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TENSION, CHANGE AND LIBERTY
By John de J. Pemberton, Jr.

During the first half of the Nineteen Sixties the open society of which our country boasts has demonstrably expanded its recognition and protection of those individual rights and liberties which are the essence of its "openness." But this expansion has been accompanied by the expectation that it would be followed by a new cycle of contraction. Not only have such cycles beset us in the past, but severe change in the world in which we live has foreshadowed the development of enormous tensions likely to produce the fears and anxieties that lead to contraction. The year here reported may well have marked the beginning manifestations of some of these tensions; clearly their impact was felt on the protection of those liberties we associate with the open society.

I.

As always with events close at hand, the significance of those signs of contraction we have seen this year is difficult to comprehend fully. If we are pessimistically inclined, the evidence to support a prediction of full cycle contraction is easy to find. It can be found in the suppressions of protests against our country's war and foreign policy and in a renewal of the hackneyed equation of dissent with disloyalty. These may not yet have become a clear pattern of repression, but certainly they have occurred too frequently to be classed as sporadic or isolated events. It can be found in the reactions of citizens and politicians to a growing incidence of crimes that grew out of urban frustrations, and to the rioting and mass violence which such frustrations have occasionally but explosively produced. It can be found in the severity of punishments on occasion meted out to participants in peaceful campus demonstrations who have been found guilty of trespass or other misdemeanors. It can certainly be found in the heightened tempo of violence practiced by segregationists on civil rights workers and in new expressions of the northern backlash to the civil rights movement. One could lengthen the catalogue indefinitely, but the major underlying factors appear to be the increasing involvement of the United States in the war in Southeast Asia, the continued growth of urban poverty and hopelessness, and the pace of change stimulated by an increasingly self-confident civil rights movement. Each of these factors has led to tensions and reactions that contract the protection of civil liberties.

Pessimism of an entirely different class is certainly justified on the part of the civil libertarian in looking at the burgeoning Great Society programs of the Johnson Administration. While designed in many aspects to open doors that previously have been tightly closed, especially those programs embodied in the Economic Opportunity Act of 1964 and the Elementary and Secondary Education Act of 1965, in all likelihood
these programs will impose a new pattern of relations between church and state in our society. What that pattern will be was not resolved in the enactment of this legislation and may be many years in being resolved, but the prospects for muddying a relationship of mutual independence between government and religion are real and considerable. The church-state controversies which have perennially contributed to preventing the enactment of school aid bills in prior Congresses, for instance, have been avoided in the terms of these two Acts by adherence to a theory, and by obscurity, in the application of that theory. The Acts adopt what has come to be known as the "pupil benefit theory," that the constitutional ban on aiding religious institutions with tax funds is avoided by aid given only to the beneficiaries of their programs (parochial school pupils and welfare service clients). But the difficulty which the Acts do not confront lies in the definition of what forms of public assistance aid only pupils and clients and what forms also enrich religious institutions (and, as a consequence, may give the support of government to the institution's doctrines).

Nor do these Acts consistently insure that degree of public control of religiously administered programs essential to provide equal and nondiscriminatory access to their benefits. It may be fairly said that the legislation (and almost as much, the administrative regulations and guidelines issued thereunder) defer to the practices and decisions of local administrators the actual resolution of basic conflicts over the meaning of the First Amendment's religion clauses and the actual definition of the pupil (or client) benefit theory incorporated in the legislation. Many decisions, by many different administrators, will be made at many different levels of public visibility, before it is established what patterns of church-state relations will emerge from this new legislation. We have entered an interim period of flux and uncertainty during which the forum of church-state controversy has been transferred from the national legislature to the local community. But even though the nature of the new pattern is not clear, it is certain that it will tend severely to affect the observance of this part of the Bill of Rights. Moreover, the pessimistic potential is greater because the likelihood of judicial review of federal practices that may violate the "no establishment" clause is far more remote than is the case in other areas involving the Bill of Rights.

II.

On the other hand, there is evidence to support the optimistic civil libertarian. While not necessarily quantitatively equal to or greater than that which may be marshalled by the pessimist, such evidence is nevertheless impressive.

First, it must be acknowledged that the extent of domestic debate over our nation's war and foreign policy, while unsatisfactory, is considerable, measured by comparison with the Korean and two World War periods.
Efforts to suppress this debate have occurred, but many of them—such as selective police protection of the rights of demonstrators and circulators of petitions, selective according to the point of view expressed—do not form a national pattern. A high point in the development of new forms for expressing dissent may have been achieved in the spread of the "teach-in" for, unlike the purely demonstrative forms, it offers a vehicle for exposition and analysis of issues of great complexity and for developing the variety and significant shades of difference that may inhere in attempts to resolve them. When a major spokesman for the Executive Branch agreed to appear in debate with the government's outspoken critics on a nationally televised teach-in, a significant tribute was paid to this form.\footnote{It detracted from the importance of this teach-in, but hardly from the significance of this tribute, that the Presidential Assistant for National Security, McGeorge Bundy, was prevented by the overriding necessity of an assignment in the Dominican Republic from appearing on this teach-in. He later appeared in a less widely heard debate with some of the government's critics in an effort to make up for the earlier withdrawal.}

But perhaps the most noteworthy observation that can be made on the forms and extent of current debate on war and foreign policy is that competent observers have credited it with achieving a measurable influence upon that policy itself. This may be small comfort to either the "doves" (for the war goes on) or to the "hawks" in the debate (for they too are frustrated by the manner in which the war is being conducted), but it is consistent with the highest purpose which our traditions of liberty assign to debate—that of synthesizing wisdom from several sides of an argument. Let us be clear: this observation in no way suggests that the present policy of our government now embodies the ultimate in political wisdom for having enjoyed the contributions of many participants in a national debate. In terms of the magnitude, complexity and hazard of the issues at stake, the debate so far has been woefully inadequate. But men and women have engaged in debate and they have been heard.

Again the optimist may point to the subject of police practices and the rights of the accused. Despite the gathering storm of pressure for legislative restraint upon individual rights, steps continue to be taken that deal with some of the real gaps in our protection for the accused, especially those who are socially disadvantaged. Legislation aimed at reform of federal bail practices, so as to permit the indigent as well as the well-financed and well-connected accused to be at liberty pending trial, passed the Senate and will be given serious consideration in the House. The Attorney General promulgated rules designed to limit the release by federal law enforcement officials of some of the more prejudicial forms of pre-trial publicity. City officials who have fiercely resisted proposals long espoused by the Union (and vigorously joined in by other civil rights groups) for civilian review boards to hear com-
plaints of police malpractice, have here and there made concessions to ameliorate some of the outstanding obstacles standing in the way of citizen redress for such abuse. Several jurisdictions have taken new steps to facilitate or improve the provision of counsel to indigent accused. The battle ahead continues to loom large, especially over legislative proposals to sanction common but presently unauthorized police practices. But it seems clear that the actual confronting of concrete issues in this area, a major contribution of the most controversial of the Supreme Court's decisions, so far has tended to produce solutions that move our practices toward conformity with long-ignored standards.

As encouraging as any of the optimistic manifestations was the defeat in the U.S. Senate in 1965 of the legislatively popular Dirksen amendment. The amendment was designed to modify the Supreme Court's reapportionment decisions (based on the equality principle of "one man, one vote") even while their application was affecting fundamental change in the distribution of power in the nation's fifty state legislatures. That power this great is not lightly yielded has been attested by the half-century of refusal on the part of most of these legislatures to reapportion themselves despite sometimes radical shifts in population. Members of both houses of Congress normally find their own political bases closely related to the base of power in their states' legislatures, and tended understandably to be sympathetic to the effort to propose to the legislatures a constitutional amendment by the ratification of which they might raise to legitimacy at least some degree of their own malapportionment. It is a tribute to the capacity of debate and controversy to arouse an informed public opinion, and of that opinion to prevail (when supported by favorable judicial interpretations of the Constitution) over the inconsistent interests of legislators, that a sufficient minority was mobilized in the Senate to preclude the two-thirds vote required in each house for proposing a constitutional amendment.

The optimists' view of civil liberties is based in large measure on the claim that gains won during a period of expansion are not easily withdrawn, even under pressures that would have foreclosed their being won in the first instance, and this claim may be right. But pessimism over the ultimate realities of one vital area, the struggle for equality in our society, is harder to rebut. The indicia of change in racial inequality—voter registration and political participation, improved and integrated educational opportunity, expanded employment and housing opportunity, and economic betterment—continue to lag when measured by either of two critical standards: the rising level of just expectations and the increasing pace at which such complexities of our society as automation and cybernation turn existing disadvantage into greater disadvantage.

Want of vigor in the enforcement of the newest federal statutory tools in the struggle, the Civil Rights Act of 1964 and the Voting Rights Act of 1965, are especially discouraging to the civil rights advocates who
know the insistence of the demand of rising expectations. It is in this context that the Union is proudly conscious of a development that may be classified on the optimistic side. Its own "Operation Southern Justice" (this Report, p. 86), launched from the base of the Union's new Southern Regional Office, has made an appreciable dent in the armor of segregation. Through several class suits it is challenging the system of selection of juries in jurisdictions (both state and federal) where that system consistently results in juries composed wholly of whites, and often wholly of white males. This effort has enjoyed the important support of the Department of Justice's intervention, under a power conferred by Title IX of the Civil Rights Act of 1964.

Like voting rights suits, jury selection cases are directed at the heart of one of the major power bases in the segregated society. Not only is justice to defendants who are Negroes or civil rights workers at stake, but so also is their physical safety as potential victims of white crimes. More subtly, but perhaps as important, are the many collateral incidences of control over this power base, such as the capacity of a lawyer active in civil rights work or litigation to get trial justice for his other clients and, hence, to earn a living and remain in practice. The differential in the values in settlement of identical compensable injuries to a Negro and to a white man is a function of the present system of segregated justice; so, too, is the hazard of an unreasonable award in libel against a newspaper which has offended the sensibilities of those adhering to the dominant faith in segregation.

Especially at the level of discrimination in juror selection, but also in employment on southern police forces and in all of the instrumentalities of the administration of justice—courts, prosecutors offices, and prison systems—the Union's "Operation Southern Justice" is aimed at eliminating the all-white character of a system of justice which has persuaded Negroes—accurately—that it exists not for their protection but only for their oppression. Such change is essential for a nation committed to achieving liberty under a rule of law.

III.

Mass student demonstrations on the Berkeley campus a year ago, and student activity on other campuses, led to a flood of articles, books, and speeches this year on the subject of student unrest. The student generation of the Sixties, contrasting so sharply with the "silent generation" of a decade earlier, reflects in wider degree the developing unrest of a whole society. Student reactions to the hypocrisy of professing principles widely at variance with practice may have been more volatile than those of others in the society, but the Sixties have been marked by an increasing awareness of these variances. There exists a variance between our nation's professions of equality and the cruel inequalities suffered by our non-whites and our poor; between our professions of justice and the crude injustices suffered at the hands of many law enforcement agencies and
lower courts by those unable to finance legal assistance and bail; between our professions of free speech and the subtle means often employed to threaten loss of livelihood, loss of educational opportunity, or just official censure to some of those whose speech is found to be most offensive, or most threatening, by those who can enforce such threats.

Perhaps the most novel aspect of the unrest currently expressed in the student movement, however, is its pretension to a voice in the administration of those affairs which are of greatest concern to students themselves. The movement has asserted a right to influence policy not only concerning the regulation of campus life and student civil liberties, but concerning educational policy itself. Understandable there is alarm expressed at such assertiveness, but the development is hardly at variance with the meaning of democratic traditions. If, as Edmond Cahn has taught us, the heart of democratic principles is reflected in a “consumer perspective” of government, no more appropriate practice of this principle could be imagined than the development of a consumer perspective toward the governance of educational institutions. They are the very institutions looked to for the examination, nurture and transmission to another generation of our society’s democratic heritage. This development is not to be confused with an imagined proposal that students replace faculty, administration and trustees in their respective responsibilities for the governance of a university; the proposition is no more than that students will be heard with a respect due their vital interest in the adequacy of their education.

Much the same may be said of the especial assertiveness heard in the voices of the student movement over issues involving military conscription and war policy. Again the assertion is that, as persons subject to conscription whose lives (and consciences) may be expended in the execution of war policy, youth have a special interest warranting their voice being heard in criticism or support of our nation’s policy. (It is to the credit of the student generation that the response of their “hawks” to petitions, pamphlets and demonstrations to end U.S. involvement in the Viet Nam war has taken the form of counter petitions, pamphlets and demonstrations more often than that of attempts to repress the protests of the “doves.”) Again it is not necessary to urge that military policy be made by conscriptees and potential conscriptees in order to welcome the voice of these persons who are especially affected by its outcome.

Perhaps the most optimistic inference to be drawn from this year’s events affecting civil liberties is that the new assertiveness of the student movement, and the responsive chord heard from many of those students’ elders, may foreshadow an enlarged determination by citizens to use those rights essential to the working of self-government—to use them in the definition, analysis and resolution of matters which, as consumers of government, they find to be most urgent today. This is important not

2. Edmond Cahn, The Predicament of Democratic Man, 1961
merely because it promises to resist tensions which work toward con-
traction of these rights and liberties. Its importance lies in the necessity 
for procedures of self government to be made to work effectively, so as 
to solve novel problems of enormous potential for social dislocation.

The test of our capacity to preserve civil liberties may already be 
posed by the growing tensions created by war, urban frustrations, 
and human rights expectations. To meet this test we must not only de-
 fend our rights successfully against each of the increasing challenges and 
threats to them. We must also prove our ability to use our rights in the 
resolving of the problems from which these tensions arise.

During the year 1965 the Union grew from a membership of 72,500 
to 80,000. In October 1964 it opened its Southern Regional Office in 
Atlanta, Georgia, with a staff of two persons and this addition to the 
program of the national organization was supported during 1965 by the 
special contributions of the Union's several statewide and local affiliates. 
With assistance from this office, new affiliates were formed during the 
year in the state of Alabama and North Carolina and in addition, other 
statewide affiliates were formed in Kansas and Hawaii. An upstate New 
York organization joined with the New York City one to form a state-
wide affiliate in New York, serving for the first time substantial areas 
of that state that had been outside of the earlier two. At the end of the 
year 36 ACLU affiliates were actively providing civil liberties defense 
and education in 34 of the 50 states.

Increasingly the members of the Union are making the force of their 
commitment to liberty felt through the activities of these affiliates and 
their numerous metropolitan area chapters. Important parts of the legisla-
tive work of the Union (including that at the level of local governments 
and school districts), and of its growing program of public education are 
being done by our expanding non-lawyer membership, while the Union's 
work in litigation is expanding with the recruitment of additional 
volunteer attorneys. The tests America faces—to preserve liberty in the 
teeth of stormy change and to employ its uses to combat the storm itself— 
—will be better met, if they can be met at all, because of the energies 
each of the Union's active members is devoting to our cause. Our work 
often consists of thousands of individual, minute parts, each dependent 
upon the talent and effort of one or a few individuals. Only when it can 
be done thoroughly, and in every city and every area of our land, will 
the work of the Union be adequate to the needs of our nation.

* * *

This report was written by Mitchell Levitas, a New York journalist, and 
supervised by Alan Reitman, the Union's Associate Director. It covers the period, 
July 1, 1964 to June 30, 1965 (with updating of important issues), primarily 
reflecting the activities of the Union but including those of other individuals 
and organizations. Legal citations are omitted because of limitations of space but 
all information on a particular case that is available to ACLU will be furnished 
on request.
FREEDOM OF BELIEF,
EXPRESSION AND ASSOCIATION

Despite effectively organized vigilante opposition at the local level and intensive lobbying in many state legislatures, basic freedoms of speech, belief and association were enlarged by major U.S. Supreme Court decisions.

Years of effort by the ACLU and its affiliates finally resulted in striking down the federal screening of “Communist propaganda” mailed from abroad—an unconstitutional invasion of free speech which the high court unanimously set aside. Also speaking with one voice, the Court tightly tethered the authority of state and local film censors, but stopped short of declaring that pre-censorship was itself unconstitutional, which is the contention of the ACLU. Similarly, the decision by the high court to review several convictions for publishing and distributing allegedly pornographic literature may result in clarifying the vague standards outlined eight years ago in Roth. Since then, however, these guidelines have proved unworkable, as evidenced by state and local attempts to outlaw obscenity at the expense of constitutional guarantees protecting free expression.

In areas other than censorship, the record was less encouraging. The not-so-peaceful revolt on the Berkeley campus of the University of California sharply raised the issue of academic freedom for students. A few colleges attempted to restrict the rights of students to demonstrate over political and social causes, but in general these attacks were successfully opposed and students at several schools won the right to hear speakers of their own choosing without administrative interference. Meanwhile on campuses in several states, and in Congress, the fight to eliminate loyalty oaths for teachers and students moved ahead.

As the Administration moved to improve the lot of the poor and strengthen the nation’s educational system, the ACLU cautioned against violating an even more vital public policy enjoined by the Constitution: preserving the wall separating church and state. As federal programs get into full swing, some questionable practices may be eliminated, but others may well be tested in the courts. Widening the scope of religious freedom, as it has done for some years, the U.S. Supreme Court established the right of persons who do not adhere to orthodox religious beliefs to claim status as conscientious objectors.

In a significant decision running counter to a recent trend, the high court upheld the authority of the Secretary of State to prevent citizens from traveling to areas he has quarantined as “unauthorized.” And in a long-awaited decision that established a new constitutional “right of privacy,” the U.S. Supreme Court marshalled half a dozen constitutional amendments against Connecticut’s attempt to regulate the morality of its citizens by forbidding the use of contraceptives by anyone, including married couples.
Congress and the U.S. Post Office

The long campaign by the ACLU against federal screening of "Communist political propaganda" from incoming foreign mail was finally won in the U.S. Supreme Court, despite an 11th-hour attempt by the Post Office Department to avoid judicial review by changing its procedures in order to moot the basic issue. The high court met the constitutional issue head on, declaring that the right of individuals to receive their mail without interference is an essential ingredient of free speech.

The long-sought ruling invalidated a 1962 law requiring persons receiving mail (other than first-class) from Communist countries to make a special request to the Post Office to deliver it by returning a reply card. Otherwise, the mail is impounded. "We conclude," said the Supreme Court's unanimous opinion, "that the Act as construed and applied is unconstitutional because it requires an official act (returning the reply card) as a limitation on the unfettered exercise of the addressee's First Amendment rights. As stated by Mr. Justice Holmes: 'The United States may give up the Post Office when it sees fit, but while it carries it on, the use of the mails is almost as much a part of free speech as the right to use our tongues.'" The Court's opinion declared: "The addressee carries an affirmative obligation which we do not think the Government may impose on him. . . . Any addressee is likely to feel some inhibition in sending for literature which federal officials have condemned as 'Communist political propaganda.'"

The ruling was based on two cases before the Court. In one, appealed by publisher Corliss Lamont of New York City, the ACLU entered a friend-of-the-court brief challenging the constitutionality of the law. The second case was brought by the ACLU of Northern California on behalf of Leif Heilberg of San Francisco, who had wanted to receive a Chinese Communist pamphlet written in Esperanto. A federal three-judge panel ruled that the practice requiring written authorization for the material was an unconstitutional restraint on the dissemination of ideas, in violation of the First Amendment (see last year's Annual Report, p. 14). Furthermore, the court condemned the compilation of lists of persons receiving the material from Communist countries, since in the past the lists "were routinely turned over to the House Committee on Un-American Activities." Government assurances that the practice of turning over the lists of names has been discontinued "cannot be reasonably expected to mitigate a person's reluctance to have his name associated with 'Communist political propaganda,'" the court declared. In addition, the three-judge federal panel said that, in the absence of a
statutory requirement that the lists remain confidential, "there are no . . . assurances that this information will not be made available in the future."

After the U.S. Supreme Court agreed to hear the government’s appeals in the Heilberg and Lamont cases, the Postmaster General announced a change in policy whereby he ended the practice of compiling lists of persons receiving the suspect mail — a practice the Post Office was never compelled to undertake. In view of the change, the Postmaster General said, the Court might feel it was appropriate to remand the two cases for reconsideration by Federal District Courts. The ACLU opposed the suggestion and the high court did, too. Another issue in which the Union’s view also prevailed was whether, by releasing impounded mail, the Post Office Department might properly moot cases brought by people who wished to challenge the statute itself and therefore declined to return a postcard requesting the mail. The Department had used precisely this strategy when it was confronted by the first challenge of the 1962 law, launched by the ACLU of Southern California. When a Pasadena truck driver, Charles Amlim, refused to forward the reply card the Post Office treated his complaint as a request for the mail (a pro-Communist newspaper published in Tokyo) and sent it along, thus evading a legal test of the law.

The high court ruling put a stop to such evasions, ending the life of a law under which nearly 100 million pieces of mail from abroad were screened, at a cost of more than $500,000. Prior to the 1962 law, the censorship was conducted as an administrative practice, particularly during the heyday of McCarthyism in the 1950’s. Then, as protests mounted, it was curtailed and by 1960 the planning board of the National Security Council recommended that it should be abandoned completely. It was, only to be revived as a rider to a vital appropriations bill. It was this legislation that the Supreme Court reviewed and struck down.

The Post Office Department ran afoul of an angry Senate Judiciary subcommittee over sanctity of the mails. Two encounters resulted in a split decision. In the first incident, Postmaster General John A. Gronouiski promised to issue new regulations tightening controls over the use of mail covers, but refused to turn over to the subcommittee a list of 24,000 names whose mail was being watched on the grounds that it would “seriously violate the civil liberties of many innocent people.” Senator Edward Long, chairman of the Senate panel studying governmental invasions of privacy, withdrew his demand for the list but commented: “There is no indication that you feel that the civil liberties of the same persons might have been violated by the placement of mail covers without their permission or knowledge and without any statutory authority.” The practice, Long said, “appears to violate the longtime sanctity of the U.S. mail as a means of purely private communication.” In the second incident, the Post Office ruefully admitted it was wrong in seizing the mail of “flagrant” tax evaders and turning it over to the Internal Revenue
"We've been doing it wrong, no question about it," a Post Office official conceded. Nevertheless, the seizure of mail by the IRS remains a very real possibility under legislation passed by Congress. It is possible for the IRS to obtain mail covers on people whose property is subject to levy, and then have an IRS agent stand by when mail that may contain valuable property is delivered. The agent could then intercept the mail immediately after delivery, since at that point such mail is subject to levy and, hence, seizure.

Objecting that the proposed cure was more deadly than the disease, the ACLU testified against a proposed House bill to create a Commission on Noxious and Obscene Matters and Materials which might, in effect, establish a national board of censorship. The Union noted the appeal of "easy solutions" to the problem of obscenity. "There are many who believe that if we can give some public official broad powers to stop the flow of 'smut' we shall then have gone a long way toward insulating our children from pernicious influences which may lead them into degradation and crime," the Union observed. Nevertheless, such "solutions" are illusory for several reasons. First of all, said the ACLU, there is no proof that a causal relationship exists between allegedly pornographic material and the commission of anti-social acts by children, or adults, for that matter. Rather, there is considerable controversy among experts on the issue. Yet the bill proceeds on the unwarranted assumption that certain printed matter has a "morally corrosive effect" on readers.

Turning to the constitutional questions raised by the proposal, the Union cited the difficulty of juries, judges and the U.S. Supreme Court itself in arriving at a universally satisfactory definition of obscenity. "What may be offensive to one person may be great art to another person," the ACLU testified. "And frequently such individual judgments condemn most severely only controversial expression — the very kind of speech for whose protection the First Amendment was written." Moreover, by providing no judicial procedure to determine what comes within the purview of the proposed commission, and by proposing to suppress some printed matter, the Commission will further violate the First Amendment, the Union said.

The same Congressman responsible for the ill-fated rider authorizing the screening of "Communist political propaganda" returned to the censorship stage in a campaign against "morally offensive" mail. For the third consecutive congressional session Representative Glenn Cunningham introduced, and the House of Representatives passed, a bill allowing any postal patron to force the Postmaster General to stop mail the addressee regards as morally offensive. The ACLU has repeatedly opposed the measure as a form of pre-censorship and restraint on free speech, since the complaint of any one individual can set in motion a chain of events that could punish the sender by holding him in contempt of a federal court order. Controversial mailings on any subject probably would be found morally offensive to someone, who could move to put
the sender in contempt if the mailing continued. Any group, the AMA or the NAACP, would be affected. As for the bill's stated aim of suppressing obscenity, the ACLU objected to the "subjective judgement" of obscenity by the recipient, rather than on what has been "judicially determined" to be obscene. The Union pointed out that the U.S. Supreme Court has ruled that material which is not obscene enjoys the freedom of the press. By allowing any person to determine obscenity, the bill could affect material which is entitled to constitutional protection. These arguments apparently carried weight in the Senate, which for the third time allowed the Cunningham bill to die.

The ACLU protested the seizure and reading of a woman's diary by a U.S. Customs Service border office in Laredo, Texas. The Union, which has lodged complaints against the Customs Service on past occasions, repeated an appeal for a clear and simple directive informing officials of the constitutional rights and proper procedures to be used in dealing with travellers. The Union said that seizing the woman's diary, as well as conducting an internal physical examination, "was an affront to the First Amendment's protections against abridging individual freedom of expression and also an unwarranted governmental invasion of privacy."

The Courts

The U.S. Supreme Court agreed to review the obscenity conviction of Ralph Ginzburg, publisher of Eros, again raising the question of definition it faced in the Roth case eight years ago. At that time, the Court said the test of obscenity is "whether to the average man, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." All ideas "having even the slightest redeeming social importance," however, are protected.

Ginzburg was convicted in a Philadelphia Federal District Court in 1963 and sentenced to five years in prison and a $28,000 fine for alleged violation of the postal laws by using the mails to distribute Eros and other publications on the subject of sex. The ACLU and its Pennsylvania affiliate argued then, and again before the U.S. Court of Appeals for the Third Circuit, that the only utterances which can be constitutionally restricted are those which can be shown to create "a clear and present danger of anti-social conduct" (see last year's Annual Report, pp. 13-14). Now, for the third time, the Union and its Philadelphia affiliate challenged the constitutionality of the Roth doctrine and present federal censorship laws in a friend-of-the-court brief submitted to the U.S. Supreme Court.

The brief argued that the Court and commentators alike have recognized the Roth doctrine as "vague and unworkable." In the case of Ginzburg, the brief declared, three "enormous if not insurmountable difficulties" were raised by Roth: "(1) How are the standards of sex portrayal 'in a manner appealing to prurient interest' and 'having a tendency to excite lustful thoughts' to be applied in concrete cases; (2) Who
is the 'average person' whose 'prurient interest' or 'lustful thoughts' need to be aroused before material may be judged obscene? What of material designed for a special audience? (3) How is the determination that material is 'utterly without redeeming social importance' to be made? . . . By the application of literary or artistic standards or left to the determination of juries?

"The question in each case," the brief said, "is whether the words or pictures are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about a substantive evil which the state has a right to prevent. . . . There is no demonstrable connection between the evil which obscenity statutes are intended to avoid and the means chosen to avoid that evil." Furthermore, argued the Union and its affiliate, "some of the 'evils' alleged are not evils in a society which cherishes and thrives on freedom and liberty."

At the same time the Supreme Court will hear argument on the Ginzburg case, it will have two further opportunities to redefine the standards of obscenity set down in Roth. The tribunal will hear the appeal of Edward Mishkin, a New York City man convicted of publishing books on sadism and masochism. Also pending before the Court is the obscenity conviction of David E. Keney of Rochester for selling copies of Lust School, Lust Web and Sin Servant.

Continuing its attack on obscenity standards laid down by the Roth case, the ACLU filed a friend-of-the-court brief on behalf of two Fresno, Calif. mail order book dealers convicted in a Michigan Federal District Court for selling Sex Life of a Cop. One dealer, Sanford E. Aday, was sentenced to 25 years in prison and fined $25,000; the other, Wallace De Ortega Maxey, received a 15-year sentence and a $19,000 fine for transporting copies of the book from California to Michigan. The brief, entered by the Union and the ACLU of Michigan before the U.S. Court of Appeals for the Sixth Circuit, called the sentences "draconian" and "a direct and impermissible interference with rights guaranteed by the First, Fifth and Eighth Amendments" protecting free speech, due process and barring cruel and unusual punishment. The brief noted that the heavy penalties were the most severe in U.S. history relating to the publication or distribution of reading materials. To impose such fines and prison sentences "is to sanction and encourage censorship by intimidation on a gigantic scale," the brief declared.

As for the question of obscenity, Roth's definition begs the question, the brief argued, "for obscenity is not a peculiar genus to be identified like poison ivy." Moreover, added the Union, "it is difficult in a culture where sex is used to sell cigarettes and detergents to believe that the circulation of this volume could pose a serious threat to any interest which the government has a right to protect against." As in the Ginzburg brief, the Union said that only the "clear and present danger" standard is sufficient justification to suppress free expression.

The famed Little Blue Books published in Girard, Kan. by Henry
J. Haldeman have survived the scrutiny of the U.S. Court of Appeals for the Tenth Circuit. Haldeman was convicted of mailing lewd material but after reading the eight Blue Books involved, written to provide sex education on a variety of unusual topics, the appeals court ordered the indictment dismissed. The decision said that the forms of sexual behavior described in the books "are common problems about which there is considerable literature, including discussions in many text and reference books." The Lawrence, Kans. ACLU Chapter, had urged reversal of the conviction in a friend-of-the-court brief protesting suppression of the books on obscenity charges and objecting to judicial denial of First Amendment protections against censorship. The affiliate said the trial judge erred in allowing the jury to decide whether the books were obscene, rather than deciding himself.

In other obscenity prosecutions opposed by ACLU affiliates:

¶ The Civil Liberties Union of Massachusetts filed a friend-of-the-court brief supporting the publishers of Fanny Hill before the state's highest court. The court ruled the book was obscene, and the decision is on appeal to the U.S. Supreme Court. The Hampden County Chapter of the CLUM, meanwhile, filed a brief on behalf of two Springfield booksellers indicted for selling another erotically entertaining novel, Candy.

