothing Workers of America, Aris Anagnos, Ernest Angell, Mr. and Mrs. John P. Axtell, Mrs. Evelyn Preston Baldwin, Mrs. Helen Beardsley, George Bodle, Mrs. Elizabeth P. Borish, Mrs. Sylvia Braverman, Miss Julia C. Bryant, Andrew Burnett, Mrs. Carlton E. Byrne, Montague Casper, Miss Ethel Clyde, Miss Fanny Travis Cochran, Edward T. Cone, Thurlow E. Coon, Professor and Mrs. Albert Sprague Coolidge, Maxwell Dane, A. B. Delacorte, Mrs. Margaret DeSilver, Isaiah S. Dorfman, Robert T. Drake, Edward J. Ennis, W. R. Everett, Dr. & Mrs. John H. Fergen, Henry G. Ferguson, H. L. Fisher, Walter T. Fisher, Mrs. Stanley Freeman, Mrs. Stanton A. Friedberg, Harvey Furgatch, Mrs. Margaret Gage, William M. Gaines, Mr. & Mrs. J. W. Gitt, Herbert G. Graetz, Philip H. Gray, William Roger Greeley, Richard Grumbacher, Charles K. Hackler, Wilbur G. Hallauer, Mrs. Donald M. Harris, Mr. & Mrs. Gilbert Harrison, Henry Hirschberg, Dr. & Mrs. George H. Hogle, B. W. Huebsch, Mrs. Sophia Yarnall Jacobs, Sidney D. Josephs, Dr. Benjamin Karpman, Robert W. Kenny, Dr. & Mrs. William Kiskadden, B. H. Kizer, Arthur S. Kling, Mrs. William Korn, Dr. Austin Lamont, Mrs. Agnes Brown Leach, Carter Lee, Hon. Herbert H. Lehman, Mrs. Mary Aiken Littauer, Mr. & Mrs. Patrick Murphy Malin, Arnold H. Maremout, Mrs. Charles Marks, H. Zachary Marks, Mr. & Mrs. Lee Marvin, T. S. Matthews, Charles E. Merrill, Merle H. Miller, Richard L. Ottinger, Mrs. Gertrude Pascal, Dr. Linus Pauling, Frank C. Pierson, Dr. Dallas Pratt, George D. Pratt, Jr., Mrs. Jane A. Pratt, Robert Preyer, Harold Raymonds, Chester Rick, T. Thatcher Robinson, Morris Rohrick, Miss Charlotte Rosenbaum, Mrs. Joseph Rosenthal, Harry Roth, Dr. Kenneth Rubin, Alan Sagner, Mrs. Alice Schott, Mr. & Mrs. Herman F. Schott, William J. Scott, Henry W. Shelton, Miss Gratia E. Short, Mr. & Mrs. Lloyd M. Smith, Dr. & Mrs. John Spiegel, Mrs. Charles S. Stein, Jr., Mrs. Edward Steiner, Mr. & Mrs. Robert C. Stover, Mr. & Mrs. James Struthers, Miss Ellen Thayer, Willis Thornton, Sidney R. Troxell, John B. Turner, United Steelworkers of America, Frank Untermyer, Philip Wain, Mr. & Mrs. Robert C. Weinberg, J. Daniel Weitzmann, Miss Mariquita West, Mr. & Mrs. James Whitmore, Duane E. Wilder, Harold Willens, Edward Bennett Williams, Mrs. Betty Zukor. Four anonymous contributions totaling $2,300 were received.

1961-62 MEMBERSHIP ENROLLMENT

<table>
<thead>
<tr>
<th>NATIONAL ACLU MEMBERS MARCH 31, 1961</th>
<th>54,719</th>
</tr>
</thead>
<tbody>
<tr>
<td>New members enrolled</td>
<td>8,424</td>
</tr>
<tr>
<td>Dropped: deceased, delinquent, etc.</td>
<td>5,615</td>
</tr>
<tr>
<td>Net increase</td>
<td>2,809</td>
</tr>
<tr>
<td>NATIONAL MEMBERS MARCH 31, 1962</td>
<td>57,528</td>
</tr>
<tr>
<td>NORTHERN CALIFORNIA SEPARATE MEMBERS</td>
<td>3,650</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>61,178</strong></td>
</tr>
</tbody>
</table>
SUMMARY

INCOME:
Membership contributions $533,046.38
Miscellaneous receipts 9,142.40
$542,188.78

EXPENDITURES:
Transfers to integrated affiliates 262,131.33
National organization (N.Y. headquarters & Wash. D.C. office) 334,847.74
Operating (Deficit) (54,790.29)
Less Bequests received 19,364.80
$596,979.07

NET EXCESS OF EXPENDITURES OVER INCOME ($35,425.49)

EXPENDITURES—NATIONAL ORGANIZATION

MEMBERSHIP OPERATIONS:
Salaries $37,922.55
Other expenses:
  New promotion 25,070.30
  Annual renewal 8,846.70
  Semi-annual appeal 8,016.08
  General 1,564.69
$81,420.32

FUNCTIONAL OPERATIONS:
Salaries 88,790.16
Legal work (see Litigation, p. 85) 15,357.78

