1960 – Fortieth Anniversary Year

WORK AHEAD IN HOPE

39th Annual Report
July 1, 1958 to June 30, 1959

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1960 – Fortieth Anniversary Year

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170 Fifth Avenue New York 10, N. Y.
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DEDICATION

TO ALL WHO HAVE WORKED
FOR THE GREATEST POLITICAL CAUSE
THROUGH THE AMERICAN CIVIL LIBERTIES UNION
1920 — 1960

Prime Minister Harold MacMillan, on television in Moscow, March 2, 1959: "Every individual should have freedom to develop his personality. On this foundation, our whole political system is built. We hold that the state exists for man. In our small island, we have thought a lot about political philosophy and we have worked out our system gradually over a period of a thousand years. Of course, the result is not perfect, but we think it represents a good compromise between the rights of the individual and the demands of the state. For the problem of the organized society is really how to combine order and freedom."

Allen Drury, a member of The New York Times Washington bureau and author of "Advise and Consent," in an article in his newspaper’s Sunday book review section, September 6, 1959: "One gradually arrives, after covering the Government of the United States at its heart for sixteen years, at some sort of philosophy about Congress, about America, and about the American people, in relation to themselves, to their times, and to each other. There are some, I think in the minority, who have arrived at a philosophy of angry and ironic contempt. There are others, I think in the majority, who have arrived at about what I have arrived at—a realization of America’s weaknesses, an appreciation of her strengths, and a balance that comes down, even as it looks some quite hard facts in the eye, on the side of hope."
"WORK AHEAD IN HOPE"

by Patrick Murphy Malin

Men find it easy to look back in anger, to look around them in anger, cursing the darkness; they find it hard quietly to work ahead in hope. But the durable future is always being built by those who discipline themselves to that hard task. The American Civil Liberties Union does its share of righteously angry shouting. But, as its 40th Anniversary approaches with the beginning of 1960, it must more than ever test itself by actual achievement.

Ever since its founding in 1920, the Union has been unique among American private organizations, as they taken together are unique among the institutions which characterize the various nations of the world. Its membership is drawn from all sorts and conditions of people in all sections of the country, and it serves all sorts and conditions of people in all sections of the country. We are concerned with all civil liberties—mainly freedom of belief, communication and association; due process of law, and other kinds of fair procedure; equal protection of the laws, without discrimination on account of any irrelevant consideration of sex, race, creed, national origin, etc.—and we are, as an organization, concerned with nothing but those central guarantees of a democratic government and a free society. The Union performs its watchdog function in all governmental areas—the courts and legislatures and executive departments, federal and state and local—and in some non-governmental areas. Without a large natural constituency of occupation or religion or ethnic origin, it has nevertheless long had wide and deep influence.

In the courts we work, not as a legal aid society supplying free counsel to indigent litigants or defendants from the initial stage onward, but usually in the role of amicus curiae—friend of the court—at the appellate levels, when the constitutional questions of civil liberties have become distinguished from other questions of law and from questions of fact. Through our cooperating attorneys—now numbering 800 in 300 cities of 48 states (including Alaska and Hawaii, but not South Dakota and Wyoming), and all working without fee—we supply printed briefs and oral arguments on what seem to us to be the civil liberties points involved, not merely in the specific interest of those whose rights are immediately at stake, but chiefly in what we believe to be the general interest of all of us—"we the people of the United States."

In the legislatures—from city halls to Congress—we present our views on new bills and existing laws, and on strategy and tactics, in offices and hearing-rooms and lobbies. Such work is more rough-and-tumble than an appearance before the Supreme Court, but we need constantly to remind
ourselves that civil liberties are increasingly affected by the enactment or non-enactment of ordinances and statutes and that by no means all legislative errors can ever be carried to the high courts for correction. The Union cannot throw much electoral weight about, but it can argue—the most honorable way to lobby—and it can stimulate other organizations with bigger battalions.

In the executive departments—from municipal police to the White House—we offer protests and suggestions to the administrators who, as society grows in complexity, are left by legislatures and courts to shoulder an increasing proportion of discretion in making the day-in-and-day-out practical and detailed application of general laws and guiding principles. Bureaucracy is inescapable in a complex society—in big business and big labor as well as big government. Our only hope is to prevent it from being any more tyrannical than necessary, and we confront an ever-larger and never-ending task to realize that hope.