¶ The ACLU of Northern California won a victory when the federal government abruptly abandoned its appeal of an adverse ruling ordering the return of 2,000 imported "girlie" magazines.

¶ An attorney of the Indiana CLU is defending a bookseller arrested for offering Tropic of Cancer, more than a year after the U.S. Supreme Court thought it had settled the issue in a case brought by the Florida CLU that the Henry Miller novel could not be constitutionally banned (see last year's Annual Report, pp. 11-12).

State and Local Issues

Encouraged, perhaps, by the vague standards of obscenity set by the Roth case, state and local lawmakers continued to consider measures designed to "outlaw obscenity." In New York State, Governor Nelson Rockefeller vetoed all but two anti-obscenity bills, but the two he signed were contradictory and put enforcement "into a legal mess," the New YorkCLU declared. One bill deals with the distribution of allegedly obscene material to minors under 17 and specifies that the material must be "utterly without redeeming social importance" before it can be banned. Another bill, however, affects material distributed to minors below the age of 18, and includes "nothing . . . which would conform to the standard required by the U.S. Supreme Court," the NYCLU said. Moreover, said the affiliate, the law will result in the suppression of material that is constitutionally protected.

Rather special circumstances prompted an anti-obscenity campaign
in Minnesota, where legislators were aroused by allegedly obscene mate-
rial entering from outside the state. The proposed Minnesota law,
successfully opposed by the ACLU affiliate, would have allowed a court to
issue a temporary restraining order without notice to the defendants if it
appears that "immediate and irreparable" moral injury will occur "be-
fore notice can be served and a hearing had." To speed things further,
the Secretary of State is named in the bill as the agent for any non-
resident for service of process in any action taken under the suggested
legislation. In two other protests lodged by the Minnesota CLU, the
affiliate objected to a campaign against allegedly pornographic maga-
zines and books in St. Paul, launched by the Mayor, on the ground that
the courts, not city officials are the proper judges of obscenity; and, in a
similar situation, the affiliate is planning legal action against the St. Paul
Metropolitan Airports Commission for coercing news dealers into
removing allegedly obscene material from airport stands. The Airport
Authority in Indianapolis came under fire from the Indiana CLU.
Acting on a complaint that Playboy was not being sold at the Municipal
Airport, the affiliate pointed out the unconstitutionality of such prior
censorship to authority officials. The magazine was then made available
on the newsstand.

Once again, Congress considered an omnibus crime bill containing
severe penalties for obscene material circulated in the District of Colum-
bia. Its chief new feature added films to the list of items under scrutiny
for possible obscenity. The National Capital Area CLU raised strong
constitutional objections to the measure, which faltered in the Senate-
House Conference Committee but may be revived in the next session
of Congress.

In two other cases by ACLU affiliates:

¶ The ACLU of Oregon undertook the appeal of a Klamath Falls service
station operator convicted for selling a paperback book, Lust Pad.

¶ The Arizona CLU worked with a private attorney and filed a friend-of-
the-court brief upholding a newsstand dealer arrested for the sale and
possession of allegedly pornographic magazines; the charges were dis-
missed.

Why was the service station operator in Oregon convicted and the
newsstand dealer in Arizona freed? One possible reason was put for-
ward by a law enforcement official who ought to know: the chief of
police of Detroit. Transferring one-third of the Police Censor Bureau
staff to other duties, the police chief explained the bureau "could not
contend with the complete confusion in the field of obscenity enforce-
ment. Things have gotten to the point that no one can define obscenity," he said. "It doesn't make any sense to have a squad of police officers
ruling on what is or is not obscene, when there is no definition to test."
Private Pressure Groups

The prime targets of vigilante groups seeking to ban "offensive" material are newsstands and classrooms, but organized censorship by police, public officials or parents is hardly the answer in a free society.

An example of such action was a municipal campaign against the sale of salacious magazines and books in Mt. Kisco, N.Y. Opposing it, the New York CLU took the position that though the material may have no merit, using police powers to curb free speech and free expression was even more reprehensible. "Bypassing the law is the first step toward anarchy," the NYCLU declared. "The most effective way for a community to combat pornography is to support a positive plan for better libraries and cultural programs." One of the most active private pressure groups are the Decent Literature Committees, with chapters in many communities. In New Jersey, where the group has grown in recent years, the South Jersey Chapter of the ACLU of New Jersey backed a newspaper and magazine distributor who was the target of vigilante pressure. Striking back at the book-banners, the distributor also sued them for $100,000 for allegedly acting in restraint of trade.

Several ACLU affiliates also took steps opposing censorship in the schools. Among such actions:

- The ACLU of Washington state played a key role in a significant local victory when a widely-respected social studies school magazine was restored to the classrooms of a Spokane school district. The battle began when a parent objected to the use of Read magazine in her daughter's class. The teacher suggested that the girl change classes but instead the school board banned Read. The affiliate's Spokane Chapter entered the case at the teacher's request, and following a hearing by the school board, the magazine was restored to the classroom.

- The Illinois Division applauded the Chicago Board of Education's decision to resist parental objections to James Baldwin's novel Another Country. The book was on the assigned reading list of Wright Junior College, which infuriated the parent of a student. He demanded the withdrawal of the novel from the list, but officials ruled that the school faculty and administration were the proper judges of their own curriculum.

- The National Capital Area CLU, in a friend-of-the-court brief, challenged the constitutionality of firing a Maryland high school teacher who assigned Brave New World to his English class.

- The Kentucky CLU successfully fought a case that involved a school-connected group's attempt to censor newsstand publications. The affiliate persuaded two county PTA councils to withdraw law suits against publishers whose material the PTA groups considered indecent.
MOTION PICTURES

The Courts

Two decisions by the U.S. Supreme Court drastically curbed the authority of state and local film censors, imposing strict guarantees on the right of free expression. The high court did not change its view, expressed in 1961, that the film censorship laws were not unconstitutional because they required a censor's approval before a public showing. But by specifying tight procedural safeguards for First Amendment rights of untrammeled expression, the Court implicitly raised the question of whether state and local film censorship boards could function.

The basic opinion, issued unanimously, struck down the Maryland film censorship law. The case had been brought by Ronald L. Freedman, a Baltimore theater owner who showed the film, Revenge At Daybreak, without the censor's stamp required by law. Supporting his appeal to the U.S. Supreme Court in a friend-of-the-court brief, the ACLU and its Maryland Branch struck hard at pre-censorship as unconstitutional.

"There is no reason why our motion picture exhibitors can be validly hobbled in this respect where our newspaper and magazine distributors, our phonograph record outlets, our radio and television broadcasters cannot," the brief declared. It also questioned the capacity of film censors to make esthetic judgments, especially in view of the fact that films are judged and censored by vague standards.

While the high court did not back the Union's position on the unconstitutionality of precensorship, it unanimously backed the arguments raised in the brief for rigorous procedural safeguards to protect free expression. Spelling out three criteria, the Court ruled: (1) the burden of providing that a film cannot be shown rests with the censor; (2) the censor's decision cannot be final; final restraint can be imposed only after judicial review; (3) the procedure must be speedy, minimizing the time between the censor's interim opinion and the final judgement of a court.

The second action by the high court consisted of citing without comment its Maryland decision in reversing censorship by New York State of a Danish film, A Stranger Knocks. The exhibitor had first sought a license to show the film in March 1963 and turned to the courts when the license was refused. Not until March 1964 did the state Court of Appeals decide to uphold the ban unless certain sexual sequences were cut. New York's film censorship authority hastily adopted new regulations purporting to conform with the procedural guarantees outlined by the U.S. Supreme Court. But these were ruled unconstitutional by the state's highest court, which in effect, put the state censor out of business. Similarly, a lower court in Virginia held that the state film censorship law did not conform to the U.S. Supreme
Court's decision, which movie exhibitors interpreted to mean that they will no longer be forced to submit any film for approval by the Virginia Censor Board. The Virginia decision left two states with an official screening board — Kansas and Maryland. The Maryland state legislature hurriedly passed new legislation, prescribing a maximum 15-day wait between the film board's determination of obscenity and a judicial ruling. Whether the new procedure satisfies the U.S. Supreme Court remains to be tested, since the exhibitor of Revenge At Daybreak has initiated a challenge of the latest statute. Procedures of the Kansas Board have been revised to meet the Supreme Court's test, although a group of film distributors have objected that the changes are contrary to the Court's rulings.

Meanwhile, Chicago, one of 15 municipalities which censor films, also moved to bring its procedures in line with the guarantees of free expression demanded by the high court. The Illinois Division of the ACLU condemned the "patchwork of amendments" and urged Chicago to give up the costly, time-consuming litigation under the law and instead abandon movie censorship entirely before it is rejected by the courts.

Tennessee's 105-year-old obscenity law was declared "invalid and unconstitutional" by the state Supreme Court, only to be replaced by a new obscenity law that borrows some language from Roth ("anything which has as its predominant appeal to prurient interest") to cover almost any "exhibition" from the newsstand to the movie theater. Meanwhile, a Federal District Court struck down the Memphis Censor Board which has been notoriously active over the years, on the ground that it constitutes a system of prior restraint in violation of the Fourteenth Amendment.

The New York CLU filed a friend-of-the-court brief in a case that attracted brief, but lively, national attention: the attempt by Notre Dame University to prevent the distribution of the film or the book, John Goldfarb, Please Come Home. The movie was a farce, but Notre Dame claimed that its right of privacy was violated in the film, and for purposes of commercial exploitation. No free speech rights were involved, the university declared. The NYCLU challenged this contention, arguing that the name was in the public domain and that Notre Dame's suit for an injunction was a prior restraint of free speech. The school should sue for libel if it felt itself damaged, the brief said, and not attempt to violate constitutionally protected rights. Though a preliminary injunction was issued, it was dismissed on appeal. Prompted by the Goldfarb case and other court decisions in which the issue of freedom of expression and the invasion of privacy were involved, the Union initiated an extensive analysis of the problem.
State and Local Issues

Despite the setbacks to movie censorship in the courts, the issue remains popular with some legislators. The Rhode Island legislature, for example, passed a bill allowing local licensing authorities to block exhibition of a film for 48 hours while reviewing it or seeking an injunction. But the Rhode Island Affiliate, ACLU, opposed the bill, joining theater owners, and it was vetoed by the Governor. In another action, the Rhode Island Affiliate strongly protested the lifting of a license of a Warwick movie theater because it showed *Kiss Me Stupid*, a film condemned by the Roman Catholic Legion of Decency.

A proposed film censorship law in Pennsylvania was denounced by the Greater Philadelphia Branch of the ACLU as a "substantial and unwarranted restriction on freedom of expression." The bill requires registration of film distributors and exhibitors in the state, written 72-hour notification prior to the premiere of any film and furnishing a Motion Picture Preview Board with a copy of the film. The board would have the power to enjoin the showing of any film it believed "violates standards set down by the courts for obscenity."

Seattle, Wash. passed a censorship ordinance which was opposed by the ACLU of Washington. The ordinance retains an age limit of 21 for movies classified by a supervisory board as "adult entertainment," but sets up a new category of 18-21 for other movies. Quite apart from the question that age distinctions between 18 and 21 are unjustified gradients of maturity, especially in a university community, the ACLU affiliate called the measure unconstitutionally vague and a form of prior censorship.

Intervention by the CLU of Massachusetts has ended the oft-heard cry "banned in Boston" which the rest of the country usually took to mean that the banned movie, book or play was a mature and creative work of art. Instead, the system of tyrannical precensorship that barred such works as *Strange Interlude* and *Within the Gates* has surrendered to mere supervision of public entertainment by the city administration, relying on existing laws and due process enforcement. The system began in the 1920's under the regime of Boston Mayor Curley. All plays performed in Boston had to conform to an eight-point rider attached to contracts between Boston theater owners and New York producers which prohibited suggestive dialogue or behavior, scanty clothes, portrayal of drug addiction, or the use of profanity. Power to enforce the rider's injunctions were vested in a city censor, who used it.

The system was challenged by the Union affiliate when the widely-acclaimed play, *Who's Afraid of Virginia Woolf?*, was forced to make certain changes on the basis of the rider. CLUM representatives met with Mayor John F. Collins, who assured them that the censor would no longer be permitted to exercise veto power. Subsequently, the affiliate
announced that the rider will no longer be included in contracts governing theatrical performances in Boston.

In other cases involving ACLU affiliates:

* The Cincinnati Chapter of the Ohio CLU succeeded in obtaining the release of a Viet Cong propaganda film mysteriously seized by a U.S. Customs Agent from Cleveland, apparently operating on instructions from his superiors in Washington, but without the knowledge of the local U.S. Attorney.

* The ACLU of Southern California advised a local chapter of the United Nations Association to show a documentary film despite threats of a libel suit. The group had requested advice when a California Congressmen, James B. Utt, threatened to sue the organization for libel if it should show a CBS film tracing a right-wing rumor that a U.S. Army training exercise was, in fact, a United Nations plot to take over America.

* The New York CLU defended an art gallery owner arrested by police for displaying “lewd and obscene” paintings and drawings. The gallery owner said that his arrest demonstrated a logical progression from “pop art,” through “op art” to “cop art.”

RADIO AND TELEVISION

Diversity of Programming

Revising an earlier position, the ACLU fully endorsed the system of pay television as a means of increasing diversity on the air. “Licenses to broadcast should be judged in terms of the public interest, convenience and necessity,” the Union declared. “And since the ACLU believes that diversity is an essential element in this field, we resolve that one way of promoting such diversity is to remove all restrictions on pay-TV other than those falling within the framework of existing laws governing radio-TV communication.” At the same time that the Board of Directors announced its policy change, the Union declared its support of the effort to enjoin enforcement of Proposition 15, which outlawed pay-TV in California. The ban, the Union declared, abridges rights protected by the First Amendment — “the right of the public to hear TV programs of their choice”—and the liberty protected by the Fifth Amendment’s due process clause.

The Union’s earlier estimate of pay-TV was made in 1955. At that time, the ACLU expressed the reservation that current plans for pay-TV might weaken the First Amendment interest in increasing information and opinion. The ACLU then suggested these safeguards: (1) no sponsors on pay-TV; (2) no pay-TV should be permitted in a city unless there are two other free channels; (3) a time limit for the experiment; (4) pay-TV must guarantee something not now available on free television, if asked to do so by the Federal Communications Com-
mission. The new ACLU policy eliminates these conditions. The first and second were withdrawn on the grounds that they do not foster civil liberties and might, in fact, reduce diversity by limiting competition among different franchises. The third was deleted because pay-TV is no longer an experiment. The fourth condition was dropped as discriminatory because no other television system must give the FCC such special guarantees.

As for Proposition 15, despite its approval in a referendum, it quickly moved onto the docket of the California Supreme Court. On its first test the ban on pay-TV was defeated by a lower court judge who declared: "Invention and progress may not and should not be so restricted, at least when they are cloaked with the immunity of the fundamental freedom." When the case reached the California Supreme Court, the ACLU of Northern California and the Union filed a friend-of-the-court brief supporting the free expression ruling of the lower court.

In a second major step, the ACLU announced its support of the FCC’s "fairness doctrine," which was a source of controversy for months in the broadcasting industry. Recent FCC interpretations of the doctrine state that persons or groups attacked on the air be given time to respond, and when a partisan position is taken on a political election issue an opportunity for an answer be afforded. It also declares that when views are expressed on current, important issues such as a racial discrimination, opposing responsible groups should get airtime to speak out.

The Union backed the doctrine in the interests of enlarging diversity on the airwaves, while acknowledging that problems remained in enforcement. "Because of the limited number of channels which technically can be developed in the radio and TV spectrum," the statement said, "government regulation is necessary to avoid chaos. Government regulation always carries with it the possibility of censorship, and the ACLU is especially sensitive to this danger. However, each FCC step toward actually increasing diversity — without interfering with program content — deserves the backing of civil libertarians eager to have the First Amendment utilized for the resolution of public issues." The Union questioned certain procedural requirements of the "fairness doctrine," notably the submission of broadcast transcripts by stations to persons or groups attacked. Although it did not take a position on such a requirement, the Union confessed "strong reservations" about its practicality.

Implementing its "fairness doctrine," the FCC ordered a Jackson, Miss. radio station and television station to cease racial discrimination in its programming. But by issuing the stations one-year probationary licenses and refusing to hold a public hearing upon complaints that these stations and three others consistently violate the law and should not be granted license renewals, the FCC drew the strong opposition of the ACLU and the United Church of Christ, which had pressed the complaint.

In April 1964 the United Church of Christ petitioned the FCC to
allow the licenses of Jackson television stations WJTV and WLBT to expire on the grounds that the stations systematically ignored the needs and interests of the Negro population in their service area. The ACLU wrote to the FCC, arguing that public hearings were necessary to determine whether the licences of the allegedly segregationist stations should be renewed. The Union said the hearing would help the Commission judge fairly whether federal or local measures should be taken against the stations if they should be found guilty of consistently and intentionally misrepresenting the Negro population which constituted 40 per cent of the area. The FCC granted the customary three-year license renewal to station WJTV and its companion radio station largely on the grounds that they had apparently reformed since the United Church of Christ filed its petition. In the case of the other television station and its two radio affiliates, the FCC voted 4-2, to grant a one-year probationary renewal with a stern directive that they "immediately cease discriminatory programming patterns," as charged in a separate complaint filed by the AFL-CIO. The United Church of Christ then appealed to the U.S. Court of Appeals for the District of Columbia to order the FCC to hold hearings, which the ACLU supported.

A Senate subcommittee investigating juvenile delinquency received its share of criticism and support from the ACLU for an interim report on television. The Union opposed a subcommittee proposal urging television networks to cooperate in producing children's programs. "Competition between networks offers a better chance for variety of programs than joint programming," the ACLU said. The Union also opposed three other subcommittee proposals and supported two recommendations made in the interim report by the panel. The Union said it would be willing to support a revision in a program service form, submitted by the broadcaster to the FCC at the time of a station's license application or renewal, to show the extent of children's programming. At the same time the ACLU warned that "only actual federal regulation of program content" would deter the broadcasting of violence and brutality and such legislation would be unconstitutional under the First Amendment. The Union also objected to recommendations making membership in the National Association of Broadcasters mandatory and invoking stiffer penalties for violation of the NAB code on the grounds that the code would tend to restrain freedom in the trade of ideas, while setting up a quasi-governmental set of regulations governing pre-censorship, which is "patently unconstitutional."

The ACLU supported a subcommittee recommendation to promulgate an FCC rule encouraging public comment on children's programming. The Union also strongly supported a proposal for long-range research into the relationship between TV viewing and juvenile behavior. "So much of the drive to remove certain kinds of programs from the air, which always raises the peril of censorship, is rooted in the premise that such programs have a direct, harmful effect on the behavior of young child-
dren," the Union said. "The kind of research envisaged can help resolve the basic question of causal relationship."

The FCC approved the transfer of control over an AM-FM radio station in the Philadelphia area to a group headed by the Reverend Carl McIntire, generally regarded as a right-wing extremist. Many labor and religious groups protested the sale, arguing that the Rev. McIntire was irresponsible and his opinions were disruptive. The Greater Philadelphia Branch of the ACLU urged the FCC to approve the transfer, declaring that if the FCC were to accede to the protests, "government would be engaged in passing judgement on the worth, truth and social value of opinions. This, we submit, is governmental censorship." However, added the affiliate, should the new owner abuse the franchise "by suppressing opinions contrary to his own, his license may, in fact, should be revoked."

**Loyalty and Security**

The ACLU adopted a policy statement governing the rights of broadcasting employees who engage in political activity. The Union said it would oppose the firing of any employe, merely because of his identification with a political or controversial issue. But because of the sensitivity of the news field, it would not quarrel with a network or station that temporarily transferred a newsmen to a different position if he was so identified. "Our review," the Union said in a letter to the three major networks, "was not based on a particular case or complaint, but on the broader level of determining whether citizens' exercise of freedom of speech is curtailed."

The Union statement distinguished between two groups of employees: those who are purely entertainers, and should be allowed "full freedom in their non-broadcasting activity as a demonstration of support for the right of the individual citizen to express his opinions without fear of economic or social sanction;" and newsmen involved in presenting the news to the public. In the latter category, "there is fear that such participation will not only affect the newsmen's own presentation on the air, but will remove the impression of integrity and total credibility which the network or station seeks to project to the audience." The Union emphasized it was not urging broadcasters to transfer such employees to less visible jobs, temporarily. Any penalty more drastic than that, the ACLU warned, "would offend the spirit and meaning of the First Amendment," and would be vigorously opposed.

**NEWSPAPERS**

Prompted by a number of incidents in the past several years in which non-commercial advertising was refused by newspapers, magazines and the electronic mass media, the ACLU urged the proprietors of such
marketplaces for ideas to allow all points of view to be expressed through their advertising facilities. The statement by the Union, modifying a previous stand that upheld a publisher's right under the First Amendment to be free to accept or reject advertising, took note of changes in communications that have made it almost impossible for an advocate to receive serious consideration for his views unless it is heard by large segments of the public through the mass media. "The public interest in freedom of speech will be well served if communications media were publicly to declare and adhere to an 'open' policy with respect to acceptance of non-commercial advertising," the ACLU said. Such advertising includes expressions of opinion or recommendations for action or political or social issues; among the advertisements on such subjects that have been refused in recent years by mass media have been advertisements for "peace" groups, an organization devoted to the interests of homosexuals, and political candidates. Advertisements for informational and cultural works such as books and motion pictures should also be treated as non-commercial advertising, the ACLU said, since these items — even though they are advertised for sale — may themselves be the means for exposing controversial viewpoints to the public which is the essence of the First Amendment.

The ACLU urged privately-owned media voluntarily to adopt a policy under which fairness will prevail, subject to publishers or radio-TV station owners requiring "compliance with existing law and with reasonable non-discriminatory regulations." While encouraging the communications media to adopt its position, the ACLU said exceptions may be made for publications with "specialized audiences, such as labor union members or a religious group."

A different test was applied to media involved more with public ownership or regulation. Privately-owned but government-regulated radio and television stations which, under their FCC-granted license are obliged to operate in the public interest, have "a special obligation to accept advertisements dealing with political, social, religious or economic issues, whether or not contrary viewpoints have first been aired," the ACLU said. This necessarily includes the explicit obligation to accept advertisements rebutting views previously presented in other advertisements. Publicly-owned media, the statement urged, should be required to follow this policy if they accept advertising, as should the privately-owned, but government-regulated bus and subway monopolies.

The Courts

The U.S. Supreme Court extended to criminal libel cases the so-called New York Times rule, which limited state power to punish criticism of public officials to situations where a statement is made "with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not" (see last year's Annual Report, pp.
The unanimous decision broadening the landmark ruling was made in the case of Jim Garrison, the District Attorney of Orleans Parish, La., who was convicted of criminal defamation for criticising eight local judges.

A policy statement by the ACLU squared with the high court's decision in both the Times and Garrison cases. Completing an 18-month review of libel and free speech, the Union declared its opposition to libel suits by persons in political life unless they could prove "with convincing clarity" that the statements conformed to the Supreme Court definition of malice. At the same time, the ACLU reaffirmed its position that, outside the area of politics, ordinary libel suits do not raise civil liberties issues but that criminal and group libel laws do violate First Amendment guarantees of free expression.

As regard to libel suits in politics, the Union said its policy statement was prompted by the need to permit "the widest scope of criticism and free discussion of public affairs. . . . Speech cannot be restricted without making government the arbiter of truth," the statement warned. Persons within the realm of politics were defined as those who hold, have held or are aspirants for public office, which include either elective or appointive posts in a political party or at any level of government. In the non-political area, however, the ACLU said that "defamatory attacks on individuals have little relation (if any at all) to the purposes for which freedom of speech is safeguarded. False statements involving character assassination do not forward the process of a marketplace of ideas." Thus, "in the absence of an overriding public interest," the right to sue for libel does not, in itself, involve a question of civil liberties. As for the Union's opposition to criminal prosecutions for libel, the policy statement pointed out that in a "disproportionate number" of these cases, the defamed person has been, or is, involved in politics. "The repressive effect of criminal libel laws could operate most strongly, therefore, in the very area in which it is vital that the greatest possible scope be given to free expression," the ACLU declared. In a similar vein, the Union explained its opposition to group libel laws aimed at preventing defamation of a group. Said the ACLU: "The type of statements sought to be proscribed by group libel laws, like defamatory statements about public officials, require protection because they frequently will pertain to social and political issues of public importance. While the statements may well be offensive and hateful, still it is better that they be openly expressed and accessible to challenge and debate."

The ACLU fought two free press issues all the way to state Supreme Courts. The Union lost a case in the Alabama Supreme Court, which upheld the constitutionality of a state law forbidding any form of electioneering on Election Day, thus reversing a lower court ruling that the statute violates guarantees of freedom of speech, press and due process of law. The Union had filed a friend-of-the-court brief on be-
half of James E. Mills, editor of the Birmingham *Post-Herald*, who was
arrested in 1962 for writing an Election Day editorial urging his read-
ers to support a proposition changing the form of local government.
And the New Mexico Supreme Court reversed the criminal con-
tempt of court conviction of Will Harrison, a columnist. Harrison was
convicted for intimating that a former District Attorney got favored
treatment from a lower court in a vehicular manslaughter case. The
*New Mexico CLU* argued before the state Supreme Court that Harri-
son's conviction violated his right to freedom of the press under the First
and Fourteenth Amendment, an argument which the high court agreed
with.

A federal judge in Nashville, Tenn. invalidated the state Senate's
resolution which barred reporters of the *Tennessean* from the Senate
floor as a violation of the First and Fourteenth Amendments. The reso-
lution grew out of fracas during which a reporter from the paper refused
to leave a committee hearing when its proceedings were to be conducted
in a secret session.

Other Issues

The battle continued between reporters, backed by a House gov-
ernment information subcommittee, and the Executive Branch. The
subcommittee held hearings on a bill supported by the ACLU allowing
anyone who asks to see most records of the federal government. The
bill was opposed by Administration officials, who said that while they
appreciate the public's right to know, the situation was too compli-
cated to be resolved by a set of rules. Meanwhile, the American Society
of Newspaper Editors again singled out a favorite target, the Pentagon,
for allegedly "managing" the news. "It has not been an encouraging
year for freedom of information," the chairman of an ASNE committee
declared. On the local level, the public's right to know was enlarged in
Milwaukee and New York. A Milwaukee judge ordered the police chief
to make departmental administrative bulletins available to the press and
public, and an appellate court in New York City ruled that Criminal
Court clerks must open filed records for public inspection unless the
papers were sealed by specific court order or statute.

In other actions by ACLU affiliates:

‖ The ACLU of Southern California helped win a ruling entitling a
reporter to use a tape recorder at a public hearing.

‖ The NYCLU won the dismissal of charges of peddling without a license
brought by three men who were selling a magazine published by LeMar,
an organization espousing the legalization of marijuana.

‖ Two Houston newspapers asked the ACLU to investigate the public
information polices of the National Aeronautics and Space Administra-
tion, following a charge by the papers that NASA shrouded its activities
in unwarranted secrecy.
ACADEMIC FREEDOM

Loyalty and Security

Persistent efforts over the years by the ACLU, the nation's leading colleges and other organizations opposed to sworn affidavits and disclaimer oaths required of teachers and students in federal education programs continued to bring encouraging results. In 1962, a vigorous campaign knocked out the mandatory disclaimer affidavit from the National Defense Education Act. Pursuing the issue, Senators Joseph S. Clark of Pennsylvania and Robert F. Kennedy of New York introduced a bill to eliminate remaining loyalty provisions from the NDEA: the oath of allegiance, the provision making it a crime for anyone belonging to any organization registered or ordered to register as subversive under the 1950 Subversive Activities Control Act to apply for student aid, and to disclose any convictions for offenses more serious than traffic violations. A bill to eliminate the allegiance oath and past criminal record section, introduced by Congressmen Ogden Reid of New York, passed a House Education subcommittee, with the help of testimony from U.S. Commissioner of Education Francis Keppel, who favored repeal of the "loyalty" provisions.

Meanwhile, in the states, the ACLU continued the campaign to eliminate state-wide loyalty oaths for teachers in Georgia, New York, Idaho, California and Rhode Island.

The Georgia attack was launched by 165 professors at 13 institutions by the Georgia Conference of the American Association of University Professors, in cooperation with the ACLU of Georgia and the national AAUP and ACLU. A complaint was filed with a Federal District Court in Atlanta to prevent state officials from firing or refusing to hire professors who will not subscribe to the controversial oaths on the ground that they are unconstitutional abridgements of the rights of free speech, thought, belief and conscience protected by the First and Fourteenth Amendments.

The first oath attacked in the complaint was adopted in 1935. It declares that each teacher, from the elementary to the university level, will annually affirm he will "refrain from directly or indirectly subscribing to or teaching any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism." In 1949 the Georgia legislature evidently came to the conclusion that the 1935 oath had too many loopholes; it passed an oath requiring every state employe to swear he is neither a member nor a supporter of the Communist Party. Still a third statute under attack was passed in 1953. It is a security questionnaire requiring every state employe, as a condition of employment, to list all groups of which he is, or was, a member and to disclose his own membership and that of his parents, children and other relatives in a
list of 250 so-called subversive organizations. The 1935 and 1949 oaths were condemned in the complaint as violations of the Fourteenth Amendment because they provide "no ascertainable standard of conduct which is susceptible of objective measurement, and are so vague and uncertain that men of common intelligence are required, at their peril, to guess at its meaning." This standard had been applied by the U.S. Supreme Court in voiding state loyalty oaths in Florida and Washington in 1961 and 1964 — cases in which ACLU affiliates played a vital role. The 1953 catch-all questionnaire was attacked in the complaint as unconstitutional under the due process clause of the Fourteenth Amendment, and as having no possible bearing upon a teacher's professional competence.