Executive operations:
Salaries 38,856.10
Administrative 838.19
Board and general committees 985.24
Corporate and affiliate services 2,887.37
$43,566.90

JOINT MEMBERSHIP, FUNCTIONAL & EXECUTIVE EXPENSES (See Joint Expenses p. 86) 62,273.25

TOTAL EXPENDITURES: $596,979.07

MISCELLANEOUS RECEIPTS

Roger N. Baldwin Salary
Escrow Fund (See Baldwin Escrow Account, p. 87) $3,600.00
Other:
  Unsolicited contributions 610.32
  Income from investments 575.28
  Literature sales 1,782.98
  Honoraria 1,273.82
  Flight participants donations 1,300.00
$9,142.40

* Baldwin Escrow Fund: $3,000 transferred from Baldwin Fund in current year, $600 accrued and transferred in earlier periods.
Bequests from estates of former members and friends:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard T. Brooke</td>
<td>$3,250.00</td>
</tr>
<tr>
<td>Morris Llewellyn Cooke</td>
<td>$1,742.00</td>
</tr>
<tr>
<td>Samuel L. Hoover</td>
<td>$750.00</td>
</tr>
<tr>
<td>B.&amp; D. Lasker</td>
<td>$800.00</td>
</tr>
<tr>
<td>Peter Masony</td>
<td>$1,050.00</td>
</tr>
<tr>
<td>Oscar C. Miller</td>
<td>$750.00</td>
</tr>
<tr>
<td>Edward Muster</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>William Norton</td>
<td>$810.00</td>
</tr>
<tr>
<td>Ruth F. Weinberg</td>
<td>$2,451.20</td>
</tr>
</tbody>
</table>

Total: $19,364.80

EXPENDITURES

TRANSFERS TO INTEGRATED AFFILIATES from joint membership income, i.e., all contributions received from members in each area, except those earmarked for special national or local purpose:

<table>
<thead>
<tr>
<th>State</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>$1,292.91</td>
</tr>
<tr>
<td>California</td>
<td>$1,173.28</td>
</tr>
<tr>
<td>Colorado</td>
<td>$1,173.28</td>
</tr>
<tr>
<td>Connecticut</td>
<td>$1,292.91</td>
</tr>
<tr>
<td>Florida</td>
<td>$1,681.80</td>
</tr>
<tr>
<td>Georgia</td>
<td>$1,681.80</td>
</tr>
<tr>
<td>Illinois</td>
<td>$1,681.80</td>
</tr>
<tr>
<td>Indiana</td>
<td>$1,206.20</td>
</tr>
<tr>
<td>Iowa</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Kansas</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Maine</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Maryland</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Michigan</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Missouri</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Nevada</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$1,720.00</td>
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<tr>
<td>New York</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Ohio</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Oregon</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Texas</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Utah</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Washington</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$1,720.00</td>
</tr>
</tbody>
</table>

Total: $260,631.33

SPECIAL GRANTS:

<table>
<thead>
<tr>
<th>State</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>$1,292.91</td>
</tr>
<tr>
<td>California</td>
<td>$1,173.28</td>
</tr>
<tr>
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<tr>
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<tr>
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<tr>
<td>Illinois</td>
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</tr>
<tr>
<td>Indiana</td>
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<tr>
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<td>$1,720.00</td>
</tr>
<tr>
<td>Kansas</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Maryland</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>Michigan</td>
<td>$1,720.00</td>
</tr>
</tbody>
</table>

Total: $262,131.33

LITIGATION*

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Turks&quot; school segregation case</td>
<td>$1285.91</td>
</tr>
<tr>
<td>Lynch mental commitment case</td>
<td>$1,173.28</td>
</tr>
<tr>
<td>Jackson, Mississippi, Freedom Riders case</td>
<td>$833.28</td>
</tr>
<tr>
<td>Virginia sit-in case</td>
<td>$772.88</td>
</tr>
<tr>
<td>Leon Davis jury discrimination case</td>
<td>$633.95</td>
</tr>
</tbody>
</table>

Total: $5,899.18

*Excluding overhead costs and other general and administrative expenses.
**Educational Expenses:**

- Civil Liberties: 13,640.62
- Annual Report: 12,481.43
- Feature Press Service: 4,826.62
- Pamphlets, reprints, literature purchased: 1,429.47
- National Civil Liberties Clearing House: 1,000.00
- Printing, stationery, supplies: 305.53
- HUAC campaign: 214.70
- Miscellaneous: 1,521.76

**Total Educational Expenses:** $35,474.13

**Functional—Miscellaneous Expenses:**

- Domestic Committees: 728.36
- International Committee: 536.48
- Expenses of Washington, D.C. office exclusive of rent and salaries: $6,700.36

**Joint Membership, Functional & Executive Expenses:**

- Rent and cleaning: $22,490.76
- Addressograph system: 8,852.08
- Postage: 7,090.39
- Payroll taxes: 6,250.07
- Stationery: 3,458.10
- Telephone: 2,999.64
- Audit: 2,500.00
- Insurance: 1,405.35
- Bank charges: 1,229.13
- Repairs & equipment: 1,187.35
- Printing: 1,113.99
- Contribution to NYCLU pension fund: 1,000.00
- Miscellaneous: $2,146.39