In the field of public opinion, the Union publishes some pamphlets and makes some speeches, but it lacks the money to make large use of the mass media—partly because, as it is now organized, it cannot confer income-tax-deductibility on its contributors. We have just appointed a committee to see whether the Union—its national organization, plus 27 affiliates in 23 states, with their chapters in 80 communities—is now big enough to warrant becoming two organizations, one for non-tax-deductible activities and the other for tax-deductible operations; whether much or little would accrue in tax-deductible contributions, and whether the recent phenomenal growth in members—who serve as informed citizens, not only as contributors—could be continued. Meanwhile, we do what popular education we can, notably by providing facts and ideas to leaders of larger organizations.

We can never express sufficient gratitude to our members for the quintupling of their numbers and contributions during the last ten years; there are now about 45,000 members contributing about $450,000 exclusive of locally-raised-and-spent special funds and exclusive of bequests. Moreover, the pattern of our income, as shown by the table below, makes us even more appreciative—for the surest financial foundation on earth, and exactly the kind which a civil liberties organization, hewing to the line and letting the chips fall where they may, should have.

<table>
<thead>
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<th>Category</th>
<th>Contributions</th>
<th>Percentage</th>
<th>Total</th>
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<tr>
<td>Under $5</td>
<td>6,750</td>
<td>15%</td>
<td>$20,000</td>
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<tr>
<td>$5-9.99</td>
<td>22,500</td>
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<tr>
<td>$100 or over</td>
<td>450</td>
<td>1%</td>
<td>$60,000</td>
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About two-thirds of our cash budget—$300,000—goes to pay the frugal salaries of the sixty executive and clerical members of the skeletal staffs of the national organization and those fourteen affiliates which have any paid personnel. But the work of staff members is multiplied five or ten times by the unpaid but professional services of national and affiliate and chapter board and committee members, correspondents in the 27 states still without affiliates, and cooperating attorneys (who deserve the seventh heaven). Our product is not automobiles, but the work of our paid and unpaid personnel; and we hope that our members note how big that output is and how little it is burdened with overhead, and thus feel they get their money's worth.

Fortunately, though the ACLU is still unique in the combination of characteristics outlined above, the 1950's have witnessed a mounting activity in defense of civil liberties by many organizations—educational and civic, religious and labor, minority-group and inter-group. Among the academic and semi-academic enterprises there are: the Arthur Garfield Hays Civil Liberties Memorial Program of teaching and topical research in the New York University School of Law, established in 1957 by J. David Stern with the special help of Arthur's ACLU associates; the Florina Lasker Fellows Program in Civil Liberties and Civil Rights of Brandeis University, established in 1958 in memory of a former national ACLU board member by her sisters (one of them, Loula Lasker, a present member of our New York City affiliate board); and the Center for the Study of Democratic Institutions in Santa Barbara, California, on which is now concentrated the attention of the Fund for the Republic, established in 1952 by the Ford Foundation. The leading instrumentality for the exchange of information and ideas, among 125 organizations of the various kinds mentioned at the beginning of this paragraph, is the National Civil Liberties Clearing House of Washington, D.C., founded in 1948 largely through the initiative of Roger Baldwin. Those organizations, as a whole, are much more active in regard to non-discrimination than due process or free speech, and much more in the field of public opinion than governmental areas; but they are most useful—through, for example, the National Association of Intergroup Relations Officials, with headquarters in New York.

The removal of discrimination, South and North, is still the nation's most pressing unfinished business. In the first session of the 86th Congress, the filibuster rule was just slightly changed, and the only legislation was the extension of the life of the Civil Rights Commission—whose own recent report, admirable as far as it went, was chiefly remarkable for showing how little had been accomplished by the Civil Rights Division of the Department of Justice—even with the additional means authorized by the Civil Rights Act of 1957 and even in the primary matter of the vote. Moreover, despite the emphasis on non-
discrimination in the recent report of the Republican Committee on Program and Progress, the exigencies of presidential politics are likely to prevent Republicans and Northern Democrats from producing in the 1960 Congressional session more than a lot of grandiloquence. From the federal government, therefore, we can realistically expect only a continuation of admirable court decisions (like the Supreme Court's October 12 upsetting of a Negro's conviction in Mississippi because of the systematic exclusion of Negroes, as non-voters, from jury lists) and gradually intensified executive action (like that of the President's Committee on Government Contracts in the last several months, since the appointment to its top staff post of Irving Ferman, former ACLU Washington office director).