Shortly after the original complaint was filed the Georgia Superintendent of Schools modified the 1935 oath, removing some of the objectional phrases. Subsequently the faculty members amended their complaint to say that they did not object to taking a positive oath of allegiance to the Constitution, and forswearing membership in the Communist Party. A special three-judge federal court then ruled that the teachers may be required to take the positive oath and swear non-Communist Party membership, but held the 1935 and 1949 statutes unconstitutional on grounds of vagueness.

The test case in New York State, brought by five faculty members at the State University branch in Buffalo, moved a step forward when a special three-judge federal court agreed to hear arguments against the loyalty oath and the companion statutes raised by the ACLU and the AAUP in a joint friend-of-the-court brief. The brief contended that the oaths and the statutes raised serious constitutional issues because of their breadth, vagueness and limitations on a teacher's freedom of speech and association. Soon after it was decided that the special federal panel would hear the case, the president of the State University in Buffalo announced that no future employes would have to sign the oath. Announcing an end to use of the beleagured Feinberg Law certificate, the educator said that henceforth the university official who appoints a faculty member will be responsible for determining his qualifications.

Long opposed by the ACLU, the Idaho state loyalty oath statute was set aside by a three-judge Federal court which held that the absence of a formal hearing for a public employe refusing to take the oath violates the due process procedures of the Fourteenth Amendment. The panel said the hearing was required prior to dismissal "in order to determine the nature and quality of an individual's membership, present or past, in a 'party or organization' proscribed by the statute." The court did not agree, however, with the ACLU's contention that the statute was also void on the grounds of its vague language.

Vague language was also an issue in a new legal challenge of California's Levering Act loyalty oath launched by the ACLU of Northern
California. The affiliate filed a suit on behalf of William and Rita Mack, two ex-Communist school teachers who resigned from the Party in 1957. When the Macks took the oath in 1958 they did not disclose their former membership because the statute does not mention the Communist Party. They said they believed in good faith that as far as they knew during their period of membership, the Communist Party did not advocate the violent overthrow of the government. The state Board of Education ruled they had signed false loyalty oaths since all Party members must know that it advocates the violent overthrow of the government. It is precisely this verbal confusion and unconstitutional vagueness that the ACLU affiliate says has made the Levering Act a trap for the unwary and so broad as to inhibit activities protected by the First Amendment. If the Act means by "advocacy" the abstract notion that in some circumstances a governmental unit should be overthrown by violence, then the oath is an unconstitutional infringement of political freedom under the First Amendment. If the oath means incitement of immediate violent overthrow it should say so, the ACLU of Northern California declared.

Those who insist on loyalty oaths will agree, if pressed, that as security measures they are virtually useless. The real issue, argue civil libertarians, is the use of the oaths to penalize a teacher's private beliefs, even when they are not manifest in the classroom. Such was the case, for example, when the ACLU of Southern California came to the defense of Wendell Phillips, a Fullerton Junior College teacher who was finally upheld by the state Supreme Court in his refusal to answer questions put under the Dilworth and Levering oath acts. Other ACLU affiliates also were active, with conspicuous success, in opposing loyalty oaths for public school teachers. Following protests by affiliates in Rhode Island, Detroit and Philadelphia, boards of education dropped requirements that teachers answer questions about their political beliefs and associations.

A pro-Vietcong professor of American history at Rutgers University became the center of an academic freedom battle. His right to his opinions was endorsed by the university's Board of Governors and New Jersey Governor Richard J. Hughes, acting on the assurance that the political viewpoint expressed during a "teach in" on Vietnam was not carried into the classroom. Rutgers' defense of academic freedom was applauded by the ACLU of New Jersey, though the affiliate strongly deplored the fact that the issue quickly became a political football in New Jersey's gubernatorial campaign.

Other Faculty Issues

The U.S. Supreme Court ordered the Supreme Court of Alaska to reconsider the dismissals of two Seward teachers fired for "immorality" after they criticized the local school board and superintendent. "Immorality" may be an extreme accusation, but penalizing teachers for
criticizing their superiors is a somewhat risky business nevertheless. The Illinois Division of the ACLU, for example, protested the dismissal of a science teacher who published his unflattering opinion of school policies. And the ACLU came to the defense of a Georgetown University assistant professor of English who was notified he was fired after four years of service, and after he published three magazine articles deploring the university's failure to stimulate student concern for civil rights, to teach the Papal social encyclicals, and criticized Catholic-run colleges for giving lay professors too little say in campus policies.

A similar case — on a bigger scale — arose over protests at Paterson State College in Wayne, N.J. that the school restricted social, religious and political freedom on campus. Seven students and two professors were dismissed over the protests; the students were later reinstated but the professors were not. The uproar prompted the ACLU of New Jersey to conduct a six-month inquiry into the situation, and it concluded that "the spirit of repression and reprisal" were rife on the campus. The affiliate urged the state Commissioner of Education to open an investigation of the "inexperienced and thin-skinned" college administration, but the Commissioner rejected the request. The state college argued that since the professors did not have tenure, the college was free not to renew their contracts without giving reasons, although it claimed that the teachers' involvement in protest was not the basis for its action. As the Commissioner of Education is expected to turn down the professors' appeal, the issue will then go to the courts, with the support of the ACLU of New Jersey. Mere unorthodoxy can also be grounds for dismissal of a teacher, as the Iowa CLU discovered. The affiliate defended a West Des Moines high school English teacher, whose license was not renewed, chiefly on the grounds that his methods were unconventional.

**Student Rights**

The most explosive protest over student political rights in years shattered the Berkeley campus of the University of California, and echoed on campuses across the country. "The students are restless" was the general consensus, but to the credit of college administrators, "anti-subversive" moves by over-zealous legislatures were successfully rebuffed at a number of schools.

The uproar at Berkeley was well-organized, widely supported and deliberately disruptive, using civil disobedience tactics some students had learned in the civil rights movement. The highpoint was the mass invasion of the university administration building during an all-night sit-in, for which almost 600 persons were arrested for trespassing, resisting arrest, and failure to disperse an unlawfully assembly. The ACLU of Northern California filed a friend-of-the-court brief on behalf of the students charging that the unlawful assembly accusation was
unconstitutionally vague. The basic issue, however, was the university administration's rules curbing student political activity, principally the right to punish students for off-campus social and political protests that the courts may judge illegal. The ACLU backed the students, who in turn were supported by the Berkeley Academic Senate after a stormy session. "The current controversy," the Union said, urging the California Regents to adopt the faculty's peace proposals, "raises a major challenge to academic freedom. The right of students to freely express their political opinions in the same manner as other citizens is an integral part of academic freedom. The spirit of free inquiry, the core of an educational institution's function, cannot prevail if students' political activity is hobbled." The Regents did not accept the faculty proposal, although it partially met the student demands.

Praising the spirit of free inquiry apparent in Nevada, the ACLU applauded Governor Grant Sawyer for refusing to ratify a so-called anti-riot law believed designed to restrict student political activity. "I cannot grant my approval to legislation which might, by extension or broad interpretation, result in thought control," he said. In South Carolina, Wisconsin and New Hampshire, legislatures debated and defeated proposals to ban Communist speakers on state-college campuses. A North Carolina law which prohibits Communists and persons who invoke the Fifth Amendment from using the facilities of public colleges was condemned by the state Board of Higher Education; the law, hastily passed near the close of the 1963 legislative session, threatened the accreditation of state-supported colleges because the legislators, in effect, usurped the authority of school trustees. After a lengthy controversy the legislature revised the law to give control of speakers to the colleges' board of trustees. Such laws or regulations, regardless of who promulgates them, are unconstitutional in the opinion of the ACLU. In opposing a California law which banned Communist speakers on state-run campuses (subsequently voided by the California Supreme Court) the Union argued, among other grounds, that under First Amendment protections of free speech and association, such statutes are unconstitutional unless the restrictions are clearly justified by a "specific, clear and present danger."

A similar argument was raised by member-students of the ACLU at Ohio State University in challenging a speakers ban in effect since 1962 at the insistence of the university's trustees. The faculty and administration requested permission to end the ban but the trustees initially refused. Then, following months of turmoil, the trustees reversed their stand. Henceforth, "recognized" student groups may invite speakers of their choice, merely by getting the approval of their faculty adviser, rather than (as previously), of the university administration.

In other actions by the Union and its affiliates defending the right of students to hear speakers of their choice:

The ACLU sharply questioned a policy at New Paltz (N.Y.) State
College whereby student groups must allow for both sides of a partisan issue to be heard in the course of a scheduled series of meetings. The Union said the restriction fosters an atmosphere of timidity which would make students less willing to invite spokesmen for unpopular causes. "College students do not lead insulated lives," the Union observed. "In the natural course of events they read and hear opinions of varying political casts."

¶ The NYCLU castigated Brooklyn College president Harry D. Gideonse for "efforts to smear student groups at the college with the Communist label." The smear followed a student protest to win greater political freedom for on-campus activities.

¶ The ACLU of New Mexico launched an investigation of the state university's speaker policy when Billy James Hargis, an extreme right-winger, was refused permission to speak on the campus. Subsequently the affiliate said that the policy which requires speakers to be sponsored by recognized student organizations is reasonable. Under this policy George Lincoln Rockwell addressed a student group.

¶ An all-out effort by the Greater Philadelphia Branch of the ACLU, including a letter to each state representative, helped kill an American Legion-sponsored bill to bar Communists and members of "Communist-fronts" from speaking at state-aided colleges and universities.

¶ The case of three Young Socialist Alliance members convicted under the Indiana anti-sedition law continued its journey in the state courts (see last year's Annual Report, p. 33). In the latest episode the state Supreme Court upheld the law, centering its decision on the constitutionality of the state, not whether the three former Indiana University students were actually guilty of the charge. The Indiana CLU filed a friend-of-the-court brief raising several arguments against the law, including the claim that federal law superceded state law in the sensitive area of "subversive" activity.

¶ The Maryland Branch of the ACLU protested a "witch hunt" against civil rights leader Bayard Rustin, invited to address a training school for Maryland law officers at the University of Maryland, but who refused to sign the loyalty oath required of speakers at the state-supported institution.

Other affiliates acted on behalf of students' rights, political and otherwise:

¶ The Texas CLU came to the aid of a college student who charged that he was expelled because of his political activities. The college was recently taken into the state university's system and has since refused the student's request for pre-admission forms.

¶ The Illinois Division investigated the case of Roosevelt University students, who were suspended after publishing a premature report on the university president's resignation.
The ACLU of Northern California successfully intervened on behalf of a student who was penalized for having been suspected of, but not proved, to have committed thefts on campus. He denied the charge and the college took no action against him.

Issues Raised by the Integration Conflict

The Kansas ACLU sent a representative to the State Attorney General to discuss harassment by a local county attorney of Kansas University students who demonstrated on campus against discrimination in fraternities, off-campus housing, and assignment of student teachers. The affiliate sought to have the Attorney General use his authority to insure that the students' right to protest would be observed unhampered by the local county attorney. Months of sporadic picketing, which sometimes turned violent, demanded that Girard College, a 117-year-old privately endowed boarding school for orphaned boys in Philadelphia, end its all-white admissions policy. The restriction was set down in the will of the founder, but the Greater Philadelphia Branch of the ACLU, together with the NAACP, urged the trustees to break the will with court permission, as other institutions have done. The Indiana ACLU protested a motion of the Indianapolis school board to prohibit school children from participating in peaceful demonstrations and to deny their right to address the board on its failure to establish a clear cut policy regarding further desegregation of the school system.

In the South, the ACLU'S Southern Regional Office helped draft a statement greatly liberalizing student rights at all-Negro Alabama State College. The statement was part of an agreement under which nine students who had been suspended after civil rights demonstration on the campus were reinstated; they went into court seeking an order for their reinstatement but the case was dropped. The Louisiana ACLU obtained the reinstatement of a white student at Tulane who was expelled for bringing Negro guests into the Student Union; in this case, too, reinstatement ended a pending court suit.

RELIGION

CHURCH AND STATE: EDUCATION

Aid to Parochial Schools

In several memorandums to ACLU affiliates the Union expressed its concern that the billions of dollars in federal funds allocated under the Economic Opportunity Act and the Education Act should be spent in accordance with the constitutional separation between church and state. The variety of programs in both federal projects, the Union warned, raises "a very real danger of unconstitutional practices developing, and a gradual and almost imperceptible erosion of some principles of the
We are not suggesting that the ACLU affiliate function should be to police the meticulous implementation of (government) regulations," the ACLU said. "But we think there is a real danger . . . and that it will require a lot of judgement and sometimes difficult detective work to find and decide which practices warrant our greatest energies in the effort to maintain those Constitutional principles."

Thus, the Greater Philadelphia affiliate is scrutinizing a Neighborhood Youth Corps project which furnishes federally paid workers to serve cafeterias and other institutional programs of parochial schools, and may be engaging in outright religious discrimination in screening candidates in the program. The New York CLU and the ACLU deplored the degree of involvement by religious groups in Project Headstart, designed to operate guidance centers for more than 500,000 preschool children throughout the country. Affiliates in Detroit, Chicago, Pittsburgh and New Haven are keeping a close watch on community action programs which have contracted part of their work to parochial schools. Even though legislation establishing federally supported anti-poverty programs and education facilities have clauses prohibiting the spending of government funds for religious or sectarian programs, the ACLU said, "those administering the program may not be people who are very much aware of constitutional issues, and they may tend to use their usual methods of working."

Prior to issuing its memorandums to be on the alert, the ACLU made several objections to the Administration's education bill. Although the measure was modified in the House to satisfy some doubts raised previously by the Union, several changes or clarifications still were sought. Among them were: (1) elimination of the possibility that religious school representatives, serving as such, might be designated to supervise the administration of supplementary educational centers; (2) elimination of the requirement that benefited students attend a "non-profit" school, lest Congress' intention be construed to mean that private schools rather than their students were intended to benefit from the program; (3) limiting "loans" of educational materials to a specific time; (4) clarifying overly broad authorizations of publicly financed programs within parochial schools; (5) providing specific guarantees against any form of segregation of religious or private school pupils involved in dual enrollment programs; (6) the elimination of text book aids; and, most importantly, (7) the addition of "provision for judicial review . . . as a safeguard against religious discrimination."

Shared Time

Announcement of the Union's position on the legislation coincided with the conclusion of a year-long review by the Union of shared-time plans, a widely-discussed proposal that aims to avoid the thorny question of church-state separation. The Union concluded that the
programs "present grave constitutional and civil liberties problems."

Going beyond the immediate proposals before Congress, the Union noted that some shared-time plans may not present substantial constitutional issues. On the other hand, some plans call for the enrollment of sectarian school pupils as part time students in public schools and, to satisfy compulsory state education requirements, develop combined public and religious school criteria. Such plans, the ACLU said, violate the provision of the First Amendment which says the government shall not "establish" a religion. The establishment clause is infringed "because of the substantial benefit such programs confer on sectarian schools and because of the joint involvement by secular and church authorities in decision-making on matters affecting religion," the policy statement declared. The Union said that while the U.S. Supreme Court's 1947 Everson decision narrowly upheld the payment of funds directly to parents for transporting parochial school students, the Court also noted: "Neither a state nor the federal government can . . . pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion." Pointing to this statement, the ACLU said that under many shared-time programs "tax money is no longer being used incidentally for the child's protection and health, but is instead being utilized to support academic programs for the children receiving their basic education in church schools."

The Union statement objected to the joint decision-making potentially involved in shared time arrangements, ranging from the choice of instructors and teaching materials to the number of hours to be devoted to a course. Such procedures, said the ACLU, violate the establishment clause of the First Amendment, which was drafted "by men of the 18th century who had vivid recollections of bitter religious conflicts. Its chief purpose was to enable the United States to avoid the friction and strife that inevitably accompany the fusion of government and religion."

An even more flagrant disregard for the wall between church and states is illustrated by tax financed bus transportation for parochial and private school children, which ACLU affiliates across the country are testing in the courts and fighting in the legislatures. The Ohio CLU brought a prompt court challenge of a school bus law underwriting public transportation costs for private and parochial school children. "Calling the bill a safety measure doesn't make it one," the affiliate declared. "This is only an attempt to circumvent the constitutional separation of church and state and it doesn't do it." The impending Ohio test was the latest of several court challenges raised against similar legislation by ACLU affiliates in Indiana, Michigan, New Jersey and Pennsylvania. In addition, affiliates in Missouri and Minnesota opposed
such proposed legislation that did not pass. The Union disagrees with the U.S. Supreme Court ruling in *Everson* which upheld the constitutionality of direct payments to parents for costs incurred in sending their children to parochial schools on public transit buses. Moreover, it is arguing that specific provisions in many state constitutions are violated by present and proposed legislation. For example, bus transportation is not simply a form of welfare provision to the child, as some states claim, but is an aid to the school. It is not analogous to lunch and medical care, which a child must have, irrespective of whether or not he attends school, and which are truly welfare services which a state may help finance without engaging in aids to religious education.

The supply of textbooks to parochial schools and their pupils — another popular form of unconstitutional aid — was condemned by the ACLU and affiliates in New York and Rhode Island. The NYCLU opposed a law which enabled parochial school to "borrow" textbooks chosen from a list used by public schools and the Rhode Island Affiliate supported a test case brought by parents in Cranston challenging a 1963 textbook law. The Administration's education bill provides $100 million for library and textbook aid to public and parochial schools alike, but ACLU objection to such aid failed to win support.

**The Courts**

The U.S. Supreme Court's 1963 decision banning prayers and Bible reading in the public schools continued to provoke rearguard defiance in scattered communities, as it probably will for years to come. Nevertheless, other court decisions gradually widened enforcement of the high court's ruling.

The U.S. Court of Appeals for the Second Circuit, for example, held that kindergarten children could not recite nursery prayers during school time. At issue were prayers recited in a Queens, N.Y. class, among them: "God is great, God is good, and we thank Him for our food." And in the first ruling in Pennsylvania governing the distribution of Gideon Bibles in the schools, the Bucks County Court of Common Pleas ruled that such distribution violates the First Amendment's guarantees of church-state separation. "The net effect of our religious freedom Amendment," said the court, "was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business . . . Our Constitutional policy denies that the state can undertake or sustain (religious training, teaching or observance) in any form or degree." The plaintiffs who brought the successful action were represented by cooperating attorneys from the Greater Philadelphia Branch of the ACLU.

But while the high court's school prayer decision continued to win gradual acceptance among die-hard opponents, not all the Court's opponents remained silent. In a number of northern New Jersey towns,
for instance, blue and white banners proclaiming "One Nation Under God" have blossomed atop municipal flagpoles and buildings of lay religious groups and some veterans' organizations. The ACLU of New Jersey, while not regarding the display as a clear issue of church-state separation, considered the movement as inspired by "super-patriots" anxious to assault the U.S. Supreme Court. It strongly objected to the use of tax funds and public grounds to advertise defiance of the tribunal's ruling deplored "this disrespect for the law."

The phrase "One Nation Under God" in the Pledge of Allegiance recited by school children was the source of a suit brought by the Free-thinkers of America. The words "under God" were challenged as a violation of guarantees of religious freedom protected by the First Amendment, but the U.S. Supreme Court refused to review a New York state ruling upholding the use of the words as a patriotic, not religious exercise.

In the first round of a major case testing the constitutionality of tax aid to religious institutions, a Maryland county circuit court held that state funds to help finance science, dormitory and dining facilities at four church-affiliated colleges did not violate church-state provisions of the First Amendment. The test, said the court, must be whether "the legislative purpose or the primary effect of the enactment advances or suppresses religion." If the legislation did not it is valid, said the court. Otherwise, it is not valid. At the same time, however, the court confessed: "It must be admitted that regardless of the established law of separation of religion and government this has never been completely accomplished and would be practically impossible."

Aid to Higher Education

Though the question of federal aid to colleges and universities, as such, is not a matter of civil liberties concern, the ACLU does have a concern over whether the entirely worthwhile objective of strengthening higher education will be compromised by ignoring the constitutional problems arising out of federal aid to some church-related institutions. With this thought in mind, and considering the Administration's Higher Education Bill, the ACLU issued a policy statement outlining criteria under which federal aid would and would not violate the First Amendment's ban against "an establishment of religion or prohibiting the free exercise thereof. . . ."

The statement pointed out that the mere affiliation of an educational institution with a religious group does not necessarily bar it from receiving public funds. Rather, the institution's range of activities must be examined before such a decision can be made. The Union set forth five practices, any of which would be reason for denying a college or university public assistance: (1) requiring faculty or students to belong to a religious organization or to subscribe to any belief or opinion as a condition of employment, admission or graduation; [Divinity schools of insti-
tutions are exempt from these requirements] (2) requiring a student to attend religious services or take part in religious observances; (3) requiring a student to attend classes designed to foster religion, except for objectively presented courses in, for example, comparative religion; (4) subjecting a student to discipline solely on religious grounds; (5) conducting educational activities in places that display religious symbols or pictures. Among the forms of public aid barred to institutions engaging in any such practices the ACLU statement cited federal or state grants or loans to construct buildings, buy equipment or raise teacher salaries.

At the same time, the ACLU found no objection on civil liberties grounds (while expressing no opinion as to desirability from a policy point of view) to the use of public funds for specific non-religious research projects required by the national interest. Nor did the Union oppose public scholarships and fellowships to aid students attending any accredited institution of higher learning, provided the awards are made on the basis of academic ability or under such programs as the G.I. Bill. In subsequent testimony before a Senate Education subcommittee, the ACLU relied heavily on the policy statement in raising several objections to the Higher Education Bill, mainly on the grounds that it "does not attempt to draw any distinctions that should be constitutionally drawn" between some religious educational institutions and others.

Religious Observance and Other Issues

The ACLU of Pennsylvania was spared the trouble of pressing a court test of a course introduced by the Cornwall-Lebanon school system which ostensibly studied "the literary and historic qualities" of the Bible (see last year's Annual Report, p. 36). The state Board of Education retained five scholars to examine the course, and on their recommendation decided it was neither literary, historic, or satisfied "reasonable educational standards." A more direct challenge to the U.S. Supreme Court's ban on prayers in the public schools was made by school officials in Fairfax County, Va. and De Kalb, Ill. It was opposed in both communities by ACLU affiliates. The National Capital Area CLU criticized without success lunch period prayers, a practice ruled unconstitutional by a Federal District Court in Michigan; the Illinois Division also criticized prayers during kindergarten snack time as further evidence of "widespread non-compliance with Supreme Court decisions."

Disputes over recitation of the Pledge of Allegiance to the flag involved several Union affiliates. The ACLU of Southern California defended a Santa Barbara high school boy who refused to take the pledge on the grounds it would violate his agnostic beliefs. A Superior Court judge agreed, ruling that even though some people might think the boy "odd or even sacrilegious . . . we must stand for his own right to think
as he will, so long as his way of life . . . (does) not interfere with the beliefs of others.” Protests by the Minnesota Branch brought the cancellation of a compulsory pledge by graduating teachers in state institutions to teach reverence for God in the classroom. And the ACLU of Northern California won the re-hiring of a Sonoma county school teacher who had refused to lead the flag salute on religious grounds.

CHURCH AND STATE: THE GENERAL PUBLIC

Problems of Conscience

Skirting the question of constitutionality, the U.S. Supreme Court nevertheless issued a significant decision when it exempted three men from military service who had been denied classification as conscientious objectors because of non-adherence to orthodox religious beliefs. The Court supported a broad interpretation of the test contained in the draft law: "Whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption."

The ACLU filed a friend-of-the-court brief on behalf of the three CO's, Daniel Andrew Seeger, Arno Sascha Jakobson and Forest Brett Peter. The brief claimed the law’s definition of religious training and belief to be unconstitutional since it "creates a governmentally sanctioned form of religion and thus directly affronts the First Amendment." The ACLU did not question the constitutionality of confining exemption to religious grounds, but opposed the government’s right to define the kind of religious beliefs that qualify. "Moreover," the ACLU declared, "its limitations only to those who meet the test of believing in a Supreme Being is a burden on the free exercise of those who believe in nontheistic and polytheistic religions."

In pausing to note its refusal to rule on the constitutionality of the draft exemption law, the high court said: "No party claims to be an atheist or attacks the statute on this ground. The question is not, therefore, one between theistic and atheistic beliefs. We do not deal with or intimate any decision on the situation in this case."

Blue Laws and Other Issues

The New York State Court of Appeals approved a broad interpretation of a Fair Sabbath Law which, in the opinion of one District Attorney, "seems to render valueless our Sabbath-closing laws.” Previously the laws generally allowed a business to stay open on Sunday if it closed on Saturday, and it was operated by a family on the premises. But the court ruling held that limiting the interpretation to families was unjust dis-
crimination against a man who had no family, for example. It left open the question of how large a business could remain open on Sunday if a member of the family supervised his employes.

An atheist inmate of a California jail lost his plea to be transferred to a single cell where he would not be subjected to religious services. Jail officials offered to remove him temporarily during the Sunday services, but the ACLU of Northern California objected on the grounds that it would cause the prisoner to be singled out and subjected to possible harassment.

The city of Eugene, Ore. was divided by a controversy over a giant, concrete cross erected in a municipal park high above the city. At night it glows, lighting the dispute between citizens who want the cross to remain and a group who have pledged its removal, even if it means taking the case to the U.S. Supreme Court.

**General Freedom of Speech and Association**

**Right of Movement**

In a decision that departed from a recent trend expanding the rights of Americans to travel abroad freely (see last year's Annual Report, pp. 42-43), the U.S. Supreme Court affirmed the authority of the Secretary of State to bar U.S. citizens from travel to unauthorized areas. The majority opinion held such authority was "constitutionally permissible. The fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited." The case before the Court was brought by Louis Zemel of Connecticut who sought to visit Cuba as a tourist and to make himself "a better informed citizen." His two requests to make the trip were denied by the State Department. The ACLU contended in a friend-of-the-court brief that Zemel was thus deprived of the "liberty of personal movement protected by the First and Fifth Amendments, and no public interest is shown to justify the suppression of the constitutional right of personal travel to Cuba." The brief cited two previous passport decisions by the high court, Kent (1958) and Aptheker (1964), as indicating that the tribunal holds the constitutionally protected right of personal movement to be paramount in the absence of grave national emergencies.

The Supreme Court said that Zemel's case was different from these earlier cases, which involved the plaintiffs' political beliefs. The Zemel ruling, the majority said, was based on "foreign policy considerations affecting all citizens" and was not used to penalize individuals for their beliefs. The Court said the Passport Act of 1926, which grants the Secretary of State the right to issue passports, was worded broadly enough to permit the impositions of area restrictions. And it cited earlier restrictions to illustrate the point: Belgium in 1915 because of a famine;
Ethiopia in 1935 because of war; China in 1937 because of unrest. In the case of Cuba, said the majority, restrictions were justifiable because the Castro government seeks to export revolution through travelers. A minority opinion (one of three) written by Justice William O. Douglas challenged the Court's reasoning. "The First Amendment presupposes a mature people, not afraid of ideas," he said, arguing that Americans should be allowed to travel freely to Communist countries in order to understand them.

Prior to the high court decision in the Zemel case, the ACLU intervened successfully to obtain a passport for a New York City student, Frances Mary Kissling. She had been refused a passport by the State Department unless she executed an affidavit promising not to travel to Cuba, but when the Union noted the absence of any statutory authority for such a pre-condition, and the denial of a hearing to protest the action, the State Department granted a passport. Obviously, however, even though she had the passport, Miss Kissling would not be allowed to visit Cuba under the limitations upheld in the Zemel case.

Acknowledging a charge by the ACLU, the State Department instructed all its passport offices to use only newly-issued application and renewal forms and cease using old forms that ask for information that the Union said was "unconstitutionally irrelevant." The irrelevancies were questions pertaining to membership in the Communist Party and to travel and residence abroad by naturalized citizens. Both arguments had been previously upheld by the U.S. Supreme Court in two separate cases supported by the ACLU in friend-of-the-court briefs.

RIGHT TO FRANCHISE

Congress

By the relatively narrow margin of seven votes the Senate defeated a proposed constitutional amendment that would have upset the landmark "one-man, one-vote" decision of the U.S. Supreme Court. The Senate roll-call ballot, which fell short of the two-thirds vote necessary to approve an amendment to the Constitution (plus a two-thirds vote in the House and ratification by three-fourths of the states), revived the battle last year to set aside the high court's ruling.

As it did then, the ACLU printed and circulated literature, lobbied actively through its affiliates locally and nationally, and stimulated other groups to action against the proposed amendment sponsored by Senate Minority Leader Everett Dirksen. The ACLU's basic position, outlined in testimony, pointed out that every state that joined the Union during the century after the original 13 formed the United States, entered with a constitution providing for representation in both houses of its legislature based principally upon population. The ACLU pointed out that
the U.S. Supreme Court's insistence that each state redistrict itself so as to ensure an equal number of voters in each electoral district was based on the provision of the Fourteenth Amendment forbidding the states to deny any person "the equal protection of the laws." The Amendment was ratified in 1868 and only after that time, the ACLU declared, "the states began the movement away from representation in accordance with population — sometimes by a change in formula and sometimes simply by failing to live up to their own constitutional requirements." By 1962, when the high court made its first ruling on equal representation, the movement had reached a peak. "Malapportionment was king nearly everywhere."

The Union specifically criticized a proposed constitutional amendment, endorsed by the American Bar Association, to the effect that one house of a bicameral legislature might be apportioned by factors other than population if the plan is approved by a majority of voters. "To urge that the popular majority should be restrained from fulfilling its goals because of the objections of economic or social-interest minority groups is to confuse high principles with cynical expediency," the ACLU said. "Nothing is more fundamental to representative government than the rules governing the electoral process itself. No reason consistent with the ideals of equality and majority — or minorities' — rule has been advanced for not effectuating the equal-population principle."

Summing up, the ACLU said the high court's decisions "have made it possible for state legislatures to return to their rightfully proud position in which they can voice a confident consensus of state opinion that will represent, again as once before, the wishes of the majority."