**Balance Sheet As of March 31, 1962**

**Assets**

- Cash: Operating (general fund) $44,262.00
- Endowment: 106.16

**Total Assets:** $44,368.16
### Accounts receivable

<table>
<thead>
<tr>
<th>Affiliates</th>
<th>5,894.15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchange</td>
<td>392.86</td>
</tr>
</tbody>
</table>

### Loans receivable

| Indiana Civil Liberties Union | 1,584.46 |
| Greater Philadelphia Branch  | 423.00   |

### Securities

| General Fund       | 1,742.00 |
| Endowment          | 8,506.68 |

### Long-term deposits

| Office rent (interest-bearing) | 3,500.00 |
| Airlines                      | 425.00   |

### Liabilities

| Delayed transfers to affiliates | $23,709.20 |
| Payroll taxes payable          | 3,344.81   |
| Staff savings bond purchases   | 56.85      |

### Net worth

| General Fund       | 31,113.11 |
| Endowment Fund     | 8,612.84  |

### The Robert Marshall Fund

- Received in form of securities: $33,939.25
- Received in cash—balance of principal: 17.75
- Dividends: 391.96

**Net Worth March 31, 1962:** $34,348.96

### Roger N. Baldwin Escrow Account

- Income from investments: $2,731.33
- Net profit on sales of securities: 8,446.95

**Expenditures**

- Transfer—paid to ACLU for Mr. Baldwin's part-time services: 3,000.00
- Custodian fee: 150.00

**Net worth, book value:**

- April 1, 1961: 33,266.40
- March 31, 1962: $41,294.68

**Market value of securities in Account March 31, 1962:** $78,389.00

### Certificate

In our opinion, the attached statements present fairly the financial position of the American Civil Liberties Union, Inc., the R.N. Baldwin Escrow Account, and the Robert Marshall Fund at March 31, 1962, and the results of their respective operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

APFEL AND ENGLANDER
Certified Public Accountants
BEQUESTS TO THE ACLU

Between February 1, 1950 and March 31, 1962, the national American Civil Liberties Union has received by bequest a total of $221,364 from the estates of sixty persons. (Some affiliates have also received bequests.) The legacies have ranged from $20 to $34,000.

The Union regards such gifts with special pride and special obligation, because they represent the legators' final dedication to the preservation of civil liberties in our democracy.

Those desiring to make such provision in their wills may use this language: "I give $.......................to the American Civil Liberties Union, Inc., a New York Corporation." If the testator is in an area where there is an ACLU affiliate, and wishes the affiliate to share directly in the bequest, there should be added to the foregoing, "of which $.......................shall be applied to the use of its ..................................affiliate."

A copy of the complete auditor's report will be sent on loan to any member on request. The ACLU's financial and accounting methods are endorsed by the National Information Bureau, 205 East 42nd Street, New York 17, N. Y., a private agency organized to help maintain sound standards in philanthropy and to provide contributors with information and advice.

Contributions to the American Civil Liberties Union are not deductible for income tax purposes, since the Treasury Department has held that a "substantial part" of the Union's activities is directed toward influencing legislation. The ACLU itself pays no taxes other than Social Security, Old Age Benefit and Workmen's Compensation levies in connection with its employees' salaries.
IT'S YOUR BILL OF RIGHTS
DEFEND IT!
JOIN THE
AMERICAN CIVIL LIBERTIES UNION!

ACLU members in these categories receive Civil Liberties each month, this 1961-62 Annual Report (and future annual reports), and their choice of pamphlets:

- PARTICIPATING MEMBER .......... $100
- COOPERATING MEMBER .......... $50
- SUPPORTING MEMBER ........... $10
- SUSTAINING MEMBER ............ $25
- CONTRIBUTING MEMBER .......... $5

Associate Members at $2 receive Civil Liberties and the Annual Report. A bi-weekly bulletin is available on request to contributors of $10 and over. Members living in the areas listed on pages 80 and 81 (with the exception of ACLU of Northern California which maintains separate membership and finances) also belong to the respective local ACLU organization, without payment of additional dues. If you live in one of these areas, it will automatically receive a share of your contribution. The more you give the larger its share. Be as generous as you can! See coupon below.

AMERICAN CIVIL LIBERTIES UNION
156 Fifth Avenue, New York 10, N.Y.

The ACLU needs and welcomes the support of all those—and only those—whose devotion to civil liberties is not qualified by adherence to Communist, Fascist, KKK, or other totalitarian doctrine.

Here is my $ membership contribution to the work of the ACLU, fifty cents of which is for a one-year subscription to Civil Liberties.

PLEASE PRINT CLEARLY

NAME

ADDRESS

CITY ....................... ZONE ...... STATE

Occupation

* If you already belong, won't you pass this Annual Report on to a friend when you have finished it, urging him or her to join the ACLU.

Annual Report, 61-62

Price of this pamphlet: 75c postpaid.
Quantity prices on request.