But the biggest and best news is that, with regard to public school desegregation, the change in the tide of opinion and action which began in September 1958 among white Southerners (herewith thanks and homage to the Southern Regional Council, headquarters in Atlanta) is continuing, not rapidly but steadily. The businessmen of Little Rock—typifying the chief influence at work all through the South—have taken the lead in re-opening its schools; "massive resistance" has crumbled in bellwether Virginia; The Charleston (South Carolina) News and Courier is editorially forsaking total segregation; former Governor Arnall of Georgia has announced that unless the schools of his state are kept open—segregated or not—he will seek election on that platform in 1962; and the 1959 Southern Governors' Conference was dominated by Hodges of North Carolina and Collins of Florida. Alabama and Mississippi will soon be alone in futile defiance of the irresistible tide—as they are now conspicuous, though by no means alone, in the outrage to which the ACLU is currently trying to awaken state and local bar associations: the refusal of white lawyers to represent Negroes in even due-process or free-speech cases.

Removal of discrimination in employment, housing and public facilities—by state and local government action, and by individual and private-group action—continues in the South as well as in other sections of the country, where there are not only more and more Negroes, but also Puerto Ricans, Mexican-Americans, Asian-Americans, Indians and Jews. (See recent surveys of the National Association for the Advancement of Colored People, the National Urban League, the American Jewish Congress, the American Jewish Committee and the Anti-Defamation League of B'nai B'rith.) But in many "northern" localities the problem grows faster than the solution, and it is almost universally true that much remains to be done before "the North" can justifiably claim it has shouldered its own share of a national and international obligation.

Organized labor, having sown the wind of neglect, has this year reaped the whirlwind, even from friends. For example: A. Philip
Randolph, president of the Pullman Car Porters and a National Committeeman of the ACLU, has indicted the AFL-CIO leadership for failure on the bias front, in the unions themselves and in the outside community; and the ACLU, which began in 1942 to urge the unions voluntarily to create an internal democracy of free speech and due process, has now decided also to support federal legislation to that end. On the nation-wide due-process front, recent studies serve to remind us that classic problems never die but live on to plague the "common people," who are not intellectuals and rarely make a headline. The ACLU's Illinois Division issued in January a sobering report on Secret Detention by the Chicago Police. The Pennsylvania Bar Association Endowment has just issued The Eavesdroppers, a startling report on wiretapping, etc. The Arthur Garfield Hays Civil Liberties Program is currently engaged in investigating double jeopardy and other troubles arising from federal and state jurisdiction.

Intellectuals of one degree or another have made plenty of headlines in the television quiz scandal, and it is to be devoutly wished that the housecleaning now in motion may extend to improving the industry's service to civil liberties through greatly amplified and varied presentation of serious public questions (in the 1960 campaign, for a start); this would help stave off government censorship of specific program content, while preserving government responsibility for general public-interest operation of what is in fact a public utility. As for other censorship, nearly everybody else in government seems to be out of step with the Postmaster General in his crusade for tighter restriction; but justifiable concern over juvenile delinquency is causing some Protestant groups and women's organizations to lean toward official censorship and private boycott, at the very moment when some Catholic groups are moving the other way. On the church-and-state front, the fundamental problem continues to be, not Senator Kennedy and the Presidency, but public-funds-for-religious-schools and public-schools-for-religious-purposes; and on that problem the Baptists, now doing the yeoman work for non-"establishment," are going to need all the help they can get. In the academic freedom field, educators must step up their soul-searching about the National Defense Education Act of 1958, not merely because of its highly-publicized oath-and-affidavit clause, but much more importantly because of its almost-ignored portent of manifold governmental regimentation following in the train of federal aid.