The Courts and the States

Sometimes voluntarily, and sometimes prodded by Federal District Courts, state legislatures continued the job of reapportioning themselves to conform with the U.S. Supreme Court decision. In several states — New York, California, Illinois and Idaho, among others — the first attempt at redistricting was not good enough, and the high court sent the plans back to the lower courts for reapportionment that would follow its one-man, one-vote doctrine. In these and other states where legislatures were slow to apply the rule, ACLU affiliates joined the effort to hurry them along into compliance. The Indiana CLU won a significant victory in its reapportionment test. The U.S. Supreme Court struck down as unreasonable a provision of the Texas constitution which automatically denies the right to vote in local elections to servicemen who move into the state after entering military service; the high court upheld a Maryland one-year residency eligibility to vote in presidential elections in a brief order, without an opinion. The rule had been challenged by the ACLU and the National Capital Area affiliate as having "no reason-
able relation" to the process of choosing the state's Presidential electors. The argument said that such residency requirements in 29 states had prevented at least 3,700,000 persons from casting their ballot in Presidential elections — the number of people who move from one state to another each year.

RIGHT OF ASSEMBLY IN PUBLIC FACILITIES

The long and widely-publicized conflict over the use of the Indianapolis World War Memorial by controversial organizations flared anew with the filing of a court suit seeking to prevent the Indiana War Memorials Commission to change its rules so that they are consistent with the free use of a public building. A state court held that no group which hadn't already met there could have access to the building, and that the Commission didn't have the authority to decide who could use the building; this complicated decision was altered by an appellate court which ruled that the Commission did have the authority to decide how the building should be used. Since this court decision the Commission has said that it will change its rules. The IndianaCLU was not involved in the suit, although it has not been permitted to hold meetings there under a temporary restraining order in effect since 1963. Actually, the battle to meet in the building dates to 1953, when the ICLU cancelled its founding meeting at the Memorial after protests by the American Legion that the ACLU defends Communists and because the Union's founder and long-time director, Roger Baldwin, spent a year in jail as a conscientious objector in World War I. During a recent visit to Indianapolis, Baldwin noted that a plaque in the War Memorial calls for "Liberty Under Law" and commented: "If anyone believes that, it's the American Civil Liberties Union." While the controversy continued in Indianapolis, a similar debate ended, more happily, in Syracuse. The Upstate Division of the New York State ACLU successfully protested the inclusion of a loyalty oath in contracts of all performing groups and lecturers using the Syracuse War Memorial.

Though the ACLU has no sympathy with the ideologies of the John Birch Society, the National Renaissance Party or the Ku Klux Klan, the Union came to the defense of these groups after they were denied the use of public facilities in violation of constitutional guarantees of freedom of expression.

The Maryland Branch of the ACLU offered to challenge those sections of a state law under which the Birchers were refused the right to meet in public schools, but the society did not press the issue. The state Attorney General made the ruling, deciding that since the society was a "politically partisan action group" that had polled less than 10 per cent of the vote, it was not eligible under the law to meet in a public school. The affiliate said that "regardless of the alleged statutory authority,
the ruling — and perhaps the statute also — violates the First and Fourteenth Amendments of the U.S. Constitution.” The National Renaissance Party was caught up in a squabble with the Orange County (N.Y.) Board of Supervisors, which refused to allow the NRP to hold a public meeting in the Newburgh County court house. The reasons indicated were that the NRP was “fascist” and “subversive.” The ACLU filed suit pointed out that the court house had been used by other political parties, and to deny its use by the NRP constituted illegal prior censorship, silencing discussion of public issues, and abuse of discretionary power. The case was not pressed because the NRP dropped the suit. As for the Klan, the Georgia CLU protested to the Mayor of Marietta his refusal to allow the Klan to meet in the town square. After the affiliate’s position was made public, the Mayor said he would offer the KKK equally advantageous room to meet elsewhere. The response was a change of heart, since originally the refusal was based on the Klan being “a disruptive element in the community.”

In other actions by ACLU affiliates:

¶ The ACLU of Washington State helped win the acquittal of 40 students at Western Washington State College who were arrested for parading without a license during a peace protest demonstration.

¶ The New York CLU won dismissal of charges against a civil rights speaker who was arrested in Harlem during a post-riot ban on meetings in the area.

¶ The ACLU of Northern California successfully defended a visiting Chicago professor, Dale Pontius, arrested in San Francisco for failing to disperse during a Vietnam street corner protest meeting.

¶ The Colorado Branch of the ACLU appealed the loitering conviction of a Denver minister speaking on a soapbox to the state Supreme Court, which reversed the verdict on the grounds that the speaker did not obstruct pedestrian traffic.

¶ Following a protest by the ACLU of Southern California federal judges in Los Angeles modified an order banning all demonstrations around the federal building.

STATE AND LOCAL CONTROLS

Birth Control

In a historic decision that establishes a new constitutional “right of privacy” the U.S. Supreme Court struck down Connecticut’s 1879 birth control law. The law forbids the use of contraceptives by anyone, including married couples. The reasoning behind the high court’s sweeping ruling was in line with the contention of the ACLU, as outlined in a friend-of-the-court brief, that the statute violated the right to privacy guaranteed by the due process clause of the Fourteenth Amendment and
bears no reasonable relation to a proper legislative purpose. "Connecticut
presumes to regulate the conduct of its citizens by notifying them that
(it will declare) sexual intercourse between spouses . . . to be criminal
unless they abstain from the use of (such) devices," the brief said.
Though the ostensible purpose of the law is to regulate morality, "... it
is perfectly obvious that a statute whose terms forbid even married couples
to use contraceptive devices has no bearing whatsoever on morality."

The Supreme Court's majority opinion cited half a dozen constitu-
tional amendments in supporting the view that the case before the
tribunal "concerns a relationship lying within the zone of privacy
created by several fundamental constitutional guarantees. And it concerns
a law which, in forbidding the use of contraceptives, rather than regul-
lating their manufacture or sale, seeks to achieve its goals by means
having a maximum destructive effect upon that relationship. . . . We deal
with a right of privacy older than the Bill of Rights." Not all the seven
members of the majority concurred on the applicable constitutional provi-
sions to void the law, but all seven agreed that married couples have
private rights that cannot be abridged in such a manner.

The case was decided on appeal by two leaders of the Connecticut
Planned Parenthood League, which won the support of the ACLU in a
previous, but inconclusive test of the law. For many years the Union
maintained that state and federal laws which interfered with the dis-
semination of birth control information impaired freedom of speech
and information protected by the First Amendment. Subsequently, the
ACLU re-evaluated its policy and concluded that any prohibition against
the prescription, sale or use of birth control articles was a serious violation
of the due process clauses of the First and Fourteenth Amendments.

Job Rights

"The judgment of people on the basis of their individual ability and
competence, not their political beliefs and associations, is a cardinal
civil liberties principle." So said the ACLU in a policy statement defend-
ing the right of John Birch Society members to be policemen. The state-
ment was prompted by demands in many communities to dismiss police-
men who were Birchers on the grounds that the aims of the society were
not compatible with the duties of public servants to protect citizens' con-
stitutional rights, and preserving peace in the event of violence or racial
tension. But, as the Union observed: "This is not the first time this
question has arisen. From time to time membership in other organizations
whose philosophy and program are regarded as opposed to democratic
values was suggested as a disqualification for public employment — most
notably members of the Communist Party and Catholic nuns who belong
to religious orders should not be allowed to teach in public schools. The
ACLU reaffirms now in the John Birch Society case the same civil liberties
standard" it applied in the past — that "mere membership in any or-
ganization is not sufficient grounds for disqualification from employment. The right to associate for lawful purposes is a constitutionally protected right and no public servant should be barred from exercising it."

The Union noted that public officials have discretionary power to examine the suitability of police officers at all times, and certainly if information is received that activity as a member of the John Birch Society has interfered with the proper performance of a policeman's duties, further action may be warranted. "But the guiding standard for such inquiry should be conduct," the ACLU emphasized, "not mere membership."

The New York CLU launched a drive aimed at stopping the widespread practice of many employers who ask prospective employees whether they ever have been arrested. Such questioning raised as conditions for employment "is a pernicious evil which makes a mockery of our presumption that a person is innocent until proved guilty." The NYCLU did not object to questions about prior convictions, as distinct from mere arrests.

In actions involving the private rights of public employees, ACLU affiliates took these steps:

* A ruling that prohibits political activity by Lincoln Park firemen, policemen and their spouses was termed "clearly contrary" to the First Amendment by the Metropolitan Detroit Chapter, which pledged prompt action to test the policy.

* The Minnesota CLU backed the right of civil service employees to be delegates or alternates to political conventions.

* The ACLU of Northern California filed suit on behalf of an assistant district health officer who was fired for picketing during a civil rights demonstration. The affiliate also successfully defended a fireman who was suspended for 30 days for criticizing his department; the suspension was invalidated by a Superior Court.

* In reply to newspaper charges that two employes of the U.S. Geological Survey in the San Francisco area were prevented from making statements as private citizens about building hazards, the acting director of the agency told the ACLU the accusations were false. "The individual rights of our employees are fully recognized," he said. "The tradition of this bureau opposes censorship or infringement of these rights."

**Other Issues**

The ACLU of Washington State debated a policy statement on Indian rights. One position held that Indian treaty rights are property rights and hence do not pose civil liberties questions. The opposing view argued that since Indian treaty rights were interwoven with the survival of the group as an ethnic minority, Indian treaty rights should be defended by the affiliate. Finally a compromise was achieved in a policy
statement: ". . . ACLU may be called upon from time to time to secure protection for such Indian rights, including rights founded on treaty and rooted in property concepts. Where it is not hostile to basic Bill of Rights principles, the ACLU should favor the concept of Indian self-determination. ACLU involvement in Indian right issues should be on a case-to-case basis within the principle stated above."

ACLU affiliates took actions on a wide variety of state and local limits on individual freedom, ranging from the ACLU of Pennsylvania's opposition to a bill which would remove children from unwed mothers, and a warning against midnight check-ups on welfare clients issued by the Illinois Division to criticism of a bill by the Colorado Branch that would force drivers to submit to a blood test for alcohol on the theory that they gave their "implied consent" to the test simply by driving on the roads.

In other actions by ACLU affiliates:

¶ The Rhode Island ACLU presented a 10-point statement to a Constitutional Convention which included establishing the right of any citizen to sue the state for an alleged wrong — only possible now by special act of the legislature.

¶ The ACLU of Southern California filed a brief supporting a member of the American Nazi Party accused of violating a building code by operating a headquarters in his home.

¶ The ACLU of Michigan won acquittal of another Nazi party member who was accused of libeling the Negro race by distributing hate leaflets.

¶ The New York ACLU will seek to have declared unconstitutional a city ordinance requiring the "conspicuous display" of an American flag by street speakers.

CONGRESSIONAL ACTION

The Courts

The U.S. Court of Appeals in Washington, D.C. considered the last three contempt-of-Congress cases which arose during the spate of post-World War II congressional investigations. The three men had been twice convicted for refusing to answer questions about their political associations, claiming constitutional protections against such interrogation. Their convictions were overturned by the U.S. Supreme Court in 1962 but a few months later they were indicted on new charges. Two of the men, Herman Liveright of Philadelphia, a former TV program director, and William Price, a former N.Y. Daily News reporter, had appeared before the Senate Internal Security Subcommittee. The Court of Appeals reversed the convictions on procedural grounds.

John G. Gojack, a labor union official, had been called by the House Un-American Activities Committee. His conviction was upheld by the U.S. Court of Appeals for the District of Columbia and the ACLU asked the U.S. Supreme Court to review the case. The petition asked the high
court to reverse its 1957 decision in the *Barenblatt* case, which upheld the constitutionality of the HUAC's mandate and declared that the nation's need to preserve internal security outweighed a person's First Amendment's rights, when the two needs conflicted. The ACLU petition further argued that the real purpose of the HUAC investigation was to break the union of which Gojack was then an officer (the United Electrical, Radio and Machine Workers of America) and to "exact compulsory disclosures of . . . political beliefs and affiliations" forbidden by the First Amendment.

**House Un-American Activities Committee**

While the three remaining contempt convictions were pending, the HUAC voted three new citations for contempt — the first since 1959. The targets were three persons who refused to answer questions before an executive session of the committee in connection with its inquiry of protests made to the State Department in 1963 when the government initially barred a Japanese professor from the U.S. for a series of peace meetings. The visa was later granted. The three witnesses were Mrs. Donna Allen of the Women's International League for Peace and Freedom; Russell Nixon, general manager of the *National Guardian*; and Mrs. Dagmar Wilson, a founder of Women Strike for Peace. They demanded an open hearing, arguing that their protest to the State Department was an expression of opinion protected by the First Amendment. After a brief trial the three were convicted. The ACLU supported their position that the HUAC's inquiry infringed on their right of free speech and association.

Though the House Un-American Activities Committee has been responsible for only two new laws during its 27-year history, the Committee received a record appropriation of $370,000 which supposedly was intended to serve a legislative purpose. The act of lavishness was mitigated somewhat by the fact that the largest show of opposition in years was made by members of the House against the HUAC. Sixty-four Congressmen voted (or were paired) to recommit the appropriation request for public hearings, and since only 20 had voted similarly during its last request for funds in 1963, the vote was regarded as major progress toward curbing, and hopefully eventually abolishing, the HUAC.

A few days before the House vote the ACLU strongly opposed a proposed investigation of the Ku Klux Klan and other ultra-right extremist groups by the HUAC. A letter to the HUAC chairman noted that while the record of such groups shows that they go past the bounds of free speech and association to actual violence and harassment, "such activities fall into the category of violation of criminal law, which the Department of Justice has the clear authority to investigate and prosecute. And if any questions arise as to the Department's adequate enforcement of these laws, the HUAC is certainly not the unit to review the issue. . . . This
function is within the specific authority of the House Judiciary Committee. Quite apart from the jurisdictional issue, the letter condemned the circus that HUAC hearings would surely become "and for which the HUAC has been roundly criticized in the past." And the Union added that although it would be easy for the ACLU to cheer an investigation of a group as obnoxious as the KKK "the vitality of the democratic institutions we defend lies in their equal application to all. The single standard is still the best standard and it should be observed at every level of government."

The ACLU's objections to a HUAC investigation of the Ku Klux Klan took on particular pertinence a few days later when a civil rights worker was slain in Alabama, allegedly by members of the KKK. President Johnson strongly suggested that congressional committees may wish to investigate such organizations "and the part they play in instigating violence," but the ACLU registered its prompt objection to what the HUAC might consider an invitation to proceed in its disgracefully familiar style. The Union, though outraged by the murder and praising the prompt arrest of the Klansmen, said that "while an investigation of violence would not seem to involve First Amendment questions of speech and association, the record of the HUAC is one that clearly discloses wholesale attacks on these vital freedoms. Their public hearings have resulted in 'trial by publicity' in which people are accused of wrongdoing without benefit of confronting and cross-examining their accusers."

The real need, the Union said, is an investigation, perhaps by the House Judiciary Committee, of the administration of justice in the South "to probe the underlying reasons for the encouragement which overt criminal acts now enjoy in some Southern states. We suggest that a proper investigation be made of the present ineffectiveness of federal law enforcement in the South, including the continued selection of juries in federal courts and the appointment and hiring of federal court officials on a discriminatory basis." Nevertheless, the HUAC opened an investigation of the Klan.

The HUAC's major public effort of the year took place in Chicago and prompted the usual explosive hearings. Among the groups leading the opposition to the committee's investigation of alleged Communist influence in the area was the Illinois Division of the ACLU. The affiliate strongly protested the release of names of subpoenaed witnesses prior to hearings, in violation of fair procedure and the HUAC's own rules. It objected to investigations of persons launched by city officials, initiated only on the strength of the issued subpoena. In addition, the ACLU affiliate contributed a member to an eight-member lawyers' panel formed to represent witnesses desiring an attorney, and recruited a group of ACLU observers to scrutinize police conduct, picketing and other forms of protest. One subpoenaed witness, Dr. Jeremiah Stamler, an internationally eminent heart disease specialist, was forced to sign a statement of loyalty on the demand of the Chicago Board of Health —
a demand which the Illinois Division condemned as a violation of Stamler's rights under the First Amendment. Though the physician refused to testify before the HUAC, and subsequently filed suit against the Committee, the health board said his opposition had nothing to do with his professional usefulness or ability and voted unanimously to retain him. Rather than testify, Stamler walked out of the hearing on the advice of his counsel, Albert E. Jenner Jr., a former member of the U.S. Loyalty Review Board and an attorney for the Warren Commission that investigated President Kennedy's assassination. Jenner said the hearings should have been closed, and he should have had the right to cross-examine witness to protect his client from defamation and slander. He denounced the HUAC for "degrading U.S. citizens of good reputation" while operating from behind a "façade of alleged legislative fact-finding."

Stamler's suit follows the line of attack made so often in the past against the HUAC. Its authority is so broad and vague that freedom of speech and other rights under the First, Fifth, Ninth and Tenth Amendments are violated.

In the aftermath of HUAC hearings in Buffalo (see last year's Annual Report, pp. 50-51), six of 15 witnesses who were called to testify lost their jobs. The Upstate Division of the New York State ACLU deplored this "economic reprisal" based on a refusal to testify, a right protected by the Constitution, and successfully intervened on behalf of two elementary school teachers whose recommendation for tenure had been denied because of alleged affiliation with the Communist Party. In one case, a teacher's husband had refused to testify; in the other, pressure to refuse tenure grew out of a 1957 HUAC hearing at which the teacher refused to testify. The Union affiliate urged the Board of Education to consider the cases on the basis of the teachers' professional competence and warned that any move to deny tenure on the basis of the HUAC hearings would be unconstitutional. After a heated controversy, the Board voted to grant tenure.

LOYALTY AND SECURITY

The Federal Scene

The U.S. Supreme Court, in a major decision affecting state-federal judicial relations, declared unconstitutional major provisions of Louisiana's subversive activities and communist control law. The decision, which declared that federal courts may enjoin state court proceedings under statutes that unconstitutionally deny free speech, may provide effective protection against harassment of civil rights workers in the South. The immediate effect of the ruling was to prevent Louisiana officials from trying James A. Dombrowski, executive director of the Southern Conference Educational Fund, Inc. and two other SCEF officials
for failing to register as members of a "Communist-front" organization (see last year's Annual Report, p. 57).

In a friend-of-the-court brief submitted to the tribunal the ACLU argued that the statutes were invalid on their face as violations of free speech and association. The Union also declared the lower Federal District Court had erred in denying injunctions sought by the SCEF officials. "We urge this court to make clear . . . that it is the duty of the District Court to decide cases," the brief said. And in view of "persistent and repeated misunderstandings in the lower courts" of U.S. Supreme Court rulings, "the public interest requires accurate adjudication at the trial level; appeals should be needed only when the law is truly unclear," the Union argued.

Commenting on the possible meaning of the case for the civil rights movement, the brief declared the issue to be whether federal rights would be enforced "or whether they are to be smothered in the name of state sovereignty." Resolving the issue, the high court overruled a previous doctrine under which federal courts had abstained from enjoining state court proceedings to give the state courts an opportunity to rule themselves. In the SCEF case, the Supreme Court said, even if the defendants successfully defeated the state's allegations the long legal battle "will not assure adequate vindication of constitutional rights." It is the "fact of the prosecution" itself, added the high court, which has a "chilling effect upon the exercise of First Amendment rights."

The seizure of some 2,000 allegedly pro-communist books and pamphlets by Texas law enforcement officials was denounced by the U.S. Supreme Court: "What . . . history indispensably teaches is that the constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books and the basis of their seizure is the ideas which they contain . . . The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression." The high court's stern reminder was issued in the case of John W. Stanford Jr., a San Antonio bookseller whose home was raided by Texas police under provisions of a law known as the Suppression Act. The Act outlaws the Communist Party and authorizes the issuance of a warrant for virtually any material that allegedly shows the person or individual is violating the statute. The ACLU, which handled Stanford's appeal, charged that the law violated federal protections under the Fourth Amendment against illegal search and seizure. The Union also argued that the Suppression Act was void on the grounds of superseding federal legislation in the area of communism, but the high court did not reach this issue.

The U.S. Supreme Court voided one section of the Subversive Control Act of 1950 that requires members of the Communist Party to register with the government, the first test of this provision which has been made
unenforceable over the last 14 years by previous court challenges raised by the Party. The ACLU filed a friend-of-the-court brief in the case, supporting the appeal of William Albertson and Roscoe Quincy Proctor. Pointing out that both men claimed the constitutional privilege against self-incrimination before the Subversive Activities Control Board, the ACLU said that to require them to risk criminal prosecution in order to test the validity of their constitutional claim would be "a mockery of justice." The law should, therefore, be held unconstitutional as applied to individual members who have, in timely fashion, claimed their privilege. Accordingly, they should not be required to register. Underscoring the First Amendment significance of the case, the Union argued that compliance with the SACB's order would force disclosure of political associations. "We submit that no such invasion of First Amendment rights should be permitted, barring a showing of grave public necessity, and that no such showing exists here or has even been attempted," the brief declared. In its decision the high court held that the individual registration provision directly violated the protection against self-incrimination.

Prior to accepting the Albertson-Proctor appeal, the high court had declined to rule on another section of the law, requiring "Communist front" organizations to register, on the ground that the record had become "stale" with the passage of time. Thus, it vacated orders against the Abraham Lincoln Brigade and the American Committee for the Protection of the Foreign Born and remanded the cases to the Subversive Activities Control Board "for proceedings consistent with this opinion." Dissenting Justices were sharply critical of the decision to avoid a test of the provisions under challenge. "The case is very much alive," Justice Douglas declared. The ACLU agreed, and in a 50-page friend-of-the-court brief argued that the statute violates the First and Fifth Amendments to the Constitution. The Union cited, among other reasons, the failure of the law to meet the clear and present danger test; the failure to distinguish the constitutionally significant difference between a Communist-front and Communist action organization; and the vague, uncertain range of acts it penalizes. Following the U.S. Supreme Court's refusal to face the constitutional issue, the ACLU urged Attorney General Nicholas de B. Katzenbach to discontinue legal action against both groups. "We urge the U.S. to abandon its futile pursuit of an invalid objective under a statute which is an affront to free men," the letter said, "... a constant reminder that the vast power of government can always be invoked to punish those with whom it disagrees."

The ACLU won several significant victories in the drive against loyalty oaths and affidavits required under federal laws and regulations. The Union regards these oaths as infringements on freedom of association and expression, protected by the First Amendment. An amendment to the Economic Opportunity Act removed the disclaimer oath as it affects Job Corps and Vista volunteers. Legislation submitted to create a national humanities foundation along the lines of the National Science
Foundation eliminated an oath requirement because, in the words of the legislation's sponsor, "they haven't accomplished anything." The strong stand by the Union against disclaimer oaths also appeared to be a major factor in dropping the requirement for applicants for federal Public Health Service fellowships.

After pondering the case for six months, the U.S. Court of Appeals for the District of Columbia ruled in favor of a job applicant who had been accused of homosexual conduct and thereby barred from federal employment for three years. The case, supported by the National Capital Area CLU, was significant in two respects: 1) for the first time, job applicants (as distinguished from employees already on the job) were recognized as having the right to challenge disqualifications in the courts; 2) the court held that mere allegations of "immoral" or "homosexual conduct" were not sufficiently specific to justify disqualification or dismissal. Henceforth, the Civil Service Commission will have to tell an employee or applicant exactly what they did that warranted a label of immorality.

In other actions by the ACLU and its affiliates:

- The ACLU charged the Veterans Administration with violating the First Amendment rights of Robert G. Thompson, a Communist Party official, by denying him disability benefits because he attacked U.S. policy during the Korean War. Thompson won his benefits, on technical grounds.

- The National Capital Area CLU won a victory in the U.S. Court of Claims, which held that a government employee accused of falsely denying membership in the Communist Party cannot be deprived of his annuity without a trial-type hearing.

- The Illinois Division investigated the case of a homosexual fired from a non-sensitive federal government job after he was convicted for disorderly conduct for homosexual assault — as it happened against an undercover policeman.

- After intervention by the ACLU of Northern California, the Atomic Energy Commission dropped security charges against a scientist accused as a security risk because he and his wife allegedly associated with members of organizations held to be subversive.

**State and Local Issues**

The Arizona CLU argued its challenge of the state's loyalty oath for public employees before the Arizona Supreme Court. In a friend-of-the-court brief filed on behalf of Mrs. Barbara Elfbrandt, a Quaker and a junior high school teacher in Tucson, the affiliate said that the vague language of the oath abridged the rights of freedom of thought and expression guaranteed by the First Amendment. The case was based on the U.S. Supreme Court's decision voiding the Washington State
loyalty oath in 1964, which was finally won with the aid of the ACLU of Washington State after nine years.

The Ohio Civil Liberties Union vigorously protested the revocation of the articles of incorporation of the state Ku Klux Klan as a "subversive organization." "Although incorporation may be a privilege not constitutionally protected," the affiliate said, "to the extent that (it) is revoked because of the ideas espoused . . . revocation becomes a civil liberties concern. The state may not by withholding a privilege induce limitations upon freedom of speech, which if directly attempted would be unconstitutional . . . . Only the actual violation of law or the creation of a clear and present danger of a violation of law, determined with full due process safeguards, justifies the revocation of an association's incorporation on the basis of its advocates." The challenge was not pushed by the KKK.

LABOR

Loyalty and Security

Following its defeat in the U.S. Circuit Court of Appeals for the Ninth Circuit, the government appealed a decision striking down a section of the 1959 Labor-Management Reporting Act prohibiting Communist Party members from holding office in labor unions. By a narrow margin, the U.S. Supreme Court sustained the lower court, holding the provision to be a bill of attainder and thus a violation of the Constitution. A bill of attainder is legislation which inflicts punishment without a judicial trial.

The case involved Archie Brown, who served on the 35-member executive board of the Local 10 of the International Longshoremen's and Warehousemen's Union, and on whose behalf the ACLU of Northern California filed a friend-of-the-court brief. The affiliate said the provision of the Act "seeks to partition off from a small minority the full guarantee of freedom of speech and association, the guarantee that liberty will not be taken without due process of law, and seeks to put members of the group under a sweeping bill of attainder." The high court concurred, declaring that Congress "cannot specify the people upon whom the sanction it prescribes is to be levied."

Heartened by the U.S. Supreme Court decision in the Brown case, the ACLU and eight national labor unions jointly filed a friend-of-the-court brief asking the high court to strike down the non-Communist affidavit provision of the Taft-Hartley law as a bill of attainder. The latest test was brought in behalf of six officers and employees of the International Union of Mine, Mill and Smelter Workers who were convicted of conspiring to defraud the government by falsely denying their membership in the Communist Party or their affiliation with the Party.
The conviction was also assailed for relying on the vague concept of "conspiracy" which, the brief pointed out, has often been used to harass unions. The Mine-Mill case has aroused special interest in labor and civil liberties organizations since the 1950's. The affidavits which are the basis of the government case were signed between 1949 and 1955. The defendants were convicted in 1959 after this provision of the Taft-Hartley law was repealed, but the decision was reversed because of prejudicial hearsay testimony allowed at the trial. Convicted on retrial in 1963, they then petitioned the U.S. Supreme Court to review the case following a decision sustaining the conviction.

Hollywood, which has been in the spotlight over loyalty-security disputes that sharply divided the film colony, was again the focus of a major loyalty oath challenge. The test grew out of a merger between the Screen Director's International Guild, operating in the New York area, and the Director's Guild of America, which operated on the west coast. Backed by the ACLU, six members of the SDIG sought an injunction in a Federal District Court forbidding the DGA to refuse the directors membership in the new organization because of their refusal to sign a loyalty oath which has long been a requirement of the DGA. The refusal was a matter of principle; the plaintiffs argued that the oath establishes "a test of political belief as a condition of union membership; maintains a foundation for a political blacklist . . .; restricts freedom of expression . . . and diminishes personal integrity by forcing avowal of unclear generalities."

Workers' Rights

The ACLU urged strict enforcement of Title I of the Labor-Management Reporting Act which provides pre-election remedies of alleged abuses of union members' rights. The Union's views were submitted in a friend-of-the-court brief filed on behalf of three members of District 1 of the Marine Engineers' Beneficial Association, AFL-CIO who argued before the U.S. Supreme Court that they were not given a fair opportunity to nominate candidates for union office after the MEBA adopted a reorganization plan in 1961. The reorganization drastically changed the union's rules for nomination and eligibility for office. Challenging the trio, the president and secretary-treasurer of the MEBA sought to apply another section of the Act, Title IV, which affords remedies only after an election. The ACLU brief said that Title IV was inadequate protection since "the interim period, for the protesting members, must be spent with a hostile administration in full control of union offices and authority and with full opportunity to consolidate its strength and position. Furthermore, it affords only limited inquiry into election abuses because it is available only after intra-union remedies are exhausted, and then at the decision of the U.S. Secretary of Labor rather than an individual complainant. The U.S. Supreme Court, however, ruled that the change of
rules in the complaint did not violate Title I, although they might violate Title IV. Thus, the Court removed the case from the jurisdiction of the federal courts.

The U.S. Supreme Court, reversing the U.S. Court of Appeals for the Second Circuit decision, upheld the voting system used by most labor unions at their conventions. On most convention roll calls, unions authorize delegates to vote the actual membership strength of their locals rather than give each delegate a vote. The weighted system was challenged by a faction within the American Federation of Musicians who claimed that a union dues increase was approved by a minority of the convention delegates, (though it represented a majority of the union membership represented).

The New York Civil Liberties Union filed a friend-of-the-court brief challenging the constitutionality of the state's Condon-Wadlin law, which bars strikes by public employees. The brief raised a variety of issues, including the fact that the penalty provisions of the law (strikers must work two days without pay up to 30 days for each day on strike) constitute involuntary servitude.

Bias

Considering the civil liberties questions raised when an employer uses his rights of free speech to present false or misleading statements to employees during a union organizing drive, the ACLU Labor Committee concluded that such biased statements may properly be grounds for the National Labor Relations Board to overturn a representation election. The decision, in effect, endorsed the current policy of the NLRB which holds that willful misrepresentation of facts within the knowledge of the speaker, under circumstances which make effective rebuttal impossible, and where employees lack independent knowledge to weigh the erroneous statements, may serve as reason to order a new election. The NLRB doctrine does not violate the First Amendment's rights of free speech, the ACLU said. In the interest of fostering free discussion during representation campaigns, the ACLU also supported the principle of the NLRB's backing of a union request for access to employees on company time and company property, in order to reply to an anti-union speech made by employers under similar conditions.

In the first major series of complaints filed under the 1964 Civil Rights Act, the NAACP charged 10 employers and five major labor unions with racial discrimination. In one case the NAACP said that an East St. Louis fertilizer plant operated by Darling & Co. had three white locals whose members had all the skilled, better-paying jobs, while the Negro members of the same union, the International Chemical Workers, were segregated in a fourth local. In a Memphis plant of the Kroger Baking Co., a member of the Bakers Union charged, the company restricted Negroes, some with college degrees, to janitorial jobs.
Congress wiped out a 40-year-old blight on the national record by writing a new immigration bill that erased discriminatory quota provisions used to virtually exclude southern Europeans and Asians from American shores. Though sections of the new law fell short of the ACLU's desires, the measure was nevertheless a major legislative achievement and vindication of long effort aimed at reform.

Other civil liberties reforms, in the area of social welfare, were won with liberalization of the rights of the mentally ill in New York State and the District of Columbia. And on a frontier issue of civil liberties, the Union launched a major effort to have the courts treat chronic alcoholism as an illness, not a crime.

The no-man's land between constitutional standards and police practice continued to be a bitterly contested area of civil liberties, with the U.S. Supreme Court gradually extending the rights of the accused. Though the trend was not wholly consistent—the Court ruled that a right protected by the Bill of Rights would not be granted retroactively, for example—the tribunal backed up the thrust of its decisions in recent years by holding state courts to the requirement that defendants must have the right to cross-examine witnesses. On three basic issues of criminal law the high court has yet to spell out its conclusions in detail: the circumstances under which a confession is admissible; the question of how soon a defense attorney may appear for his client; and the obligation, or lack of it, by the authorities to inform a prisoner of his constitutional rights. Relevant to the controversy was the growing public demand for an impartial, independent civilian authority to investigate charges of police malpractice—a demand for some form of public review board which the ACLU and its affiliates have vigorously supported.

Concluding a two-year study of the highly emotional, morally complex issue, the ACLU took a stand opposed to capital punishment and promised a major effort to seek the repeal of existing laws that impose the death penalty. The Union said that capital punishment denies equal protection of the laws, is cruel and unusual punishment and eliminates due process guarantees—irrevocably.

The continuing controversy between the conflicting demands of a free press and a fair trial were highlighted by the U.S. Supreme Court's reversal of Billie Sol Estes's swindling conviction. Television coverage of the Texas trial made it impossible for Estes to get a fair hearing, the Court declared.
Congress

An objective sought by every President since Harry S. Truman was finally achieved when Lyndon Johnson signed a new immigration bill at the foot of the Statue of Liberty. The historic reform, long advocated by the ACLU, removed the 40-year-old national origins quota system which favored immigrants from northern Europe and discriminated (and often virtually excluded) persons from southern Europe, Asia and other parts of the world. The Union said the quota system was fashioned in "ignorance" and accompanied by "ignobility." In place of the old law, the new measure set up an annual quota of 170,000 immigrants from all nations outside the Western Hemisphere, with a limit of 20,000 from any one country. It was a long step toward equality, but one section of the new law was deplorably backward: it placed a ceiling on newcomers from Canada, Mexico and other nations in this hemisphere of 120,000 annually, but fixed no limit for individual countries.

The restrictions for the Western Hemisphere were written into the bill in the Senate, where the ACLU testified on the then-pending legislation. The Union opposed such limitations while making several proposals of its own. The ACLU proposed a 10-year statute of limitations on deportable offenses, removing "the threat of banishment and exile" from resident aliens and securing "a fair and humanitarian administration of the deportation laws." In addition, the Union suggested that any alien admitted to the U.S. for permanent residence prior to his 14th birthday should be immunized from deportation and that sailors who marry U.S. citizens should be allowed to remain. Among the grounds for deportation are failure to register as an alien, becoming a public charge within five years of arrival, conviction of two crimes involving moral turpitude, advocating the doctrines of communism. The ACLU's recommendations failed to pass, however.

Citizenship

Aided by the ACLU, a Fresh Meadows, N.Y. man successfully concluded a two and a half year campaign to force the State Department to eliminate the word "race" from its immigrant visa and alien registration forms. The effort began when Myron Blumenfeld found that the "race" question was still in use when he applied for a visa for his adopted son, a Greek orphan, who came to the U.S. under a law permitting an adopted orphan to enter as a non-quota immigrant. But three years previously, Congress had passed a law specifically requiring the elimination of any question of race or ethnic classification from immigrant visa forms.
The ACLU of Northern California defended Socialist Party leader Bogden Denitch’s petition for naturalization. It was denied in a Federal District Court on the grounds that Denitch was not of “good moral character” because he had falsely said he was a citizen in applying for a job (he is eligible to apply again, however). Even so, the decision represented a civil liberties victory in that the decision rejected the government’s political and religious objections to Denitch’s petition. “Conformity in religious or philosophical belief, political viewpoint and economic theory, is not a prerequisite to citizenship,” the judge declared. “It is well that this is so. Otherwise our society would lose the vitality stemming from free expression of diverse views and from non-violent advocacy.” The words should have been heard in Syracuse, N.Y. where a month-long protest by the Upstate Branch of the New York State Civil Liberties Union was necessary before a Syracuse University professor was awarded citizenship. The reason for the delay was that between the date of his security clearance and his scheduled swearing-in, the professor had joined the ACLU.

Deportation

Issues of basic religious liberty were involved in the threatened deportation of a Greek national on whose behalf the ACLU filed a friend-of-the-court brief before the U.S. Court of Appeals for the Fourth Circuit. “Deportation . . . will, as the Government freely concedes, virtually insure his imprisonment there for practicing religious rights which are protected by the First Amendment and guaranted against abridgement . . . through the Fourteenth Amendment,” the Union brief declared. The case involves Eleftherios Liadakis, a Greek seaman who entered the U.S. in 1960 as a non-immigrant crewman and overstayed his allowed time. While in this country he married a U.S. citizen and converted to the faith of Jehovah’s Witnesses. If he is forced to return to Greece Liadakis intends to continue the proselytizing required by the faith, even though the Greek constitution forbids proselytism “or any other interference” with the Greek Orthodox Church. The punishment is imprisonment. The Union contended that the section of the Immigration and Nationality Act authorizing the Attorney General to withhold deportation if the alien would be subject to “physical persecution” clearly applies to the imprisonment Liadakis faces. Furthermore, the ACLU said, the right to proselytize in the U.S. is a firmly rooted religious freedom, as is the tradition of aiding victims of religious oppression.

CONFINEMENT OF MENTALLY ILL

The Iowa CLU, filing a petition on behalf of a mental patient transferred from a hospital to an institution within the confines of a state
prison, prompted a major state reform in the confinement of the mentally ill. As a result of the case, 17 patients were moved back to the mental institution they came from and the legislature authorized construction of a new security hospital for the confinement of dangerous mentally ill patients. The reform followed a court ruling that it is unconstitutional for the state to transfer a patient from a mental health institution to a prison hospital at the Anamosa Reformatory. The practice had been routine for years, involving non-criminal mentally ill patients, before it was challenged by the ACLU affiliate. The Iowa CLU pointed out that civil procedures for committing a person to a mental hospital are not the same as the criminal procedures required to commit a person convicted of a crime to prison, arguing that the state-sanctioned transfer violated constitutional guarantees against loss of liberty without due process of law.

Major legislative reforms affecting the mentally ill were approved in the District of Columbia and New York State. The National Capital Area CLU hailed a law for which it had campaigned for years, simplifying voluntary commitment procedures and establishing rules guaranteeing prompt release unless a court order is obtained. Another feature of the legislation is a "Bill of Rights" governing communications by patients to individuals or agencies, the use of mechanical restraint, and the right to vote, sign contracts and dispose of property unless judged mentally incompetent. New York's rigid McNaghten rule was liberalized after 122 years by a law that liberalized the concept of criminal insanity. Under the old rule, psychiatrists could only answer yes or no on whether a defendant suffered from total mental incapacity; a defendant was considered sane unless he was completely incapable of knowing what he was doing, and whether it was right or wrong. Now, however, psychiatrists will be able to testify whether a person is "substantially" incapacitated and give his complete opinion of the defendant's mental condition, including whether the defendant could "appreciate" the difference between right and wrong. In a second major reform, the new law also ended the indefinite hospitalization of non-criminal patients without legal review by providing for a new agency which will guarantee court hearings at specific intervals after admission to an institution.

The ACLU was one of the groups which won the release, after 15 years, of a patient erroneously committed to Matteawan State Hospital for the Criminally Insane in New York. The patient, Paul Shappet, was committed in 1949 while on probation as a youthful offender and technically had no criminal record. The state relied on the fact that he had a previous criminal indictment, but since the indictment was nullified, Shappet's lawyer successfully argued that the patient should have been sent to a civil institution and not an institution for criminals.

In other actions by ACLU affiliates:

**The Minnesota CLU launched a campaign attacking as unconstitutional commitment legislation and practices on a statewide level. The drive**
began after the MCLU obtained the release of a patient after six weeks of imprisonment without a hearing, being denied the right to consult with her family doctor, contact her attorney, or even to call any friends.

¶ The Kentucky CLU won a state appellate court decision on the grounds that doctors in a mental inquest hearing presented affidavits, rather than subject themselves to cross-examination. The court held that although the inquest is quasi-criminal, the defendant’s freedom is involved as in a criminal case.

¶ The Wisconsin CLU sponsored a workshop on the civil liberties aspects of mental committment which produced quick results: introduction of a bill in the legislature directing the Legislative Council to review state commitment practices.

¶ A murder defendant who became insane after he was convicted was defended by the Louisiana CLU, which won commitment of the prisoner to a state hospital and a stay of execution.

¶ The Illinois Division successfully defended the right of an artist to his privacy and property. The artist, who had been a temporary mental patient, was unable to get hospital authorities to release work done there and was embarrassed by a public exhibition of his work in a show featuring the art work of mental patients.

**MILITARY JUSTICE**

The U.S. Court of Military Appeals upheld a provision of the Uniform Code of Military Justice which grants an absolute right of appeal to flag and general officers, but which affords lower ranks only a discretionary right of appeal. In a friend-of-the-court brief suit filed on behalf of Army Private Richard G. Gallagher, the ACLU challenged the constitutionality of the provision as an arbitrary denial of equal protection under the law. “As a federal court,” the ACLU declared, “this court is bound to give equal due process to all military defendants regardless of their rank.” In denying Gallagher’s petition, the appellate court held that due process was not denied because “the right of appeal is not essential to due process of law.” Furthermore, the court added, although the right of appeal is discretionary under the Code, “it is, in fact, a substantial review based upon arguments in writing” as well as an examination of the record for further infringements.

The San Antonio Chapter of the Texas CLU appointed a subcommittee to investigate reported violations of constitutional rights of
federal employees at Kelly Air Force Base through the use of psychological tests. A small random sample of employees interviewed by the Chapter disclosed that employees were being forced into retirement through "medical" disability following the administration of a few paper and pencil psychological tests and a brief interview with a psychiatrist. The employee was not formally informed of his alleged inadequacies, nor was he allowed to present his side of the issues or consult with his own physician (his right under Air Force regulations). In a few cases where the employee objected to the procedure and appealed through formal grievance machinery, he has been reinstated — but only after months of delay and after subjecting himself to more tests and examinations to prove he is in good mental health. The Chapter said the practice was a clear invasion of privacy and due process in which individuals have been apparently intimidated into submitting to examinations without being provided adequate advice as to their rights under the law.

**WIRETAPPING**

A national scandal erupted over disclosures by the Senate Judiciary Subcommittee on Administrative Practice and Procedure that the Internal Revenue Service had knowingly used illegal wiretaps, hidden microphones, two-way mirrors and a variety of snooping devices in investigating suspected tax frauds. IRS Commissioner Sheldon Cohen and Attorney General Nicholas deB. Katzenbach acknowledged that the IRS taught wiretapping techniques to agents and supplied wiretap technicians from Washington despite laws against electronic bugging. In one case, agents disguised themselves as telephone company agents and, using a similarly disguised truck, tapped conversations in Pittsburgh on three different lines for four months.

In a potentially significant lower court decision in New York City, the 1958 state law authorizing electronic eavesdropping was declared unconstitutional. A detailed opinion delivered by Supreme Court Justice Nathan R. Sobel addressed itself to the issue of whether a legally-authorized order for eavesdropping may be equated under the Fourth Amendment to a warrant authorizing trespassing to "search" for conversations. Finding an eavesdropping order to be equivalent to a search warrant, the court applied the Fourth Amendment's requirements for the issuance of search warrants, which include specifications in advance for the things to be seized during a search. Moreover, no warrant may be issued for the purpose of discovering mere evidence of a suspect's guilt. Hence, the law permitting official bugging does not meet these constitutional requirements, according to the opinion, and the evidence thus obtained is not admissible in court. The ruling dismissed the indictment of a Brooklyn policeman, Leonard Grossman, and three
others on charges of conspiracy to kill unidentified stool pigeons, based on evidence obtained by bugging the premises of one of the accused. The court-authorized bug, however, was placed in the course of an investigation into a jewel theft; the alleged conspiracy was uncovered as an unrelated matter during five months of eavesdropping during which all conversations were overheard.

In other actions by ACLU affiliates:

¶ The Illinois Division of the ACLU called on state officials to investigate possible violations of the state's eavesdropping law as they involved tape recordings made in a Springfield hotel without the knowledge or consent of the persons whose voices were recorded. The Division also opposed a proposed wiretap law, subsequently killed in the legislature, as a dangerous assault on the right of privacy. Judicial control of wiretaps is a mythical safeguard, the affiliate declared "because a judge can only act as a rubber stamp in a secret wiretap hearing brought without any notice to the citizen whose privacy is being invaded."

¶ The MinnesotaCLU strongly supported legislation which would outlaw the use of eavesdropping devices as violations of the Fourth Amendment's right to privacy and the Federal Communications Act, which makes it a federal crime to wiretap.

¶ A new Public Safety building opened in Syracuse, complete with the latest in electronic snooping devices in cells and waiting rooms. The Upstate Division of the New York State Civil Liberties Union registered a strong protest and after some months the system was disconnected.

ILLEGAL POLICE PRACTICES

Search and Seizure

Ruling for the first time that a right guaranteed by the Bill of Rights would not be applied retroactively, the U.S. Supreme Court rejected the appeals of two men who argued that their conviction in state courts was based on illegally obtained evidence. Both men based their claim on the high court's 1961 decision in the Mapp case, which held that the Fourth Amendment's prohibition against evidence seized in unreasonable searches and seizures is applicable to state courts. The question of retroactivity has become increasingly significant as the Court has expanded the safeguards available to defendants in state courts. As a result, the administration of justice in state courts is in a somewhat confused state, with prosecutors claiming they are hamstrung in the pursuit of criminals and civil libertarians insisting that defendants are entitled to every constitutional guarantee available under the Bill of Rights. The high court, in effect, took note of the situation by refusing to make the Mapp ruling retroactive, thus indicating that it would take
into account the effect of its rulings on the states. "The Constitution neither prohibits nor requires retrospective effect," the majority opinion declared. And in contrast to previous retroactive Court decisions on the right to counsel and coerced confessions which raised doubts about the actual guilt of the prisoners, the majority held that prisoners convicted before *Mapp* are no less guilty. *Mapp's* purpose was to deter unlawful police practices. "That purpose will not at this late date be served by the wholesale release of the guilty victims," the Court declared.

The "guilty victim" in this case was Victor Linkletter, a New Orleans burglary suspect whose home was invaded by police without a warrant. They seized the evidence that sent him to prison on a nine-year sentence. Unfortunately for Linkletter, his conviction became final 15 months before the U.S. Supreme Court decision in *Mapp*. A lengthy dissent in the Linkletter case called him the victim of "grossly invidious and unfair discrimination . . . simply because he happened to be prosecuted in a state that was well up with its criminal docket."

The U.S. Supreme Court reversed the gambling conviction of William Beck, upholding that the arguments of the ACLU and its Ohio affiliate which filed a friend-of-the-court brief in the case. Beck was arrested in November 1961 as he was lawfully driving his car. He was stopped by a policemen who had a police photograph of Beck, and knew him to be a convicted policy operator. While no evidence was found on him or in his car, a further search at the police station after his arrest turned up policy slips hidden in Beck's shoes. The Union brief held that Beck's constitutional rights were violated under the Fourth, Fifth and Fourteenth Amendments. No warrant had been obtained for the search, the brief declared, even though the police had ample opportunity to get one. Moreover, "the conviction . . . flowed directly from the denial of a timely motion to suppress the evidence so obtained (which) collides violently with the federal constitutional standards to which state criminal procedure is obliged to conform."

Chronic alcoholism is the fourth largest public health problem in the United States, but police and the courts routinely treat it as though it was a crime, not an illness. As long as that attitude persists, arrests of chronic alcoholics raise serious civil liberties issues which the ACLU and its affiliates are pressing in the courts. The cases raise two basic issues: (1) does a chronic alcoholic who becomes drunk in public possess the criminal intent necessary for violation of public intoxication statutes? and (2) is it cruel and unusual punishment in violation of the Eighth Amendment to impose criminal sanctions upon a chronic alcoholic who publicly exhibits a symptom (drunkeness) of a disease (chronic alcoholism?). The purpose of ACLU-supported test cases in Washington, D.C. North Carolina, California and Michigan is to establish the principle that a chronic alcoholic cannot be convicted of the crime of public intoxication, and must therefore either be civilly committed for treatment and rehabilitation or allowed to go free.
The National Capital Area CLU supported the appeal, denied by the U.S. Court of Appeals, of DeWitt Easter, a 59-year-old plasterer who has been arrested 70 times since 1937 for being drunk in public. At the same time, the court criticized Congress for failing to provide an effective rehabilitation program for the District of Columbia. A further appeal is pending. In a similar North Carolina case the defendant, Joe B. Driver, was convicted of public intoxication and sentenced to two years in jail — his 203rd arrest. Driver estimates he has spent two-thirds of his life in jail for public intoxication. That case, too, is on appeal, to the U.S. Court of Appeals for the Fourth Circuit.

The ACLU position in this emerging area of civil liberties was outlined in detail before the House Committee on Interstate and Foreign Commerce, which was considering bills introduced to establish a federal Commission on Alcoholism. The Union heartily supported the measures as an overdue effort to treat the disease of alcoholism medically and humanely, not as though its victims were criminals. The ACLU's chief concern is not the overwhelming majority of the country's 5,000,000 chronic alcoholics who manage to steer clear of the law and keep their sickness "invisible," but the 10% of skid row alcoholics who are arrested again and again and again, contributing to most of the 2,000,000 arrests for drunkenness in 1964 — one-third of the total arrests in the entire country.

New York State's "stop and frisk" law — which permits a policeman to detain and search a person in a public place upon "reasonable" suspicion that a felony or serious misdemeanor is being, or is about to be, committed — unfortunately was the model for similar measures in Illinois and Miami, Fla. In a major victory, the Illinois Division of the ACLU convinced Governor Otto Kerner to veto a bill which would have allowed a policeman to detain and search anyone upon mere suspicion, permit the confiscation of any evidence found in the process, and compel the citizen to explain his actions. The affiliate argued that the bill violated Fourth Amendment protections against illegal search and seizure, the Fifth Amendment's guarantee against self-incrimination and the Fourteenth Amendment's right to due process.

The Florida CLU opposed a Miami ordinance patterned after the New York law; the affiliate said it would violate basic constitutional rights and lead to a rash of false arrest suits against the city. Meanwhile, in New York, the ACLU affiliate called for repeal of the "stop and frisk" law following an incident that proved the law's peril to citizens: a policeman nearly shot an innocent person to death when he turned and ran out of fear at being abruptly stopped and frisked.

In three cases brought by the ACLU of Southern California the affiliate filed a $100,000 damage suit against Los Angeles police for the pre-dawn invasion of Timothy Morton's home without a warrant, although 15 hours later Morton was released and charges against him for

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suspicions of armed robbery were dropped; filed a brief urging that narcotics obtained from the stomach of a suspect by means of a tube forced through his nose and injections causing him to vomit were violations of the Fourth and Fifth Amendments; and won, on appeal, its case that a woman could sue for damages under the Federal Civil Rights Acts because after she entered the station house to complain of an assault, police compelled her to submit to the taking of nude pictures and then promiscuously circulated them in the building.

Registrations and Roundups

With the full backing of the ACLU a controversial criminal registration ordinance was defeated in Middletown, N.J. It would have required persons convicted in a state or federal court of a major crime in the past 10 years to register with police if they entered the township. Police had sought the legislation as an investigative tool, but opponents pointed out it would be a serious threat to civil liberty, was unenforceable, and could be used to harass people who had already paid their debt to society and were trying to live a proper, private life. "Such a practice," the Union declared, "cuts directly across the rights of due process guaranteed in the Fifth and Sixth Amendments. . . . We also believe that zeal for crime prevention should not endorse tactics which smack of totalitarian tyranny." In addition, experience shows that in countries with registration-fingerprint procedures the effect on lowering the crime rate is negligible, the ACLU observed. A state-wide registration ordinance in Arizona that would affect persons convicted of a felony was vigorously opposed by the Arizona CLU. The proposal was subsequently defeated unanimously.

Vagrancy and Loitering

The U.S. Supreme Court agreed to review the contention of the National Capital Area CLU that a section of the District of Columbia's vagrancy law is unconstitutional because it is too vague. The appeal may have far-reaching significance, since the outcome could affect vagrancy ordinances throughout the country under which police often make wholesale arrests, and hold persons on the technical charge of "vagrancy" while questioning them in connection with other alleged crimes. The definition of a vagrant under District law is "Any person leading an immoral or profligate life who has no lawful employment and who has no lawful means of support realized from a lawful occupation or source." The ACLU affiliate contended that the vague language violates the due process clause of the Bill of Rights. In addition, the affiliate argued that it violated the Sixth Amendment which guarantees persons the right to be informed of the nature of the charge. The defendant in the appeal, represented by the NCACLU, is Eddie Hicks, a 27-year-old former actor, who was arrested in Washington's DuPont Circle while
playing his guitar and singing. Hicks allegedly has no permanent home and wanders across the country.

Examples of the abuse practiced under vaguely-worded vagrancy laws were two cases defended by the New York CLU. Police arrested two transvestites on vagrancy charges, but the affiliate brief argued it is not unlawful to appear in public wearing clothes of the opposite sex and that, in any event, vagrancy was not the proper charge. In other cities, the vagrancy ordinance of Minneapolis was opposed by the Minnesota Branch, ACLU and the ACLU of Northern California won dismissal of two vagrancy charges for lack of evidence under a San Francisco ordinance defining a vagrant as someone who loiters “about any school or public place at which children normally congregate.” A state appellate court had upheld the constitutionality of the ordinance, but limited the application to persons who loiter in a manner suggesting they might commit a crime. Other loitering statutes were opposed by ACLU affiliates in Austin, Tex. and St. Louis.

Brutality

With the help of the ACLU of Pennsylvania, two victims of police brutality during 1964 civil rights protests in Chester, Pa. brought suit in federal court against a group of state and local policemen. The two men, Herman Dawson and Milton Reaves, were among the most brutally treated by law enforcement officials, according to a the findings of a special investigating commission appointed by the Governor. Dawson’s complaint alleges he was pulled from a parked car by police, beaten unconscious although he was not resisting them, and left without medical attention for more than an hour and half; he was so seriously injured that he later spent 12 days in the hospital.

In two brutality cases investigated by the Illinois Division of the ACLU the affiliate defended the victim of an unprovoked beating in East St. Louis and pressed the case of a Springfield man who was chased and set upon by two policemen after he impulsively fired a bullet into the air near his home. The ACLU of Michigan sought a rarely-used avenue of redress — a citizen’s warrant — in pursuing a case in which a youth was savagely beaten by at least eight policemen after he was arrested and in custody. The affiliate also welcomed the conviction of a Detroit policeman for felonious assault, which concluded a protest of brutality originally initiated by the ACLU of Michigan in 1963.

Police Review Boards

Amidst peaceful protests, violent riots and litigation, pressure rose in more than a dozen cities for the creation of an impartial review board to investigate citizen complaints of police misconduct. The ACLU
and its affiliates have pressed for police review boards for years, but only recently — with growth of the civil rights movement — has the general public become aware of the need for machinery that fairly and promptly can assess allegations of brutality and discrimination that feed the fires of racial tension.

In New York, where a police review board became a political issue in a mayoralty campaign, a significant break in police opposition to such a panel came with a vote by Negro policemen in favor of an outside civilian review board independent of the Police Department. Added pressure was supplied by a committee of the prestigious Association of the Bar of the City of New York, which overwhelmingly approved the creation of a nine-member civilian complaint board. "The procedures presently in effect do not offer assurance" of an impartial hearing and fair disposition of charges of abuse of police authority, the committee said. "Indeed, they encourage the belief that charges of police misconduct are not disposed of fairly." As for the political campaign that awakened further interest in a public review board, the New York CLU criticized proposals made by one mayoralty candidate and another made by a City Council subcommittee. Rejecting a proposal that the board include representatives of minority groups, the affiliate said: "If a number of members ... happen to be Negroes and Puerto Ricans, well and good; but we would not want to see anyone on the board who feels he must act in the interests of ... a racial group. That would make a mockery of (any) claim to be impartial." As debate continued, the Police Department announced a change in existing civilian complaint procedures, as well as changing the location of the complaint bureau from Police Headquarters to a more accessible, less forbidding commercial office building. The change followed fresh demands for a review board in the wake of the shooting of a Negro by a white policeman, one of several such incidents that pointed up the need for reliable, impartial judgements of police practices.

The almost universal opposition by policemen to a review board — on the theory that it hampers their effectiveness — was crystallized in Rochester, N.Y. where the city's fraternal order of policemen, the Locust Club, filed suit in a state court challenging the constitutionality of the city's two-year-old Police Advisory Board. A friend-of-the-court brief filed by the New York State CLU defended the existence of the board. The city administration took the same position; in a separate statement city officials declared that the board was more necessary than ever, despite initial indications of its ineffectiveness following the 1964 riots in Rochester.

Philadelphia policemen also attempted to end the life of the city's Police Advisory Board, in existence since 1958 (the oldest independent review board in the country). In attacking the panel, the Fraternal Order of Police abandoned the accusation that it was a Communist plot; instead, the board was criticized as "a kangaroo court." More serious than
the effort to kill the board through a law suit was the danger that the panel would die from inactivity, imposed by Mayor James Tate. The board was inactive for about two years because of unfilled vacancies and its future was in doubt when the Mayor finally appointed a new full-time executive director and filled two vacancies on the board itself. The Greater Philadelphia Branch of the ACLU welcomed the reactivation of the review board as fervently as it had condemned its previous state of involuntary suspension. Of the 127 new cases filed for the board’s decision in 1964, 49 charged brutality, 31 were for illegal search and seizure, 25 for miscellaneous reasons and 22 for harassment. The docket comprised 127 reasons why the board should be back at work. A police review panel should be at work in York, Pa., too, especially in the wake of several incidents of police brutality; instead, the ACLU of Pennsylvania cooperated with the local NAACP branch and filed suit to compel the Mayor to appoint members to the panel, which has been inactive since it was authorized by the City Council in 1959. Also dormant was a review board in Minneapolis, appointed in 1960 but which has never functioned.

Such inactivity is particularly deplorable since an active board — as Philadelphia’s had been — performs a vital community function. Until the Philadelphia panel was created, no policeman had ever been disciplined on the complaint of a civilian. But in 1961-62 the board settled 96 cases to the satisfaction of the complainant without a hearing. In cases in which hearings were held, six were decided for the complainant and five for the policeman.

In Seattle, where the long controversy over a police review board received fresh impetus following a fatal shooting by a policeman, the ACLU of Washington State renewed its demand for an outside investigatory panel. The affiliate cited a 1955 investigation which found that the Police Department’s existence under Civil Service actually made it an autonomous branch of city government, “untouchable by the Mayor, council, and certainly by any citizens’ committee.” The situation has not changed substantially since then. At the insistence of the affiliate a public hearing on police practices was finally held, but local lawmakers steadfastly refused to open an investigation of alleged police misconduct.

Responding to public demands for a police review board in Newark, N.J., Mayor Hugh Addonizio announced a plan under which all cases of alleged police brutality would be referred to the FBI for investigation. The ACLU of New Jersey attacked the proposal, pointing out that the state should enforce laws within its jurisdiction instead of calling on the FBI, which deals only with violations of federal crimes. Besides, said the affiliate, the FBI’s record in civil rights cases has not been inspiring. However, other aspects of the Mayor’s proposal were welcomed by the Union affiliate, among them: a human relations training institute for policemen; promulgating proper rules of conduct by the police chief;
assigning police to community relations activities; and a citizen observer program, under which a civilian would ride in each patrol car — a novel suggestion but one which foundered initially for lack of recruiting observers.

In the District of Columbia, the National Capital Area CLU's determined campaign for an improved civilian review board finally paid off. The board was expanded from three members to five, with the two additional members to be attorneys; at least one of the lawyers must be present when the board is in session. The board is also empowered to investigate complaints and make recommendations. A newly-created Mayor's Committee on City-Citizen Relations in Denver — five prominent citizens with the right to evaluate complaints and make recommendations concerning the abuse of personal or civil rights by any city employe — was hailed by the Colorado Branch of the ACLU. Though the committee's mandate was rather broad, it essentially serves the function of an independent police review board. And in Atlanta, where the police chief proposed an inspection division within the department to investigate complaints, the Georgia ACLU instead proposed a review board composed of civilians, arguing: "The citizen who is subjected to these (illegal) practices is likely to be both friendless and penniless and in no position to defend his rights. He needs an avenue of redress which could best be supplied by a citizens board with representatives from every segment of the Negro and white community."

The riots in the Watts section of Los Angeles prompted the ACLU of Southern California to make a detailed study of police malpractices, one of several underlying causes of the riot. Commenting on the widespread feeling among Negroes in Watts that police are to be feared and mistrusted, the affiliate said: "The only solution is an independent reviewing agency, adequately staffed and empowered to investigate allegations of police malpractice and award damages if the complaints are found to have merit." Other cities where ACLU affiliates took the lead in campaigning for an impartial police review board are Kansas City, Baltimore and Detroit.

In the absence of review boards, several ACLU affiliates continued an educational campaign to improve police procedures. As the direct result of a meeting of the Upstate New York Division and the cooperation of the State University at Buffalo a course was established for all members of the Buffalo police department in the practical application of U.S. Supreme Court decisions. Another reform was won by the Minnesota Branch, which sponsored a course in constitutional law included in the training program for Minneapolis police officers seeking promotion and rookie policemen. The Connecticut CLU distributed bi-lingual (English and Spanish) pamphlets informing accused of their rights and won the cooperation of major city police departments in circulating the pamphlets statewide.
Right to Counsel

The U.S. Supreme Court and U.S. Courts of Appeals in two circuits set the stage for continued legal controversy over the admissibility of voluntary confessions as evidence in criminal trials. The issue is an echo of the landmark U.S. Supreme Court decision in the Escobedo case, in which the Court reversed a murder conviction based on a voluntary confession obtained while police refused the suspect's request for counsel (see last year's Annual Report, pp. 76-77).

Following the high court decision, the California Supreme Court significantly extended the reasoning in Escobedo. It struck down two confessions given by Robert B. Dorado, a life-termer at San Quentin Prison because they violated the Constitution on the grounds that Dorado had not been informed of his right to counsel and to remain silent. What particularly agitated law enforcement officials, and made the Dorado case far-reaching, was that Dorado did not request counsel (as Escobedo did), did not raise the issue at his trial, and could not have paid a lawyer. California's Attorney General appealed the decision to the U.S. Supreme Court, asking a limit on the confession doctrine to the facts in the Escobedo case. But the high court side-stepped the issue for the time being by declining to review the state Supreme Court opinion ordering a new trial for Dorado.

In the meantime, the U.S. Court of Appeals for the Third Circuit (New Jersey, Delaware, Pennsylvania) handed down a verdict similar to Dorado and applied it retroactively. The court for the Ninth Circuit, which includes California, remained silent. And the Court of Appeals for the Second Circuit (Vermont, Connecticut, New York) announced it will consider seven convictions which raise the issue created by Escobedo. One case was an appeal from a ruling by New York State's highest court, the Court of Appeals, which held that police do not have to advise a suspect of his right to remain silent or to have a lawyer before making a confession. The New YorkCLU, which filed a friend-of-the-court brief in the case, said the decision contradicted the spirit as well as the letter of the U.S. Supreme Court majority opinion in Escobedo. The affiliate quoted the opinion which said in part: "We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend on its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights." Then the NYCLU asked: "Can it be argued in the light of that statement of principle that the Court, having established the right to counsel, would allow its forfeiture if it were not specifically requested?"

The U.S. Supreme Court's 1962 Gideon decision — a landmark ruling strictly requiring all indigent persons accused of violating criminal laws
to be provided with attorneys — was reinforced in a potentially far-reaching case won by the Wisconsin CLU. A state circuit court judge upheld the affiliate’s argument that Richard W. Holiday of Milwaukee was improperly denied counsel during preliminary hearings in which the suspect was accused of kidnapping, armed burglary, armed robbery and car theft. Previously the state Supreme Court had held, before the *Gideon* ruling, that publicly-paid counsel for indigent defendants was necessary only for "critical" stages of criminal proceedings and that preliminary hearings did not fit that description. At the same time, however, the Wisconsin Supreme Court did encourage lower courts to appoint counsel at the early stage of investigations. The victory won by the Wisconsin CLU reinforces that right, essential to a fair trial.

Among other ACLU affiliates active in defending the legal rights of indigents were the ACLU of Michigan, which has aided more than 100 persons under new court rules providing state-appointed counsel and free trial transcripts for appellate review purposes (the affiliate is also testing two cases involving the right of counsel in misdemeanor cases); and the Iowa CLU, which finally reaped the satisfaction of a long battle when the legislature authorized a public defender system allowing officials to set up public defender offices for one or more counties, and authorized employment of attorneys as well as investigators. New York State enlarged the rights of indigent defendants by passing bills that allow senior-year law students to act as attorneys for clients too poor to pay a lawyer and require each county to set up a program of free legal services for needy defendants. The ACLU lost an argument before the U.S. Court of Appeals for the Fourth Circuit when the court reaffirmed a decision that an indigent parolee is not necessarily entitled to appointed counsel at hearings to consider the revocation of parole. The ruling was based on the theory that a parole hearing does not assume the importance or formality of a criminal trial, since parole is only a privilege given to a convicted prisoner.

After years of effort, the ACLU finally obtained a new trial for John Simon, who was convicted in Pennsylvania after pleading guilty to five major felonies though he did not have counsel. Simon was 18 at the time; he has an IQ of 59 and claims he could neither read nor write more than a few words. He was not advised of his right to counsel, he declared. Although the U.S. Supreme Court had refused to review Simon’s case, an ACLU cooperating attorney obtained a writ of habeas corpus from the Federal District Court. The writ was stayed for 60 days to permit a new trial, but on the basis of an examination made by a psychiatrist chosen by the ACLU, Simon pleaded guilty and was discharged on 10 years’ probation.

In Dallas, where the legal complications following President Kennedy’s assassination remain as bizarre as ever, the Texas CLU shared in the victory of a nine-month struggle to allow Jack Ruby’s family to employ counsel of its choice in a judicial hearing to determine the sanity of the
man who killed Lee Harvey Oswald. Despite the Ruby family’s efforts to remove a lawyer from the case, Judge Joe Brown, who presided at Ruby’s trial, named the same attorney to represent Ruby at the sanity hearing. The Texas CLU vigorously opposed the move as a violation of Ruby’s constitutional right to counsel and was finally successful. Then, in another motion to disqualify Judge Brown from presiding at Ruby’s sanity hearing, the Texas CLU engaged in considerable legal maneuvers which resulted in bringing the case before the Court of Criminal Appeals for a decision.

The Arizona CLU is seeking ways to preserve the inviolability of the attorney-client relationship, which is routinely broken by state prison officials who read the mail of all prisoners, even when addressed to a lawyer or a judge. Consequently, inmates do not write as freely as they would like.

**Right to a Fair Hearing**

In another in the series of decisions extending the protections of the Bill of Rights to state criminal proceedings, the U.S. Supreme Court held that the Sixth Amendment’s guarantee of the right of accused persons to confront the witnesses against them applied to state court defendants. The Court announced the doctrine in reversing a Texas conviction, then applied it in reversing an Alabama conviction; in both cases defendants were denied the right of cross-examination, which the Court held was "fundamental" and obligatory under the Fourteenth Amendment’s directive that the guarantees of the Constitution must be observed by the states. In its two previous rulings affecting criminal procedures in state courts, the high court held that the Sixth Amendment’s right to counsel was obligatory on the states and followed this up with a decision declaring that the Fifth Amendment’s prohibition against self-incrimination also was made applicable to the states by the Fourteenth Amendment. In a subsequent decision affecting the latter point, the U.S. Supreme Court in a separate case held that state judges and prosecutors violate the Fifth Amendment’s guarantees against self-incrimination if they comment on the refusal of a defendant to take the stand in his own defense. The decision will apply in the six states which do not already forbid such prejudicial comment: California, Connecticut, Iowa, New Jersey, New Mexico and Ohio. The Court left undecided whether its ruling was retroactive, a possibility which could mean a new trial for virtually every prisoner in those six states who did not testify at his trial.

Prodding the states to establish procedures under which prisoners could obtain review of pleas that their federal constitutional pleas were violated in state trials, two U.S. Supreme Court Justices pointed to the rising tide of such pleas to lower Federal District Courts. The comments, by Justices William J. Brennan and Tom C. Clark, were made in concurring opinions concerning a Nebraska plea to overturn a burglary conviction. Only 10 states have adopted specific procedures — by legislation or
court rule. They are: Nebraska, Illinois, Maine, Maryland, North Carolina, Oregon, Alaska, Delaware, Missouri and New Jersey. And in a decision affecting federal criminal procedures, the U.S. Supreme Court held that a defendant in a federal criminal trial does not have a constitutional right to a trial before a judge if the government demands a jury trial.

With some reservations, the ACLU endorsed the proposed Bail Reform Act of 1965 as a "gigantic step" toward the elimination of unnecessary imprisonment, according legislative recognition to the fundamental constitutional principles of the presumption of innocence and equal protection of the laws. The legislation would set these conditions, on any of which material witnesses, or those seeking writs of certiorari, or those who have been charged or convicted may be released from prison: promising in writing to appear as required; executing an appearance bail bond — either unsecured or secured by a 10% deposit; supervision by a probation officer; placement in the custody of a third person; return to jail after daylight hours, or "any other condition which the judge may reasonably require." At the same time, the ACLU offered several improvements affecting bail procedures in testimony before a Senate subcommittee considering the legislation. The Union urged that personal checks be accepted in lieu of cash and clarification of the procedures changing the conditions of a prisoner's release on bail, especially whether he must be notified or given a chance to challenge the basis for imposing different conditions. In another issue concerning bail, the Greater Philadelphia Branch of the ACLU protested the action of several judges who revoked the bail of defendants who appeared without a lawyer so they could qualify as "non-bail" cases for free legal assistance. The denial of the constitutional right to bail is no justification for observing the constitutional right to counsel, the affiliate said.

A major analysis by the Greater Philadelphia Branch of the ACLU singled out abuses of power and corruption among the minor municipal judiciary that were facilitated by faulty practices and procedures. Among the 10 specific proposals made to a special state investigator were three designed to eliminate practices actually contrary to law. The affiliate said these statutory protections force a minor judiciary court to be open 24 hours a day to provide defendants with a speedy hearing; forbid the collection of money for charities from defendants in the form of fines; bar magistrates from requiring bail in less serious offenses specified in a 1961 law. The affiliate's demand for a 24-hour court paralleled a similar demand by the Utah CLU. The affiliate requested the creation of such a court in Salt Lake City, where the absence of a night court and a weekend magistrate to conduct preliminary hearings and setting of bail is depriving many persons of their constitutional rights.

The ACLU and several affiliates were active in defending the rights of mentally defective defendants from infringement by law enforcement officials and other public officials. The South Jersey Chapter of
the ACLU of New Jersey and the Greater Philadelphia Branch obtained the release of an inmate at the Vineland School for the feebleminded who had been held beyond her sentence. The ACLU and the Georgia CLU joined with the lawyer of an escapee from a Texas mental institution in what turned out to be a fruitless effort to stop an extradition hearing that violated the escapee's due process safeguards under the Constitution. In a case that may establish several due process guidelines, the ACLU won an appeal before the U.S. Court of Appeal for the Fifth Circuit that vacated a 15-year sentence against a Mississippi man convicted of larceny and contempt of court. Bobby Gene Johnson had asked for a mental examination before his arraignment on the larceny case but it was refused at the time; at the trial, Johnson was permitted to waive counsel and plead guilty. He was convicted of contempt of court about a month later when he refused to answer questions about the robberies in which he had been involved. The long struggle by the ACLU and cooperating attorneys in Oklahoma finally saved the life of Gerald Pate, whose conviction on a murder charge five years ago raised a storm of controversy over capital punishment (see below) and sent serious issues of civil liberties to the U.S. Supreme Court on three occasions. Pate escaped death in the electric chair when a jury found him "presently insane" and removed him from death row to a state mental institution. The Pittsburgh Chapter of the ACLU of Pennsylvania filed a friend-of-the-court brief on behalf of a habeas corpus petition contending that a prisoner was sentenced to life imprisonment without due process under a rarely-used law permitting sex offenders to be sentenced and sent to regular state prisons where they receive no medical care — though the legislation is based on the theory that the prisoners are sick and need treatment, not just incarceration.

In other actions:

† The Union filed a friend-of-the-court brief with the U.S. Court of Appeals for the Sixth Circuit supporting Teamsters Union president James Hoffa's appeal from a jury tampering conviction in Chattanooga, Tenn. The brief said the eight-year prison sentence and $10,000 fine should be set aside because the government, in effect, used a local Teamsters Union official, Edward Grady Partin, to spy on Hoffa by reporting conversations and defense strategy to federal officials prosecuting the case. Such spying was an interference with the right to counsel, the ACLU declared. The appeals court sustained the conviction and the issue went to the Supreme Court.

† The New York CLU hailed the legislative abolition of "blue-ribbon juries," composed of persons with high educational and economic levels, as a civil liberties victory. Such juries rarely include Negroes or Puerto Ricans and are inclined to be harsh on minority group defendants, as well as being inherently discriminatory in the very fact of their selection. The affiliate also opened a test of extradition procedures which require the asylum state only to determine whether the state seeking extradition has
jurisdiction, not whether the conviction was constitutionally obtained in the first place.

The Illinois Division came to the defense of a 18-year-old youth who was convicted of pandering after a summary trial in which he waived the right to indictment by a grand jury, to counsel, a jury trial and the right to present mitigating evidence. He pleaded guilty and received a relatively harsh sentence, though the youth had never before been convicted of a felony.

Capital Punishment

The ACLU, concluding a two-year review, declared its opposition to capital punishment and pledged a major campaign to seek repeal of the death penalty statute. Just prior to the Union's declaration, New York State passed a bill that eliminated the death penalty for all except persons convicted of killing a peace officer acting in the line of duty and those under life sentence who commit murder in prison during an attempted escape. And not long after the ACLU announced its opposition to capital punishment, the Justice Department, also for the first time, took a similar stand. "Modern penology with its correctional and rehabilitation skills affords far greater benefit to society than the death penalty, which is inconsistent with this goal," a Justice Department official declared.

The policy statement adopted by the ACLU said the death penalty denies equal protection of the laws, is cruel and unusual punishment, and removes guarantees of due process of law. In reversing the Union's previous position, which held that capital punishment did not infringe on civil liberties, the ACLU added that it will seek the commutation of death sentences as a civil liberties matter "until such time as the death penalty is eliminated as a part of law and practice of the United States."

The Union said the death penalty denies equal protection of the law by discriminating "against the poor, the uneducated and the Negro." The statement noted that since 1930, 53.7% of all executed prisoners have been Negroes, even though Negroes are only 10% of the national population. "The disproportionately large number of executions of members of the Negro race indicates that this penalty is often imposed as a result of racial bias," the Union said. Comparing the quality of legal defense available to poor and rich persons, the ACLU pointed out that the poor defendant must rely on volunteer counsel who, while dedicated, cannot give the "kind, range and detail of service" that a wealthier person can afford. And because the death penalty applies mostly to poor people and minority group members, such punishment is not only cruel, but unusual, the ACLU declared. It violates due process protections because of its "fundamental unfairness . . . The punishment does not fit the crime. It is instead directed almost exclusively to the most disadvantaged members of society." The ACLU statement noted that if "society's respect for life denies men the right to take life in order to
prevent or end pain, or because one is tired of life, surely the state should not be permitted to take a life in order to punish for past behavior. . . . To retain the theory that imposition of the death penalty is not cruel is to ignore the persistence of individual and collective conscience which says that death imposed by the force of the state is the ultimate cruelty insofar as the person whose life is being taken is concerned." Then, too, the Union said, the irreversibility of the death penalty renders meaningless any error subsequently discovered. "Thus one who suffers the death penalty and subsequently is found to have been improperly convicted has been denied due process of law."

Corroborating the findings of the ACLU statement, a study sponsored by the Florida CLU compared the convictions and executions of whites and Negroes for the crime of rape and concluded that the death penalty had been used selectively against Negroes. From 1940 through 1964, the study found, the death sentence for the same crime was imposed on 48 Negroes and 6 whites, though 132 whites and 152 Negroes were convicted for rape in Florida. In Georgia, which has executed 400 persons (including 45 teenagers) in the last 40 years, the ACLU affiliate pursued a vigorous campaign to outlaw capital punishment. Ten faculty members and nine student volunteers wrote a 47-page analysis of capital punishment under ACLU auspices which showed that the poor, unskilled and uneducated are those for whom the death penalty is largely reserved. And when the newly-appointed state Attorney General off-handedly rejected the proposals for abolishing capital punishment during a television news interview, the ACLU of Georgia quickly criticized him for so casually dismissing "so serious a subject." Thirteen states have abolished capital punishment; the first was Michigan (1846), then Rhode Island, Wisconsin, Maine, Minnesota, North Dakota, Alaska, Hawaii, Oregon, and — in 1965 — Iowa, West Virginia, Vermont and New York.

News Media

In a 5-4 decision argued in six separate opinions, the U.S. Supreme Court held that television coverage of the swindling trial of Billie Sol Estes violated his right to a fair trial. The Court threw out the conviction, but indicated the deciding vote was cast on the grounds that the Estes trial was "notorious." If the trial had been "more or less routine," Justice John M. Harlan said, he might not have sided with the majority. The majority opinion said the television coverage deprived Estes of his right to a fair trial because the medium, by its nature, makes a fair trial impossible; hence, his due process rights under the Fourteenth Amendment were violated. This was the position of the ACLU in a friend-of-the-court brief, which noted that the trial judge had been "forced to devote an unduly large portion of his time and attention in keeping the situation within manageable bounds, (making) no less than 10 separate rulings" on television coverage. Furthermore, the brief
argued, the presence of TV cameras tends to distract witnesses, prejudice jurors (by seeing persons not called as witnesses and hearing evidence that was ruled inadmissible), and make impossible the selection of an unbiased jury for a possible retrial because of the tremendous adverse publicity the accused already received.

The ruling was a major blow to the advocates of courtroom television, which is barred under Canon 35 of the American Bar Association. Canon 35 states that televising, broadcasting or photographing court proceedings reduces the dignity of the court, distracts witnesses and participants "and creates misconceptions with . . . the public." Developed in the wake of the press coverage of the Bruno Hauptmann kidnapping trial, it has been adopted by all states except Texas and Colorado. And following the U.S. Supreme Court decision, the Supreme Court of Colorado outlawed cameras and microphones in courtrooms unless a defendant consents to their use.

The high court ruling in the Estes case came amidst a growing clamor over the free press-fair trial issue. It took on a special urgency with the Warren Commission's criticism of press and prosecutor following the assassination of President Kennedy and Lee Harvey Oswald and has been growing ever since. Symptomatic of the trend, the Attorney General issued Justice Department guidelines specifying the limits of what pre-trial information would be supplied in federal criminal proceedings. The information was restricted to the skeletons of biographical information about the accused, the substance or text of the charge, the identity of the investigative agency and length of the investigation, the circumstances immediately surrounding the arrest — time, place, resistance and weapons seized.

As the Attorney General issued his guidelines, the ACLU and its affiliates across the country were in the thick of the controversy, urging courts, district attorneys and police to withhold statements that may endanger the rights of suspects or persons accused of crimes. The ACLU of Washington State urged the police chief of Seattle to end current abuses by adopting the Justice Department rules; the affiliate also criticized two newspapers for engaging in "trial by newspaper." The ACLU and the OhioCLU's Cleveland Chapter decided to back the appeal in the U.S. Supreme Court of Dr. Sam Sheppard, convicted in 1954 of the murder of his wife in a sensationaly covered series of newspaper stories. "We are mindful of the importance of a free and unfettered press," the Union said, "but we are convinced that where the exercise of that freedom, willingly abetted by cooperative law enforcement authorities, so contaminates the atmosphere that an individual is denied impartial jury deliberation, a society dedicated to justice and fair play — as well as to freedom — must act to protect the accused." The Union pointed out it was not concerned with the guilt or innocence of Sheppard, but with the question of whether he received a fair trial on the charges.
Other cities where the Union's affiliates were actively involved in the issue were Los Angeles, where the ACLU of Southern California charged that statement made to the press by two deputy District Attorneys would interfere with a fair trial of two defendants; and Pittsburgh, where the ACLU of Pennsylvania protested the disclosure of criminal information by police and was criticized for it by the Pittsburgh Press, which beat the Union with the familiar dead horse: the ACLU "chronically is concerned with the rights of the accused, rather than the right of the public to be secure in their persons and possessions. . . ." Nevertheless, the Philadelphia Bar Association adopted rules forbidding lawyers, court officials and peace officers from making press statements about pending criminal trials and a similar code is under consideration in Ohio.

**Juveniles**

Morris Kent was 16 when he was convicted of robbery and house-breaking but found not guilty by reason of insanity on two counts of rape. But when the Washington D.C. youth came before the Juvenile Court, the tribunal waived jurisdiction to the Federal District Court where Kent was treated as an adult and sentenced to 30-90 years in prison. Supporting his appeal before the U.S. Supreme Court, the National Capital AreaCLU and 11 lawyers and law school professors argued that the waiver denied the youth his constitutional rights by not specifying the reasons for ceding jurisdiction. Moreover, the brief contended that the boy was denied effective right to counsel, since his lawyer was barred under Juvenile Court procedures from seeing the records and reports used as a basis for the decision.

The Arizona Civil Liberties Union unsuccessfully petitioned the state Supreme Court for the release of 15-year-old Francis Gault, accused by a neighbor of making an indecent phone call and sentenced to a state reform school. The Arizona CLU had demanded a reexamination of the state Juvenile Code, arguing it is "unconstitutional to the extent that it fails to apprise parents and children as to the charges sufficiently in advance of the hearing so they may determine whether to admit or contest petition; nor does it require timely, proper and adequate notice of hearing." While admitting this point, the Arizona high court said that children are not entitled to the same constitutional rights granted adults in criminal cases. Thanks to the intervention of the Greater Philadelphia Branch several children were released from confinement after having been committed, on no evidence whatsoever, by a judge who received an anonymous phone threat. Trying to prove to the public that New Jersey's juvenile courts were not coddling delinquents, the state Supreme Court lifted its ban on press coverage of the proceedings. The judge will decide whether names, photographs and other information will be printed in the interests of educating the public to the problems and procedures of juvenile courts.
EQUALITY BEFORE THE LAW

Spurred to action by a huge civil rights march from Selma, Ala. to the state capital at Montgomery, Congress passed the landmark Voting Rights Act of 1965. That a law was necessary indicated the lack of constitutional guarantees for Negroes in the South. That the law was finally passed—without a filibuster—indicated the measure of progress the civil rights movement had attained by the struggle of recent years.

In the courts, progress was also achieved, but basic changes in the woeful administration of justice in the South are essential. The U.S. Supreme Court upheld the Civil Rights Act of 1964 and overturned the convictions of thousands of peaceful demonstrators; nevertheless, the question whether private property owners may be picketed remains to be settled. The Mississippi Supreme Court overturned convictions of three Negroes on the grounds that Negroes were systematically excluded from the juries, but the decisions served to underscore the contrary practice of discrimination in trials at which whites accused of racial crimes, including murder, were quickly acquitted by all-white juries. Months before the federal government pledged an effort to correct the scandalous administration of Southern justice, the ACLU opened its own campaign to reach the same goal. A long fight was anticipated.

Explosive evidence that racial discrimination was by no means confined to the South came with a five-day riot in Watts, a Negro ghetto in Los Angeles. The reverberations were quickly felt throughout the country and the general conclusion pointed to the fact that the North's laws against racial bias in housing, jobs and education were poorly enforced guarantees of the Negro's basic demands. Until these needs are satisfied, warned the most astute public officials, any city can expect its own Watts, at any time.

The federal government used its formidable power of the purse to pressure school boards North and South into eliminating segregation in education. Whether the issue was de facto segregation, as in Chicago, or deliberate defiance of the U.S. Supreme Court's insistence on "deliberate speed," as in the South, the U.S. Office of Education threatened to cut off federal aid unless bias in the classroom was ended. Meanwhile, token integration was introduced peacefully in dozens of local Southern school districts where it was scarcely imaginable a few years ago. The pace was still slow, but hopes rose that federal pressure, along with increasing acceptance of the inevitable, would speed up progress toward the aims set forth by the U.S. Supreme Court 11 years ago.
Exactly 104 years after Abraham Lincoln signed a bill freeing slaves forced into the Confederate Army, President Johnson signed the historic Voting Rights Act of 1965 and opened the door to profound political changes in the Deep South. Without waiting for action from Congress, about one million Negroes signed the voting lists between the years 1958-1964. With passage of the new legislation more than two million more are expected to exercise their rightful franchise, until now blocked by a welter of discriminatory state legislation, harassment and violence. Initially, voluntary compliance with the federal law was "truly remarkable," the President said. Moving swiftly to enforce the Voting Rights Act, the Justice Department opened the first federal registration offices since Reconstruction in nine Southern counties; Negroes lined up for hours to sign their names to voting rolls. After the first burst of response, however, the pace of Negro registrants slowed considerably to about half of what had been expected. Among the reasons for the disappointing results was the smaller number of federal voting examiners assigned by the Justice Department to implement the law than had been expected by civil rights groups, limited registration periods and delaying tactics by some county registrars.

Under the law literacy and other tests found to be discriminatory were suspended and federal examiners were authorized to register Negroes to vote throughout Alabama, Georgia, Mississippi, Louisiana and South Carolina; the law also applied to 34 counties in North Carolina and Virginia, all of Alaska, and single counties in Maine, Arizona and Idaho. The measure applied new criminal penalties for attempts to prevent qualified persons from voting, or threatening persons assisting prospective voters. It also made it possible for many Puerto Ricans in New York to vote by waiving the state's English-language literacy requirement for those who have completed six grades of education in Puerto Rico's Spanish-language schools.

Although Congress failed to prohibit the use of the poll tax in the Voting Rights Act, that perennial obstruction to racial equality in voting may be nearing the end of its existence. On the day the bill was signed into law the Department of Justice filed suit under the Fourteenth and Fifteenth Amendments in Mississippi, Alabama, Texas and Virginia to prevent further use of the poll tax as a precondition to voting. The ACLU is waging a number of legal offensives against the device which, though outlawed by the Twenty Fourth Amendment as far as federal elections are concerned, remains an obstacle to racial equality in voting for state and local officials.

The major ACLU effort was made in Virginia, where the National Capital Area CLU successfully petitioned the U.S. Supreme Court to review the state's poll tax requirement for voting in state and local
contests. Previously, the high court unanimously struck down a Virginia law apparently designed to circumvent the Twenty Fourth Amendment by requiring voters in federal elections either to file a residency certificate or pay a poll tax. The maneuver was unconstitutional, the Court declared, because the substitution of the poll tax for a residency requirement imposes a penalty on the right to cast a federal ballot.

The Union also joined the government's challenge in a second Mississippi voting rights case by filing a friend-of-the-court brief with the U.S. Supreme Court. The suit raised a broad range of constitutional issues in attacking the state's discriminatory voting laws. The principal targets were the literacy and constitutional interpretation requirement, the "good moral character" qualification and the poll tax. Hoping to avoid defeat in the high court, however, Mississippians voted overwhelmingly for a state constitutional amendment wiping out traditional barriers against Negro voter legislation. The referendum, viewed as a victory for moderates in the state, put Mississippi technically in compliance with the Voting Rights Act. The drastic reform also served to confirm the charges raised in the ACLU brief, namely that the old statutes "intentionally discriminate on the grounds of race and implement Mississippi's long-standing legislative policy of disenfranchising Negroes."

As the job began to enforce the Voting Rights Act, work continued on enforcing the 1964 Civil Rights Act. A report to the President after one year of the law's operation noted that while compliance with the letter of the law was highly encouraging, "the next step is to achieve compliance in spirit." The report urged a concerted attack on "the psychologically imprisoning aspects of prejudice" and noted a "curious" rise in hostility to Negro gains on the part of whites in the North. The main thrust of the Civil Rights Act empowered the federal government to cut off funds to schools, hospitals, farmers, road builders and other firms and agencies which discriminate. The threat was most effective as applied to school districts in the South (see p. 94), however. The Civil Rights Commission found widespread discrimination in the administration of federal farm programs in the South, ranging from education to conservation. And the National Guard Bureau, an agency of the Defense Department, issued stern warnings to guard units that in effect threatened to disband the unit if it refused membership to Negroes.

The ACLU backed a bipartisan resolution aimed at blocking the swearing-in of Mississippi's five-man delegation in the House of Representatives. The move, introduced when the 89th Congress reconvened in January, 1965 lost by a vote of 276 to 148, but it focused public attention on what the ACLU termed "the premise of the challenge — that systematic and officially induced denial of voting rights have permeated the entire machinery by which these men were elected." The formal petition to bar the Mississippians was filed with the House by
the Mississippi Freedom Democratic Party, the same group which challenged the seating of the state's delegation to the Democratic Party's Presidential convention in the summer of 1964.

Following up its initial effort to block the Mississippi House delegation, the ACLU renewed the drive by circulating a memorandum to every Congressman and signed by 227 lawyers in 41 states which supported the challenge on the grounds that Negroes were systematically excluded from the voting process in Mississippi in violation of the Fourteenth Amendment's guarantees of equal protection of the laws and the Fifteenth Amendment's prohibition against abridging the right to vote because of "race, color, or previous condition of servitude." The ACLU urged the House to act favorably on a resolution to unseat the Mississippi delegation, after months of legal sparring finally resulted in a hearing on the issue by the House Administration Committee. The House refused to approve the resolution, but adopted the Administration Committee's motion promising to look more closely at future election challenges.

The Courts

The U.S. Supreme Court unanimously upheld the public accommodations section of the Civil Rights Act, ruling that under the commerce clause of the Constitution Congress had ample power to bar racial discrimination when it might affect interstate commerce. Answering the argument that the commerce power was inappropriate because the real complaint was moral, the opinion cited previous cases upholding the commerce power to ban interstate gambling, prostitution and misbranding of drugs, among other examples. "That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid," the Court said.

At the same time, in a separate decision, the tribunal held that the Civil Rights Act wiped out all pending state prosecutions of demonstrators who had peaceably tried to desegregate establishments covered by the law; an estimated 3,000 persons were affected by the ruling. But the 5-4 opinion was narrowly drawn, emphasizing the peacefulness of the demonstrations at businesses now subject to the Civil Rights Act. It reflected the recent history of the high court's attempt to come to grips with whether prosecutions for seeking service in privately owned accommodations, or other civil rights protests, violate the "equal protection" clause of the Fourteenth Amendment which prohibits state discrimination. In other words, what may civil rights demonstrators do legally in staging public protests, and what, if any, protests can be legally prohibited? The question came up in the appeal of the Rev. B. Elton Cox, who was convicted under two Louisiana laws for demonstrating outside a Baton Rouge courthouse. One was a breach of the peace law; the other, modelled after a federal statute, barred picketing near a courthouse. Cox's convictions were reversed on both counts, but
again by a 5-4 vote and again on narrow grounds that did not settle the basic legal issue. Similarly, when a Mississippi anti-picketing law came before the high court for review, the tribunal issued an unsigned order instructing a federal judge to consider enjoining state officials from enforcing the statute against civil rights demonstrators. The order merely cited the Court's previous decision in the Dombrowski case (p. 52), which held unconstitutional a Louisiana anti-subversive law and said a federal judge could enjoin its enforcement by the state. The U.S. Supreme Court action drew an angry dissent from Justice Hugo Black, who had also dissented in the Cox case. He warned the Court against relegating the states "to the position of mere onlookers in struggles over their streets and access to their public buildings."

Within weeks, all-white juries in Lowndes County, Ala. freed men accused of killing two civil rights workers in the summer of 1965; Thomas Coleman was acquitted of a manslaughter charge in the death of Jonathan Daniels, a young Episcopalian minister, and Collie LeRoy Wilkins was acquitted of killing Mrs. Viola Liuzzo. The verdicts were widely deplored as a travesty on justice and pointed up the need for a major drive launched by the ACLU to end the exclusion of Negroes from jury service and other discrimination in the administration of the law. The campaign, termed "Operation Southern Justice," will attack every aspect of discrimination in jury boxes, courtrooms, court employment and jails of the Deep South. The importance of the issue was evidenced by the decision of the U.S. Court of Appeals for the Fifth Circuit to have all nine judges hear a number of cases involving the systematic exclusion of Negroes from state and federal court juries. At the time, the ACLU already had six jury exclusion cases before federal courts in Alabama and Mississippi and the Union's Southern Regional Office was expected to file others. In addition, the Louisiana CLU filed an appeal on behalf of Edgar Labat, a Negro who has had a death sentence hanging over his head for 12 years — longer than Caryl Chessman. Labat and another man were sentenced to death in 1953 for allegedly raping a white woman, but the affiliate said they never should have been jailed in the first place since the odds were "less than one in a million" that the jury was impartially selected. "The guarantee of a fair trial is meaningless unless the defendant is tried by a jury from the community as a whole, not selected portions," the ACLU declared in announcing "Operation Southern Justice." "A break with present jury practices could lead to fairer verdicts, not the all-too-often whitewash verdicts of southern juries."

As the drive got underway the U.S. Supreme Court raised what may turn out to be a roadblock in the path of efforts to choose jurors without regard to race. It held that Robert Swain was not denied a fair trial in Alabama on a rape charge because 10-15% of the names drawn for jury service in Talladega county were Negroes; in the process of picking the Swain jury, six Negroes were in the panel from which jurors were
picked, but the prosecution exercised its right to bar them without giving a reason. The ACLU urged the high court, unsuccessfully, to reconsider its decision in a friend-of-the-court brief that warned of a grim alternative: "a dead halt to the improvement of the administration of justice in the Southern states." The Union pointed out that Negroes eligible for jury service in the county constitute 26% of the eligible population, but only half that number are selected for jury panels. No Negro has served on a petit jury in the county for 15 years, the ACLU said. The practical issue confronting attorneys in systematic exclusion cases is to determine the point at which the state has the burden of explaining the disparity between the number of Negroes in a county and the number who have been called or served on juries," the Union declared. "Common sense should inform us how to allocate that burden." Among the jury exclusion cases brought by the ACLU was a suit seeking to postpone all jury trials in Lowndes County until there had been a bid for a restraining order by a federal district judge. The Union filed an appeal directly with U.S. Supreme Court Justice Hugo Black which was denied. Another suit was filed on behalf of four Negroes in Birmingham and Bessemer, Ala. in the U.S. Court of Appeals for the Fifth Circuit. "The jury system is the bulwark of liberty," the ACLU brief said. "It has been weakened in a proportion that equals, almost exactly, the extent to which it has been perverted by the exclusion from it of racial and other groups." The brief noted that in view of the protestations of fairness by Bessemer officials, it must have been a one-in-a billion miracle that only one Negro was called to serve on a Bessemer grand jury in a 17-year period.

The Union's general contention was emphatically confirmed by the Southern Regional Council, a non-partisan organization, which reported after a thorough survey that Negroes were almost totally excluded from federal court jobs and inadequately represented on federal juries in 11 Southern states. Praising the report, the ACLU said a major breakthrough in the battle against discrimination could be achieved in the South if the federal government acted in accordance with the need so obviously demonstrated. Even more emphatic backing for the ACLU's drive for the non-biased selection of Southern juries came from a Federal District Court in Mississippi, which reversed the death penalty convictions of two Negroes, George A. Gordon and William Smith Jr., on the grounds of systematic exclusion of Negroes from the juries. The ACLU, which defended both men, hailed the decision as a significant advance against discriminatory jury practices. In discussing the Smith case the court observed that although 62% of the county population available for jury service were Negroes, no Negroes were on jury lists for eight of 11 years, and Negroes accounted for only 1% of the jury lists in the remaining three years. Earlier in the year, the Union won a similar case, for the same reason of jury selection bias, when the Mississippi Supreme Court threw out the conviction of William B. Harper, chiefly
because "token summoning of Negroes for jury service" would not meet federal constitutional requirements of equal protection of the laws. Harper, who was sentenced to a life term for attempted rape of a 16-year-old white girl, won a new trial also because police did not take him before a judicial officer immediately after his arrest and because legal counsel was not present at the time he gave a written confession.

The ACLU defended Harper at his trial and in his appeal to the state Supreme Court. Commenting on the decision, the Union praised the court for facing the responsibility "to correct the flagrant departures from constitutionalism that marks the administration of criminal law in Mississippi where Negroes are concerned. . . . Since gross under-representation of Negroes on juries in all the 82 counties in the state is notorious, and as the question is more frequently raised on behalf of Negro defendants and pursued through the courts, reversals we hope will become a matter of course."

**Job Discrimination**

Concluding two decades of effort by the ACLU and other civil rights and Negro organizations, the first national law forbidding discrimination in private employment went into effect. It was Title VII of the 1964 Civil Rights Act, whose operation was postponed one year by Congress when it passed the Act in order to provide time for compliance and to enable the newly-created Equal Employment Opportunity Commission time to get organized. Title VII may have many loopholes, and the Commission has no enforcement powers, yet it potentially has the power to open the way to major gains by racial groups, religious minorities and women.

**Women's Rights**

In the first batch of complaints under the equal employment provisions of the Civil Rights Act, about 20% of the cases involved charges of discrimination based on sex. Officials were surprised that no woman complained she had been denied a managerial or executive job; instead most of the complaints involved blue collar workers — departmentalized plant seniority based on particular jobs, for instance, that may result in earlier job layoffs for women than for men. Not yet an issue is what Washington wags have labeled "the bunny problem" — that is, what may happen under the law if a male applies for a job in a Playboy club, or a woman applies for a job in a Turkish bath. But even without those exotic complications, the matter of enforcing the law is "terribly complicated," the Commission conceded.

**Indian Rights**

Testifying before a Senate Subcommittee on Constitutional Rights, the ACLU praised six proposed bills to safeguard for members of Indian
tribes the rights and liberties assured to all citizens under the Consti-
tution. "The Indians have for too long occupied a no-man's land with
regard to their rights as Americans," the Union said. "Many of the
problems have been connected with the operation of some tribal courts
and their failure to accord procedural due process to defendants." In the
case of Madeline Colliflower, for example, the U.S. Court of Appeals for
the Ninth Circuit held that a tribal court on Montana's Fort Belknap
reservation violated due process rights under the Fifth Amendment when
it sentenced Mrs. Colliflower without giving her a chance to defend her-
self at a trial. A member of the Gros Ventre tribe of the Blackfoot Indian
nation, she had been supported in her appeal by the ACLU. The court
held that while tribal courts are, in some respects, autonomous, they
must observe fundamental constitutional guarantees of fairness. In the
case of Mrs. Colliflower, the court said, "the record is devoid of evidence
of any crime whatever," though she was charged with pasturing her
cattle on someone else's field. The absence of evidence was one example
of a glaring lack of due process in the case, the ACLU brief declared. In
addition, "no witnesses were examined or cross-examined," and Mrs.
Colliflower was "subjected to criminal punishment at the unbridled
(caprice of the magistrate . . . she was . . . tried by a single person who
acted as prosecutor, 'witness' and trier of fact," the Union argued.
The Minnesota CLU initiated a new program focusing attention on the
denial of constitutional rights to Indians. The major violations are police
brutality, imprisonment on misdemeanors without bail or speedy trial,
and imprisonment without bringing a charge. The affiliate obtained the
release of an Indian who had been held for eight weeks on a mis-
demeanor charge without a hearing or trial.

Condemning possible interference with a basic right of citizenship,
the ACLU urged the Justice Department to avoid a blanket prohibition
on the participation by government lawyers in non-partisan political and
educational activities. Raising the objection of "conflict of interest" is
unwarranted and may be unconstitutional, the Union declared. The Union
position was made clear in a memorandum submitted to the Justice
Department interpreting a 1962 federal statute that sought to regulate
when government employes may contribute their services to volunteer
groups. Indicating informal approval, a department representative said
the ACLU memorandum was "considered sound."

**STATE AND LOCAL DEVELOPMENTS**

Progress and paradox marked the stepped-up drive for racial equality.
Never were more achievements accompanied by such violence. The
massive civil rights march from Selma, Ala. to the state capital in Mont-
gomery, climaxing months of mass arrests, police brutality and harass-
ment, helped speed passage of the historic Voting Rights Act. More
than a thousand full-time civil rights workers fanned out throughout the
South, where previously only a handful were at work in a few states. But new laws to prevent discrimination could not prevent the searing riot that took 35 lives in Los Angeles, the havoc on Chicago’s West Side or a peaceful demonstration in Springfield, Mass. to protest alleged police brutality. And the presence of a small army of civil rights workers in the South inspired extremists to new bombings and killings, while at the same time a white leader in Gainesville, Ga. declared: “The war is over. The Negroes and the country have won it.” But, he added: “We and they are doing a poor job of running the peace.”

The peace was, indeed, far from won, and in the continuing battle for racial justice the ACLU and its affiliates, North and South, were in the thick of it. In a letter to the U.S. Attorney General the ACLU called for immediate action to improve the FBI’s investigation of civil rights complaints and its enforcement of civil rights laws. “Since the list of violations are huge and proportionately arrests and prosecutions are few, we do not think our criticism is unjustified,” the Union said. Recognizing the basic stumbling bloc as the close working relationship between the FBI and local police officers, the ACLU made two specific recommendations: (1) the Attorney General should issue explicit instruction making it clear that the FBI considers the investigation of civil rights complaints its first order of business and (2) amend present federal civil rights laws to make clearer the grounds on which local law enforcement officials can be arrested and convicted for depriving persons of their civil rights. Acting on its own to protect the legal rights of those who seek to end segregation in the South, the ACLU announced the adoption of the Lawyers Constitutional Defense Committee as an arm of the Union. The LCDC was formed in the spring of 1964 by seven major civil rights and human relations agencies to provide much-needed assistance in defending civil rights workers, mainly in the South (see last year’s Annual Report, p. 85). The first two field offices of the group were established in Mississippi and Louisiana; other offices are in Alabama, northern Florida and Tennessee. More than 300 cases were handled by LCDC lawyers covering such areas as harassment arrests of civil rights workers, assault by police and white citizens, and violations of defendants’ legal rights in arrest, pre-trial and trial procedures.

Demonstrations

Led by the Rev. Martin Luther King, 3,200 Negroes and whites, many of them travelers from all over the country, began a dramatic 54-mile march from Selma to Montgomery to protest voter discrimination. The march inspired similar demonstrations in dozens of cities, and the total impact was remarkable. The march, finally carried out with heavy protection of troops, was the last act of a struggle that had gone on for months, and in which the ACLU’s new Southern Regional Office was active throughout. The office agreed to defend 72 white Alabama civil rights protesters — the first such pro-integration demonstration in the
Deep South in living memory. It also advised Northern doctors who arrived in Selma that under Alabama law, and contrary to the advice of local physicians, they could render aid to the injured. The ACLU urged the government to arrest and prosecute police officers responsible for breaking up a march in Selma with tear gas, clubs and whips. And when the march to Montgomery was over, the Union joined with the rest of the nation in condemning the murder of civil rights worker Mrs. Viola Gregg Liuzzo by Ku Klux Klansmen — the second killing of a civil rights worker in connection with the Selma protest. Following the murder, the Michigan ACLU sharply protested the dispatch of a secret dossier on Mrs. Liuzzo that had been compiled by the Detroit police department and which sent it to officials in Alabama. The affiliate condemned both the dossier and the fact it was transmitted. The Union hailed the new voting bill sent to Congress in the wake of the march. Praising President Johnson’s “sense of commitment to the moral and constitutional right” of Negroes to vote, the ACLU urged Congress to act promptly. It did.

The Lawyers Constitutional Defense Committee of ACLU, through the generosity of an anonymous New England businessman, posted $45,000 in cash bonds to obtain the release of some 400 civil rights demonstrators arrested in Jackson, Miss. The large sum of money was required because surety companies in the state have long refused to write bail bonds in civil rights cases. The demonstrators were arrested during 10 days of marches and other protests against the special session of the Mississippi state legislature; yet even while confined under heavy guard behind barbed wire in a stockade in the Jackson fairgrounds, prisoners and lawyers reported brutal treatment by police.

Months of tension and sporadic violence rocked Bogalusa, La., where Negroes launched a well-organized drive for jobs and against racial discrimination in public facilities. Open Ku-Klux-Klan violence, carried on with police indulgence, created a large-scale civil rights crisis. The LCDC filed a suit with the Federal District Court to enjoin interference with and harassment of lawful demonstrations and picketing; and, with the aid of the U.S. Attorney General, obtained contempt convictions against the Commissioner of Public Safety, the Chief of Police and several policemen for violation of the injunction. The Department of Justice also was successful in a suit to enjoin the KKK’s activities in Bogalusa. In legal actions by the Louisiana CLU, the affiliate won a suit to desegregate the Bogalusa charity hospital, defended a Negro leader who was charged with theft immediately after he became prominent in the local civil rights movement, and defended a doctor from the Medical Committee on Human Rights who was arrested for violating an ordinance requiring segregation of races in places serving alcohol. The charges were dismissed and the ordinance subsequently repealed.

On the state-wide level in Louisiana, the ACLU urged the Justice Department to follow a more vigorous policy of releasing information
concerning attacks on Negroes and civil rights supporters in the state. The promise of prompt action, said the Union, backing up an earlier request by the Louisiana CLU, may deter segregationists from committing new acts of violence. "To remain silent is to create just the opposite effect," the Union said. The ACLU was not unaware that the disclosure of unevaluated FBI material was itself "an infringement of civil liberties" leading to "trial by newspaper." However, the Union added, "this does not mean that the federal government must remain silent except for an original announcement that incidents are under investigation." The ACLU warning should have been heeded by the Mayor of New Orleans, where a series of nighttime bombings damaged dwellings, stores and offices of persons connected with the civil rights drive; the automobile of the Louisiana CLU chairman was also attacked. The ACLU affiliate urged passage of an anti-bombing ordinance with stiff penalties as one way to halt the wave of terror. It also urged the Mayor to make a forceful public denunciation of the bombings to counter the impression some citizens may have that the city tolerates such "senseless attacks." In fact, added the ACLU, the Mayor's failure to speak out "may already have given comfort to the perpetrators of these dastardly crimes." Amidst the violence, there was one glimmer of progress: Louisiana Governor John J. McKeithen formed the first statewide biracial commission, composed of 21 whites and 21 Negroes, as an advisory group to maintain lines of communication between the races.

"I want to warn you . . . that the clock is ticking," President Lyndon Johnson said. Riots by Negroes can erupt in any city where people "feel they don't get a fair shake, [where] justice is not open to them." In 1965 the alarm went off in the Watts section of Los Angeles and it rang without letup during five days of fires, sniping and looting that resulted in the arrest of 2,200 persons and fire damage near $200 million. It was not a race riot in the ordinary sense — no whites were involved. But as an expression of what psychologist Kenneth B. Clark called "the rage of the rejected" it was a racial protest of profound significance. The ACLU of Southern California cited the explosion, which was touched off by the unnecessary use of force by a white policeman making an arrest, as further reason for establishing a police review board in Los Angeles. Sharing the view of most analysts, the affiliate pointed out that the deeper grievances were in the realm of jobs, housing, and education. "The lesson for other cities is to act now on these justified grievances," the ACLU of Southern California said, "and not wait until the dam bursts." More than 4,000 persons were arrested in the outbreak, confronting the ACLU affiliate and other groups with the monumental problem of rounding up lawyers to make certain the rights of the arrested were observed. The District Attorney at first opposed the release of any prisoner on bail, but the courts generally upheld the ACLU position that the Constitution guarantees the right to reasonable bail at all times, whether or not conditions of emergency prevail.
Similarly, the affiliate sought a reduction of excessive bail ($1,500 in 1,000 misdemeanor cases) and the setting aside of excessive jail sentences.

**Legal Harassment**

The contempt of court convictions of two Negro Virginia lawyers, defended by the ACLU, were reversed by the U.S. Supreme Court. The Union argued that the convictions of Leonard W. Holt and Edward A. Dawley Jr. "must be viewed as punishment . . . for their being civil rights lawyers, as well as for anything that occurred in the courtroom." The high court evidently thought so, too, in an opinion which said the lawyers "have been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this to defend against the charges made." The convictions grew out of a libel case in which Dawley declined to answer a question put by Circuit Court Judge Carlton E. Holladay. He was promptly charged with contempt and when Holt, who represented him, later asked for a change of venue, he too was charged with contempt.

Tobias Simon, a Miami attorney and general counsel of the Florida CLU, has won a second battle against members of the legal profession in the state who sought to punish him for his defense of hundreds of civil right demonstrators. In 1964 a contempt of court conviction in Tallahassee was dismissed (see last year's Annual Report, pp. 90-91); the charge grew out of Simon's defense of civil rights advocates in the city. In 1965, a grievance committee of the Florida Bar Association exonerated Simon of accusation by two St. Augustine lawyers that he "solicited business" and thus violated legal ethics when he represented hundreds of demonstrators in that city without fee. A number of eminent Florida attorneys came to his defense, including Cody Fowler, former president of the American Bar Association, who acted as Simon's counsel.

**Other Issues**

The U.S. Supreme Court unanimously annulled a Florida law forbidding cohabitation between Negroes and whites. "There is involved here an exercise of state police power which entrenches upon the constitutionally protected freedom from invidious discrimination based on race," the opinion declared. While not ruling directly on the constitutionality of laws banning interracial marriage, the Court cast doubt on the continued validity of such statutes which remain on the books in 18 states. They are 11 Southern states plus Delaware, Maryland, West Virginia, Kentucky, Missouri, Wyoming and Oklahoma. The Indiana miscegenation law was repealed following hearings at which the Indiana CLU testified against the statute. The National Capital Area CLU supported a test of Virginia's ban on interracial marriage before a Federal District Court. The court referred the case back to the state but made it
clear it would exercise jurisdiction if the state courts tried to evade a
test of law promptly. And in Oklahoma, the ACLU filed a friend-of-the-
court brief before the state Supreme Court challenging the miscegena-
tion laws on the grounds that they violate the equal protection and due
process rights guaranteed under the Fourteenth Amendment. The Union
said that marriage is an inalienable right which cannot be tampered with
by the state. The view that it is a social right, rather than a civil right,
which underlies the Oklahoma laws, is fundamentally inimical to the pre-
cepts of the Constitution, the ACLU brief declared. The state Supreme
Court rejected the Union's brief without dealing with the constitutional
issues; instead, the Oklahoma court denied a marriage license on the
ground that the prospective husband was only 19, and did not have
parental consent. When case came back to the high court, it held that
the miscegenation statute was not unconstitutional.

In other actions by the ACLU and its affiliates:

Discrimination in a Miami bar and grill brought about the integration
of the Dade County Jail, in a case brought by the Florida CLU. James
Ferguson was arrested when he was refused service, and sent to the
segregated jail. The affiliate took the case to a Federal District Court,
which ordered the jail integrated.

The ACLU and the ACLU of Georgia charged that a judge's denial of
a waiver of jury trial deprived a white civil rights worker in the South of
her constitutional rights. The charge was made in a friend-of-the-court
brief filed with the U.S. Court of Appeals for the Fifth Circuit which
asked for the reversal of a perjury conviction of Joni Rabinowitz, 22, who
took part in civil rights demonstrations in Albany, Ga. Subsequently the
government moved to void the conviction because of the exclusion of
Negroes from the jury panel.

A Federal District Court jury acquitted the Mayor of Dearborn, Mich.
and two top police aides of charges they conspired to withhold police
protection from a household menaced by a mob in a racial demonstration.
The Metropolitan Detroit Branch of the ACLU of Michigan brought the
suit. Still pending is a $250,000 damage suit filed by the affiliate on
behalf of Giuseppe Stantione, against the Mayor and 18 policemen. The
crowd mistakenly thought Stanzione had sold his home to a Negro and
that started the rampage.

**GENERAL DEVELOPMENTS**

**Education**

Faced with the choice of losing federal aid or desegregating their
public schools, all but about 150 of the South's more than 2,000 public
school districts chose to make a start toward desegregation. The decision
was forced by the U.S. Office of Education, acting under Title VI of the
Civil Rights Act, which prohibits giving federal funds to any public school
district practicing racial discrimination. Education Commissioner Francis
Keppel required a "good-faith substantial start" by desegregation of at least four grades in the 1965-66 school year. By the fall of 1967, all 12 grades must be desegregated, he declared. Governor George Wallace of Alabama sought to defy the order, but a revolt by a majority of the state's school boards brought general compliance. In Georgia, a letter was signed by 331 prominent citizens, expressing support for the Office of Education ruling.

The federal action was expected to double or triple last year's enrollments of 66,135 Negroes — about 2.3% of the South's school-age Negroes — with white children. More significant than the increased number, however, was the fact that for the first time many rural and small-city schools opened their doors to Negro children. No incidents of violence were reported. In Neshoba County, Miss., where a year ago three civil rights workers were slain, 10 Negro children began attending classes with whites; when a white high school senior poked a Negro student the principal whacked the white youth with a well-worn pine paddle and no further trouble occurred. Bogalusa, La., the scene of racial strife, admitted seven Negro pupils. And in Robeson County, North Carolina, where seven years ago local Indians routed the Ku Klux Klan, 110 Negroes enrolled in previously all-white schools. The school districts that refused to comply with the Office of Education order were among the poorest, most isolated in the region. The group included the wealthiest suburb in Texas, however — Highland Park, near Dallas, which has one school-age Negro.

The impact of the Civil Rights Act and the U.S. Office of Education may soon be felt in the North, too. Though the issue in the North is de facto segregation resulting from housing patterns and school district boundaries — rather than exclusion based on race — a government spokesman declared: "We can't close our eyes to discrimination." The Office of Education planned to launch inquiries in public schools in Boston, San Francisco, and Chester, Pa. In Chicago the Office of Education initially cut off federal funds, charging a pattern of racial imbalance in the schools but later restored them. Though the ACLU maintains that under the equal protection clause of the Fourteenth Amendment local school boards have an affirmative obligation to abolish de facto segregation, legal authorities and school boards differ on the question. A final ruling will eventually have to come from the U.S. Supreme Court, which so far shows no inclination to settle the matter. For the third time, the high court let stand an appeals court ruling on de facto segregation which in this case allowed Kansas City, Kan. to continue with its existing racial imbalances in the schools. The appeals court had said that while the Constitution prohibits the segregation of pupils by race, it does not command integration. Previously the high court had let stand decisions upholding New York City's attempt to better its racial "mix" and a Gary, Ind. school board decision to do nothing about de facto segregation.
Elsewhere in the North, marches and mass arrests finally brought a change in Chicago, where an integration aide was appointed to the school board over the strenuous objections of Superintendent Benjamin C. Willis. The showdown came after tension rose to dangerous levels and an influential group of business leaders called for a "bold stance" by the city in favor of school integration — and quickly. The New Jersey Supreme Court, in a far-reaching decision, ruled that communities must try to disperse Negroes throughout their school system, not merely try to reduce imbalances in schools that are nearly all-Negro. The New YorkCLU filed a friend-of-the-court brief on behalf of the Rev. Milton A. Galamison who fought an injunction to bar his activities in organizing a school boycott as a civil rights protest. The affiliate called the injunction "an outrageous effort to cut off freedom of speech and assembly." The Civil Liberties Union of Massachusetts, jointly with major religious organizations, filed a friend-of-the-court brief with the U.S. Court of Appeals for the First Circuit supporting a desegregation order affecting elementary and junior high schools in Springfield, Mass. The CLUM brief attacked the city school committee's opposition to the order, noting that feeder patterns based on Negro housing ghettoes perpetuated segregated schools. Noting the illusion that the inadequacy of segregated education is a phenomenon limited to the South, the brief declared that although "explicit racial classification may emphasize and aggravate the inferiority of the separated school . . . it is ultimately the caste character of such a school that makes it unequal" and contrary to the protections of the Fourteenth Amendment.

Housing

Since a 1962 Executive Order against discrimination in housing has hardly made a dent in the bulwark of bias, the ACLU urged an expanded, revitalized effort to put more power behind the government policy. The Union noted that the Order applies to a mere 10% or less of federally-aided housing; it thus urged the Administration to recognize "the totality of the problem by dealing with it in a total manner." This would require (1) expanding the ban on housing discrimination to all federally-aided banks and lending institutions, including commercial and national banks and savings and loan associations which are chartered, regulated or insured by agencies of the federal government; and (2) extending the Executive Order to cover retroactively all federally-aided housing built or contracted for prior to November 20, 1962, when the Order was signed.

A ruling by a Superior Court judge in California that the controversial Proposition 14 cannot be constitutionally enforced to promote racial bias in housing was a partial victory for the ACLU in its battle to nullify the measure in the courts. The case involved a landlord’s attempt to terminate a tenancy solely on the grounds of race, which the court found unconstitutional. But in another case, the same judge held against a
Negro physician who claimed a landlord refused to rent him an apartment on the grounds of race. The judge ruled in favor of the landlord, stating the Proposition 14 was constitutional if not used openly on the basis of race. The ACLU of Southern California, which brought both cases will appeal them both. Meanwhile, as the ACLU and its affiliates in Northern and Southern California continued to mobilize efforts to topple Proposition 14, an interesting legal test shaped up in the San Francisco area. There, a three-judge court representing the municipal court and the county confessed to "serious doubts" about the constitutionality of the measure in the light of the equal protection clause of the Fourteenth Amendment and the Thirteenth Amendment's "abolishing (of) slavery and its incidents." Eventually however, a U.S. Supreme Court decision will probably be necessary to decide the final fate of Proposition 14, which nullified most California laws barring discrimination in housing when it was approved in a statewide referendum in November, 1964.

Similar moves for referendums against fair-housing legislations were killed in Indiana, Nevada, Texas, and Rhode Island. Indiana, Rhode Island, Maine and Ohio passed legislation barring discrimination in private housing, bringing to 16 the number of states with such legislation. The Indiana law covers both commercial and residential properties, sales and rentals, and vacant land. Indiana had previously barred discrimination in public housing and urban renewal projects. The Rhode Island law also represents an extension from public housing to private housing. Moreover, the State Commission Against Discrimination is empowered to initiate complaints on its own motion. The ACLU of Michigan moved in court to uphold the right of Ann Arbor to enact its fair housing ordinance. The state contended that under the new state constitution, which created a Civil Rights Commission, effective authority in the field has been pre-empted by the state. The affiliate argued that municipalities could act consistent with the requirements of the state constitution on matters within their jurisdiction. Two state Supreme Courts upheld anti-discrimination bills affecting housing. One was the New Jersey tribunal, which approved a 1961 state law; the other court was Ohio's, which upheld Oberlin's fair housing ordinance. The Ohio Supreme Court said the right to own property is strengthened, not weakened, by laws which prohibit "discrimination in the disposal of property in such a manner as to interfere with the constitutional rights of others to acquire property."

Employment

Eight more states (Arizona, Iowa, Maine, Maryland, Nebraska, Nevada, New Hampshire and Utah) passed fair employment practices laws, bringing the total of states with such legislation to 32. In Arizona, a state civil rights law endorsed by the Arizona CLU, in some instances went beyond existing federal law in protecting constitutional guarantees. Concerned primarily with liberalizing voting restrictions, eliminating bias
in public accommodations and employment, the measure created a state Civil Rights Commission empowered to mediate disputes, make investigations and enforce the law. The fair employment section bars bias in all businesses employing 20 or more employes (the federal Civil Rights Act applies to firms with 100 or more employes, and which are engaged in interstate commerce), all labor unions and employment agencies. The first state Supreme Court test of the employment section of the Washington state anti-discrimination law was successful, from the plaintiff’s point of view. Reversing a modification approved by a lower court, the state Supreme Court ordered Seattle General Hospital to accept a Negro’s application and employ her in the dietary department, formerly an all-white department. For the first time the New York State Commission for Human Rights will be able to direct the collection of compensatory damages from a person found guilty of discrimination. The change, the first major revision of the law in 20 years, will strengthen the Commission’s effort against racial and religious discrimination in jobs, housing, education and public accommodations.

Public Accommodations

The Department of Health, Education and Welfare, once again flexing the power of the federal purse, moved to enforce the anti-bias provisions of the Civil Rights Act against more than 19,000 hospital and other health facilities receiving U.S. aid. The drive was preceded by a preliminary check on several institutions, including advance warnings of government inspectors. The advance notice of visits was derided by the NAACP Legal Defense and Educational Fund, which said that a hospital in Georgia shifted its Negro patients out of segregated facilities just before the investigator was scheduled to arrive, and shifted them back after he left, presumably satisfied that the hospital was not segregated.

In another crackdown under the Civil Rights Act, the Alabama Department of Pensions and Security, which gets about three-fourths of its $120 million annual budget from the federal government, stood to lose the aid if it did not comply with the nondiscriminatory provisions of the law. Miami opened its hotels and nightclubs to Negroes, but few were responding to the invitation. The main reason, it seems, was economic, not subtle discrimination. The American Library Association went on record in favor of barring from membership any institution that discriminates against library users. It was a significant step beyond a resolution adopted in 1962 which urged members not to discriminate and “if such discrimination now exists bring it to an end as soon as possible.”

A total of 35 states now have laws against discrimination in public accommodations. The latest additions to the list: Arizona, Missouri, Nevada and Utah. ACLU affiliates campaigned vigorously for passage of the legislation.
INTERNATIONAL CIVIL LIBERTIES

Although the Union’s activities are confined to the United States, it takes part in the efforts at the United Nations to write world law for civil liberties, to which the United States may adhere. For this and general purposes it maintains official relations both with the UN Office of Public Information, and the U.S. Mission to the UN and cooperates with other civic agencies through the Conference Group of National Organizations. So far, despite a considerable body of world law ratified by many nations, the U.S. has not ratified any legal convention for any one of the many rights. The Administration has submitted four such documents to the Senate, three within the last two years, and one, the genocide convention, fifteen years ago. Opposition to American involvement with world law and fear of interference with States’ rights make the prospects dim for securing a two-thirds — even a majority — Senate vote. This resistance is more remarkable since States rights are not involved in three treaties whose purposes are undeniable, to outlaw practices akin to slavery, to abolish forced labor and to assure political rights of women.

But the Union and many other agencies will continue to back ratification when a propitious occasion appears. This would presumably follow favorable not now visible action on the so-called Connally amendment to Senate ratification of the International Court of Justice, under which the U.S. reserves the right to control what U.S. cases it will permit the Court to hear. The Union supports repeal, as does the Administration, the American Bar Association and other agencies. The Union joined with thirty-five other national organizations in forming an Ad Hoc Committee on the Human Rights Treaties to aid ratification.

Due to the suspension of business in the General Assembly of the UN in its 1964 session because of the impasse over paying for peace-keeping forces, no progress was made in developing world law. The Union acts at the UN headquarters as an agency accredited for information purposes, and in a consultative capacity as an affiliate of the International League for the Rights of Man. It also maintains contacts with the UN agencies dealing with U.S. colonies on which the U.S. reports to the UN.

COLONIAL ISSUES

Virgin Islands

Strong home rule sentiment in these three islands with a population of 30,000, brought about in the fall of 1964 the election of a Constitutional Convention to write a new organic act fixing their relations with the federal government. The convention met for several months and produced a unanimous draft to be submitted to Congress, transferring to the Island government all local executive and legislative powers with the federal government retaining the judicial power. The convention expressed its goal as the greatest possible autonomy and the closest possible association with the U.S. as an “Autonomous Territory.” The
draft will be presented to Congress in 1966; it has already been presented to the executive departments.

**Puerto Rico**

Although Puerto Rico is an autonomous Commonwealth, its status is so unsatisfactory that island politics revolve around the alternatives of statehood, independence and an expanded Commonwealth relation. A joint commission to prepare studies and information on alternatives, both for Congress and the Puerto Rican people, is due to finish its work in early 1966. A vote of the Puerto Rican people will presumably follow. The Union will back in Congress whatever the Puerto Rican voters favor.

As a result of the civil rights studies made several years ago by a Puerto Rican commission, appointed by Gov. Luis Muñoz Marin, a permanent civil rights commission has recently been established by act of the legislature with wide powers of inquiry and recommendation.

**Pacific Islands**

The legislature of Guam moved to establish closer contacts with the federal government by sending a resident delegate to Washington to deal with departments and Congress. Guam will presumably move also for Congressional authority to elect its own governor. No change or complaint was reported from Samoa, where the constitution drawn up a few years ago is due for revision. The Trust Territory held its first legislative assembly. Other reforms suggested by the United Nations and planned by the U.S. have waited on this first effort at unity.

**Occupied Okinawa**

This group of islands far south of Japan, due to return to Japan as a prefecture when their need as an American military bastion is over, is the one remaining occupied area under the U.S. Governed by a general as High Commissioner, under an Executive Order, it has presented problems of civil liberties in conflict with narrow concepts of security. With the disinclination of Washington officials to interfere with the field commanders, and with a new High Commissioner under more liberal instructions, the Union has turned to its Japanese and Okinawan counter-parts to take the initiative in reforms. Many improvements are reported, with contacts between Japan and the Ryukus much easier. The Prime Minister visited the islands as evidence of Japan's solicitude for their well-being, and a liaison committee has been set up between the U.S. Ambassador, the Prime Minister's office and the Okinawan authorities. Sentiments for reversion to Japan promptly, or for joint administration, are strong, together with pressure for election of the island's chief executive, to replace his appointment by the High Commissioner from the legislative majority. The natural fears of a people whose islands are a base for American involvement in the Vietnam war have intensified desires both for greater autonomy and closer Japanese ties. The Union continues to aid in maintaining Okinawan rights and liberties.
MEMBERSHIP AND FINANCES
(For The Year Ending December 31, 1964)

The Union experienced major growth during 1964 in membership, contributions, and increased over-all effectiveness. New affiliates were organized in Georgia and Oklahoma, and three additional affiliates graduated to fully-staffed status during the year.

Some 16,800 new members joined the Union during the year, and 9,600 failed to renew their memberships. Thus the net increase in membership of 7,200 brought the figure for all areas where the national organization and its affiliates share in the contributions from members to 68,500 at year's end. In addition, the ACLU of Northern California listed 5,700 members. If we assume that roughly half of the 3,500 members in Northern California who contributed directly to the national organization were also members of the Northern California affiliate, the net membership as of December 31, 1964 was, in round figures, 72,500

This 11% growth in membership was accompanied by a 27% increase in membership contributions, a sign of a growing awareness by ACLU members that a more effective defense of civil liberties requires a higher level of financial commitment. Of the $883,000 contributed by members, $416,000 was retained by the Union's 32 affiliates for their own work and $467,000 was available for national office operations. Miscellaneous national office income (earnings of reserves, income from literature sales, etc.), special contributions for restricted purposes, and grants from special funds augmented the funds available for national operations to a total of $507,400.

However, large-scale increases in national operations described in this Annual Report resulted in total expenses by the national organization of $511,100. Thus an operating deficit of $3,700 was incurred during the year.

The average contribution for all members who gave in 1964 was $14.50 (averages in some affiliates who have ambitious programs of civil liberties defense ran much higher. In Southern California, for instance, it was $18!). Since new members join at an average of $8.47, overall averages are reduced through new membership recruitment. In 1964, 60% of the members gave $10 or more, and 12% contributed over $25.

In addition to regular contributions, over $56,000 was added by bequests and gifts to the Vigilance Fund. This Fund made major grants to the Lawyers Constitutional Defense Committee ($7,500) and to our California affiliates to assist in their campaign against Proposition 14 ($25,000). Expenditures from other special funds (see report below) combined with the operating deficit meant that the Union's net worth increased by only $6,000 to $159,000 on December 31, 1964.
The following members gave $200 or more during 1964:

Joseph W. Aidlin, Samuel Abels, Adolph's Ltd., Rowland Allen, Miss Ruth Allen, Steve Allen, Mrs. Fanny H. Arnold, Mr. and Mrs. John P. Axtell, Dr. Catherine L. Bacon, Joseph Ball, Miss Helen Beardsley, John L. Becker, Laird Bell, Dr. Carroll J. Bellis, Charles Benton, Benjamin Berg, Mr. and Mrs. Louis Berke, Dr. Viola W. Bernard, Mr. and Mrs. Edgar Bernhard, Miss Sylvia W. Bigelow, Joseph W. Bingham, Dr. Nelson M. Blachman, George Bodle, Mrs. Elizabeth P. Borish, Mr. and Mrs. T. A. Boswell, Mr. and Mrs. Harry Braverman, Mr. and Mrs. John D. Briscoe, Mr. and Mrs. Robert Brock, Bullitt Foundation, Andrew Burnett, Mr. and Mrs. Carlton Byrne, Henry B. Cabor, Chester F. Carlson, Lamberto Cesari, Sidney Charesht, Robert Clapp, Miss Fanny T. Cochran, Averna Cohn, Miss Catherine W. Coleman, Edward T. Cone, Mr. and Mrs. Albert S. Coolidge, Misses Garner Cox, Stephen T. Cray, Mrs. Alexander L. Crosby, Mrs. Carl E. Croson, Mr. and Mrs. W. S. Dakin, Maxwell Dane, Mrs. A. M. Dodge, Mr. and Mrs. Sol Dollinger, Robert T. Drake, Charles L. Dunham, Miss Frances W. Dunn, Mr. and Mrs. David Egger, Peter Elibott, Edward J. Ennis, W. R. Everett, Dr. H. O. Fehling, Dr. and Mrs. John H. Ferger, Henry G. Ferguson, Mr. and Mrs. Jack X. Fields, Mr. and Mrs. Walter D. Fisher, Walter T. Fisher, Mrs. Thomas Fleming, Mrs. Emily F. Flender, Mr. and Mrs. W. Flexner, Mr. and Mrs. Richard W. Foster, Samuel Freeman, Mrs. Stanley Freeman, Miss Libeth Preschi, Mrs. STanton A. Friedberg, Paul Froom, Albert S. Fulton, Harry Furgatch, Miss Margaret Gage, William M. Gaines, Mr. and Mrs. Edwin F. Gamble, Mrs. Sidney Gamble, Bernard M. Gelson, Harold G. Gelwicks, Mr. and Mrs. V. S. Gertner, Mr. and Mrs. J. W. Gitt, Lewis Glaser, Seth M. Glickenhaus, Mr. and Mrs. S. L. Gomberg, Miss Elinor M. Goodridge, Herbert G. Graetz, Dr. Robert P. Grant, Dr. Sidney S. Grant, Dr. and Mrs. James Graves, Philip H. Gray, Louis C. Green, Dr. John Grinde, David Grutman, Richard Grumbacher, Jeremiah S. Gutman, Mr. and Mrs. Edward B. Harper, Irving B. Harris, Mr. and Mrs. J. E. Harris, Mr. and Mrs. Gilbert A. Harrison, James H. Haun, Austin Herschel, John Horn, J. M. Huber Corporation, Mrs. Richard W. Ince, International Ladies' Garment Workers Union, Dr. Alvin Isaacson, Mrs. Sophia Y. Jacobs, David B. Jones, Mr. and Mrs. Parry Jones, Sidney D. Josephs, William Jovanovich, Orrin G. Judd, Leon Kaplan, Dr. and Mrs. Benjamin Karpman, Charles Katz, Mrs. Edith N. Kay, Mrs. Robert A. Keller, Robert W. Kenny, Dr. and Mrs. W. S. Kiskadden, Arthur S. Kling, Erwin Kingsberg, Alfred A. Knopf, Mrs. William Korn, Leo Kozin, Stanley Kissoff, Mr. and Mrs. J. B. Kruskal, Jr., Edwin J. Kuh, Jr., Dr. Austin Lamont, Mr. and Mrs. Hayes C. Lamont, Edward A. Lasher, Mrs. Agnes Brown Leach, Marshall S. Leef, Carter Lee, Mrs. V. S. Littauer, Walter Longstreth, Mrs. Pare Lorentz, Dr. and Mrs. Henry Louria, MacAlister College—Campus Chest Fund, Mr. and Mrs. Patrick M. Malin, Dr. and Mrs. Simpson Marcus, Arnold H. Marzement, Mr. and Mrs. Zachary Marks, Kenneth Mayag, Miss Frances B. McAllister, Merle H. Miller, Walter E. Mitchell, Jr., Hunter Morrison, Dr. James M. Mott, Miss Catherine Mudie, William W. Mullins, Mrs. Anna L. Myers, Mr. and Mrs. Rolland O'Hare, Mr. and Mrs. Louis Otten, Dr. Robert W. Palmer, Miss Gertrude Pascal, Dr. Helen Peak, Mrs. Katherine Peake, Oliver P. Pearson, Frank C. Pierson, Rotary Foundation, Mr. and Mrs. Saul Poliaik, Alexander Polkoff, Mr. and Mrs. Robert Pollok, Dr. Dallas Pratt, Elise D. Pratt, George D. Pratt, Jr., Mrs. Jane A. Pratt, Mrs. Jerome Pressman, Mr. and Mrs. Herbert Rackow, Anthony Randall, H. Oliver Rea, Mr. and Mrs. Chester Rick, Mr. and Mrs. I. M. Riley, Dwight Rogers, Miss Charlotte Rosenbaum, Maurice Rosenfeld, Mr. and Mrs. Alan Rosenbahl, H. A. Ross, Harry Roth, Dr. Harold H. Royalty, Dr. Kenneth Rubin, Richard Salomon, Mrs. Fay H. Sawyer, Miss Alice Schott, Mr. and Mrs. Leonard Schroeter, William J. Scott, Alexander Scourby, James Seelig, Rod Seeling, Dr. Marvin Shapiro, Dr. D. M. Shayne, Mr. and Mrs. William B. Shore, Mrs. Gratia E. Short, Richard M. Shure, Mrs. Sara Simon, George Slaff, Mrs. James Slater, Mr. and Mrs. Lloyd M. Smith, Mr. and Mrs. Allen A. Snook, Mr. and Mrs. Sam Starr, Dr. and Mrs. Charles S. Stein, Mrs. Edward Steiner, Arthur I. Stephens, Allen W. Stokes, Miss Ann R. Stokes, Dr. Robert Stoller, Mr. and Mrs. Robert C. Stover, Mr. and Mrs. James Struthers, Lyle Stuart, Miss Ellen Thayer, Mr. and Mrs. Lee Thomas, Willis Thornton, Miss Anne L. Thorp, John B. Turner, Robert C. Turner, United Automobile Workers International Union, United Automobile Workers, Local #154, United Steelworkers of America, Mr. and Mrs. Frank Untermyer, Philip Wain, J. Waties Waring, Rowe Weber, Bernard Weingarten, Miss Mary Weiss, Mrs. George West, Mr. and Mrs. James Whitemore, Duane E. Wilder, Mr. and Mrs. D. A. Wilhelmson, Harold Willens, Mrs. Josephine J. Williams, Miss Mary C. Wing, Robert E. Wise, Mr. and Mrs. Jacob Zeitlin, Miss Betty Zukor. Eight anonymous contributions totalling $3,585 were received. The following states listed ten or more of the above contributors: Southern Calif., 66; New York, 45; Illinois, 24; Pennsylvania, 13; Massachusetts, 12; Northern Calif., 10.
ROLL OF HONOR

In 1963 the Board of Directors created the Vigilance Fund, described on the back cover of this report, to consist of substantial unrestricted bequests and gifts made in honor or in memory of a named person. The testators and the persons for whom such gifts were made are listed in this Roll of Honor, which also includes gifts to the Endowment Fund. Included in the Roll are gifts received to October 1, 1965.

JANE ADDAMS
EVELYN P. BALDWIN
ROGER N. BALDWIN
JAMES D. BARNETT
HARRY BLAKE
ARNOLD BRIDGES
RICHARD BROOKE
FANNY JAMES BROWN
GRETA ELIZABETH BROWN
MORRIS L. COOKE
DOROTHY DAKIN
MARGARET DESILVER
GEORGE CLIFTON EDWARDS
EDMUND C. EVANS
LOUIS H. FRIEDHOFF
ROSEMUND GLEASON
JOHN HAYNES HOLMES

JULIUS HOLZBERG
B. W. HUEBSCH
JACOB LEVINE
JOHN MANTNER
FRED G. MELCHOR
BLANCHE MEYER
WILLIAM L. MOORE
WILLIAM NORTON
MARIE McCADDIN PAUTZ
ISAAC POMERANCE
IRVING SCHWARTZ
JOHN B. TURNER
ALEXANDER UFFE
ESTHER UFFE
RUTH VALENTINE
CATHERINE WILSON

Prior to the creation of this special purpose fund, countless others had made gifts to the Union by bequest or in honor or memory of others. Substantial contributions have also been received from donors who wished to remain anonymous. All these gifts have played a vital role in what the Union has since done and become. Though unable to name them all, in the manner in which we here honor those who created, or for whom the Vigilance Fund was created, the Union acknowledges its debt—and that of our cause—to these benefactors.
**ACLU FINANCIAL REPORT FOR 1964**

(National Organization Exclusive of Affiliates)

**INCOME**

- **MEMBERSHIP DUES AND CONTRIBUTIONS** $883,146
- **Less affiliates’ share** $415,980
- **National ACLU’s share** $467,166

**Restricted contributions**
- For Southern Regional Office $5,259
- For Emergency Expansion Drive $3,425
- **Total** $8,684

**Grants from Special Funds**
- From Marshall Fund (for legal expenses) $11,391
- Baldwin Escrow Fund $3,600
- Other $4,443
- **Total** $19,434

**Miscellaneous National Organization Receipts** $12,105

**TOTAL NATIONAL ORGANIZATION INCOME** $507,389

**EXPENDITURES — NATIONAL ORGANIZATION**

**Executive and Functional Operations**

- **Legal Operations**
  - **Salaries** $19,669
  - **Cases (briefs, court costs, law library, etc.)** $26,392
- **Education and Action**
  - **Salaries for education and program** $40,844
  - **Annual Report** $18,710
  - **Civil Liberties** $20,393
  - **Feature Press Service (weekly bulletin)** $6,922
  - **Pamphlets, reprints, misc.** $14,801
- **Washington, D.C. Office — legislative services**
  - **Salaries** $20,429
  - **Rent, phone, supplies, etc.** $7,449
- **Southern Regional Office (3 months)**
  - **Salaries** $5,648
  - **Rent, phone, supplies, etc.** $4,957
- **Executive Operations**
  - **Salaries** $52,900
  - **Board and Committee Expenses** $1,807
  - **Corporate and affiliate services** $3,763
  - **Biennial Conference** $11,019
  - **General** $889
  - **Total** $256,592

**Membership and Development Department**

- **Field Development Office**
  - **Salaries** $10,417
  - **Travel, maintenance, etc.** $8,932
- **Membership and Development Operations**
  - **Salaries** $71,860
  - **New membership promotion** $68,236
  - **Renewals, special appeals** $14,127
  - **Equipment and miscellaneous** $9,574
  - **Total** $183,146

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UN-ALLOCABLE EXPENSES
Rent, cleaning, repairs, equipment ....................... $ 27,497
Stationery, office supplies, printing ...................... 7,024
Postage, telephone, telegraph ............................. 13,554
Taxes and insurance ........................................ 13,177
Audit .......................................................... 2,750
Miscellaneous ................................................. $ 7,344 $ 71,346
TOTAL NATIONAL ORGANIZATION EXPENSES ................ $511,084
TOTAL NATIONAL ORGANIZATION INCOME ................... $507,389
Operating Deficit ............................................ $ (3,695)

GENERAL FUND BALANCE
January 1, 1964 (deficit) .................................. $(10,095)
Transfer of Emergency Expansion Fund for field development (liquidation of fund) .................. 15,373 $ 5,278
GENERAL FUND BALANCE, December 31, 1964 ................ $ 1,583

SPECIAL FUNDS ACCOUNT
VIGILANCE FUND—Balance, December 31, 1963 .............. $ 51,263
Bequest and gifts received .................................. 56,647
To General Fund for pamphlet ............................... $ 605
To California affiliates for
Proposition #14 campaign ................................... 25,000
To Lawyers Constitutional Defense Committee ............ 7,500 (33,105)
Balance December 31, 1964 ................................ $ 74,805

ENDOWMENT FUND, balance, 12/31/64 (unchanged from 12/31/63) .................. $ 48,706

EDMUND C. EVANS FUND, balance, 12/31/63 ................ $ 15,877
Dividends and gain in stock sale .......................... $ 569
Grants
To General Fund for voting rights brief ................... $ 1,000
To Lawyers Constitutional Defense Committee ............ 7,500 (8,500)
Balance, December 31, 1964 ............................... $ 7,946

ROBERT MARSHALL FUND, balance, 12/31/63 ................ $ 32,208
Interest and Dividends received ........................... 1,361
Grants to affiliates for cases .............................. $ 1,099
Grant to General Fund for cases ......................... 11,391 (12,490)
Balance, December 31, 1964 ............................... $ 21,079

FUND "B" (AFFILIATE RESERVE)
Affiliate contributions to Fund in 1964 .................... $ 20,358
Less owed to General Fund on 12/31/63 ................... $ 2,838
Development grants to affiliates .......................... 12,395 (15,233)
Balance, December 31, 1964 ............................... $ 5,125

TOTAL BALANCES IN SPECIAL FUNDS, 12/31/64
(Market value of securities held over book values $23,766) ........................................... $157,661
BALANCE SHEET AS OF DECEMBER 31, 1964

ASSETS:
Cash on hand and in banks ............................................................ $ 11,926
Accounts receivable (affiliates) ...................................................... 15,444
Due from special funds .................................................................... 15,102
Investments and security deposits .................................................... 9,353
Special funds accounts (see above) ................................................ 157,661
TOTAL ASSETS ................................................................................ $212,486

LIABILITIES AND NET WORTH:
Liabilities:
Delayed transfers to affiliates ........................................................ $ 15,523
Accrued expenses and sundry payable ........................................ 11,789
Payroll taxes payable .................................................................. 3,850
Due to Vigilance Fund ................................................................ 12,667
Reserve for severance pay ............................................................ 9,413
Total liabilities and reserves ........................................................ $ 53,242
General fund balance 12/31/64 .................................... $ 1,583
Special Funds Accounts, balances on December 31, 1964 157,661
NET WORTH, December 31, 1964 .................................................... $159,244
TOTAL, LIABILITIES AND NET WORTH ...................................... $212,486

ROGER N. BALDWIN ESCROW ACCOUNT
FUND BALANCE January 1, 1964 ...................................................... $ 43,599
Income from investments .............................................................. $ 3,007
(Loss) on sale of securities ........................................................... (172) 2,835
Transfer to ACLU for Mr. Baldwin's part time services .. 3,600
Custodian Fee ................................................................. 150 (3,750)
Balance December 31, 1964 ...................................................... $ 42,683
(Market value of securities held $89,632)
### COSTS OF CASES AND OTHER LITIGATIVE EXPENSES OF THE NATIONAL ORGANIZATION*

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</tr>
<tr>
<td>Schwartz v. Underwood—Campus free speech</td>
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<td>Smith v. Mississippi—Jury exclusion</td>
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<td>Smith v. Penn—Right to FBI reports</td>
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<td>Stamford v. Texas—Texas anti-subversive legislation</td>
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<td>U.S. v. Giniburg—Censorship</td>
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<td>U.S. v. Mississippi—Discrimination in voting</td>
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<td>U.S. v. Seeger, Peter &amp; Jakobson—Conscientious Objectors</td>
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<td>Veterans of the A.L.B.—Communist-front provisions of Internal Security Act</td>
<td>847</td>
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<td>Washington Office</td>
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<td>Worthy—Right to passport</td>
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<td>Zemel v. Rusk—Cuban transit ban</td>
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<td>Legal work—N.Y. Headquarters</td>
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<tr>
<td>Law Library</td>
<td>1,219</td>
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</tbody>
</table>

*Full details on these cases will be found elsewhere in this Report. Expenditures cover only out-of-pocket items such as printing of briefs, travel, long-distance phone calls, etc. The Union's cooperating attorneys serve without fee. 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 philosophy 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 payroll taxes.

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INDEPENDENT AUDITORS’ REPORT

We have examined the balance sheet of the American Civil Liberties Union, Inc. (national organization exclusive of affiliates), at December 31, 1964 and the related statement of income and expenditures, special fund accounts and the Roger N. Baldwin Escrow account appearing on pages 104 to 107 for the twelve months then ended.

Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements mentioned above present fairly the financial position of the American Civil Liberties Union, Inc. (national organization exclusive of affiliates) and the Roger N. Baldwin Escrow account as of December 31, 1964 and the results of their respective operations for the twelve months then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

APFEL & ENGLANDER, Certified Public Accountants

TRANSFERS TO INTEGRATED AFFILIATES AND SEPARATE AFFILIATE FINANCIAL INFORMATION (UNAUDITED)

<table>
<thead>
<tr>
<th>Affiliate’s Net Worth 12/31/64</th>
<th>Affiliate’s Additional Local Income</th>
<th>Transfers From Joint Memb. Income</th>
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</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>$ 1,327</td>
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<td>Southern California</td>
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<td>National Capital Area</td>
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<td>New Jersey</td>
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<td>New York City</td>
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<td>Oregon</td>
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<td>Pennsylvania-Delaware</td>
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<tr>
<td>To Fund “B” Reserve</td>
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</tr>
</tbody>
</table>

TOTAL TRANSFERS .......... $415,980

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* Resigned June, 1965 to become U.S. Ambassador to Luxemburg.
** Resigned October, 1965 because of moving out of state.
*** Resigned December, 1965 to accept appointment as Corporation Counsel of the City of New York.

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* Affiliate executive head—person to correspond with.
** Indicates a full-time office is maintained.
*** Indicates a part-time office is maintained.
STATE CORRESPONDENTS

(In states and territories where the Union does not have organized affiliates, these correspondents assist the ACLU by securing information and giving advice on local matters. They do not represent the Union officially.)

Alaska—James E. Fisher, Box 397, Kenai
Arkansas—Mrs. Ruth Arnold, 219 Tinwood Court, Little Rock
Delaware—William Prickett, 1310 King Street, Box 1329, Wilmington 99
Idaho—Alvin Denman, P.O. Box 1841, Idaho Falls
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New Hampshire—Winthrop Wadleigh, 45 Market Street, Manchester
North Dakota—Harold W. Bangert, 400 American Life Building, Fargo
South Carolina—John Bolt Culbertson, P.O. Box 1325, Greenville
South Dakota—Marvin K. Bailent, 125 South Maine Avenue, Sioux Falls
Tennessee—Leroy J. Ellis III, Commerce Union Bank Building, Nashville
Vermont—John S. Burgess, 67 Main St., Brattleboro
West Virginia—Horace S. Meldahl, P.O. Box 1, Charleston
Wyoming—The Reverend John P. McConnell, 408 South 11th Street, Laramie
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Executive Assistant—Mary O'Melveny
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Washington, D.C. 20036 Telephone: 483-3830)
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Membership includes the ACLU's authoritative Annual Report, *Civil Liberties* ten times a year, and your choice of ACLU pamphlets. Students members at $3 receive *Civil Liberties* and the Annual Report. 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.

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- $100 and up — Participating Member
- $50 Cooperating Member
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- $10 Supporting Member
- $6 Basic Membership

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PLEASE PRINT CLEARLY

NAME ......................................................................................................
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OCCUPATION ...................................................... PHONE .......................
The Vigilance Fund is comprised of all unrestricted bequests to the national organization and major gifts to the ACLU made in memory or in honor of a named person.

The principal of the Vigilance Fund is invested and the income used for the substantive work of the Union, assuring more effective protection and projection of our civil liberties.

Portions of the Vigilance Fund itself may be used from time to time for special projects of overriding national importance. Such projects may include:

1. Organizing a prompt and effective response to any civil liberties crisis of national proportions for which current budgeted funds prove inadequate.
2. Financing a major educational campaign on a specific civil liberties issue of extraordinary national significance.
3. Developing civil liberties activities in areas where no ACLU organization exists and strengthening affiliate organizations in areas of special need.

Such use will be made, however, only for projects recommended by the National Development Council, a body elected by representatives of the Union's affiliates and by the National Board, and approved formally by the National Board.

With like authorization the fund may be employed to finance capital requirements and the accommodation of fluctuations in the income and expenses of the Union or any of its affiliates, but amounts so used are required to be restored to the Vigilance Fund out of operating income.

The Endowment Fund is maintained for donors who prefer to add to the permanent funds of the Union. It is invested in income-producing property for the benefit of national operations. Unless otherwise specified, the Board of Directors has the authority to make temporary use of the Endowment Fund as security for short-term borrowing to accommodate seasonal fluctuations in income.

Each year the Union pays tribute to the individual testators and persons in whose memory or honor gifts aggregating $500 or more were received by listing them in its Annual Report.

**BEQUESTS TO THE ACLU**

During the past fifteen years the American Civil Liberties Union has received by bequest over $500,000 from the estates of more than eighty persons. The legacies have ranged from $20 to $145,000.

The Union regards such gifts with special pride and special obligation, because they represent the legator's 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." Bequests thus given will be added to the capital funds of the national organization and of the ACLU affiliate in the area of the testator's residence, on the basis of a sharing formula which has been developed to make most effective use of the testator's gift.

Should the testator wish to make his own provision for the portion of his gift which is to be used for local purposes, there should be added to the foregoing, "of which $......................... shall be applied to the use of its .................... affiliate."