Free speech suffered setbacks when the Supreme Court, by a bare 5-4 decision in the Barenblatt case, upheld the constitutionality of the House Un-American Activities Committee; and when the House further prolonged the life of the Committee under the same old mandate and management. But it is significant of the country's present understanding of the problem of national security and individual liberty (in this year
of international ice-melting) that—despite the urging of the American Bar Association’s special committee on Communist tactics, strategy and objectives—the bills to “curb the Court” withered on the vine in the 1959 session of Congress; and for that we may pardonably claim some credit for the ACLU’s prominently-published analysis of the committee’s proposals.

Civil liberties can never be permanently "out of the woods." But they are a lot better off than they were in 1954, when the ACLU was approaching its 35th birthday. And they will be a lot better off in the future than they might otherwise be, if—for the ACLU—life begins, once again, at forty!

This report was written by Mitchel Levitas, a New York newspaperman; and supervised and edited by Alan Reitman, our associate director, with the help of other members of the national staff, as well as our affiliates’ staffs and officers. To them, and the hundreds of ACLU volunteer workers throughout the country, this final word is offered in insufficient token of special gratitude.
I. FREEDOM OF BELIEF,  
EXPRESSION AND ASSOCIATION

THE GENERAL CENSORSHIP SCENE

1. Books and Magazines

The Courts. The Postmaster General's authority to censor material that passes through the mails received a serious setback when a Federal District Court judge in New York ruled that D. H. Lawrence's romance, *Lady Chatterley's Lover*, was not obscene. The verdict upset a ban imposed on the sale and distribution of the novel by Postmaster General Arthur E. Summerfield. The decision, which is being appealed by the government to the U.S. Court of Appeals, tightened the rules on the discretionary authority of the Post Office. Judge Frederick vanPelt Bryan observed that Summerfield had applied tests to the book which he "understood" the U.S. Supreme Court had laid down in determining questions of obscenity. But Judge Bryan declared that he had found no evidence that the Postmaster has the final power to make such interpretive judgments. "Whatever administrative functions the Postmaster General has go no further than closing the mails to material which is obscene within the meaning of the statute," he said in his opinion. "This is not an area in which the Postmaster General has any 'discretion' which is entitled to be given special weight by the courts. (To) interpret the obscenity statute so as to bar *Lady Chatterley's Lover* from the mails would render the statute unconstitutional in its application, in violation of the guarantees of freedom of speech and the press contained in the First Amendment."

It is essential to the maintenance of a free society," added Judge Bryan, "that the severest restrictions be placed upon restraints which may tend to prevent the dissemination of ideas. It matters not whether such ideas be expressed in political pamphlets or works of political, economic or social theory or criticism, or through artistic media. All such expressions must be freely available."

The New York Civil Liberties Union, which praised Judge Bryan's opinion, had filed a brief with the court arguing that under the U.S. Supreme Court's decisions it had been determined as law that the First Amendment prohibits the application of obscenity to all but "hard core" pornography and that the Lawrence classic did not fall in that category. The jurist did not rule directly, however, on the ACLU's long-held position that the Postmaster General does not have constitutional power to pre-censor.

The U.S. Court of Appeals in Washington, D.C. issued an injunction
preventing the Post Office from interfering with the mail of a film
dealer accused of mailing 14 films found obscene and objectionable.
The dealer, Wallace Hamilton, on whose behalf the Union filed a brief,
claimed the Post Office was interfering with all his mail, not only the 14
banned films; that the decision on legality was left to the discretion of
a low-ranking postal employe; and that prior restraint on his future
business was being exercised because of past illegal activity. On this
last point the ACLU brief relied on a U.S. Court of Appeals decision
in the case of the nudist magazine Sunshine and Health (See last year's
Annual Report, p. 10), which held that the Postmaster's orders must be
limited solely to activities previously found to be unlawful.

For the first time a state Supreme Court officially rejected the common
belief that links the reading of crime comic books and juvenile delin-
quency. Supporting the ACLU's argument that there is as yet no
conclusive evidence supporting a causal relationship between reading
such crime books and the commission of actual crimes, the California
Supreme Court declared in a unanimous opinion: "The record fails to
show that there is a clear and present danger that the circulation of
crime comic books in general will injure the character of persons under
the age of 18 years and inculcate in them a preference for crime." The
ACLU of Southern California had filed a friend-of-the-court brief in
the action, which set aside a Los Angeles County ordinance that made
it a misdemeanor to sell and circulate specified crime comics to persons
under 18. Additional grounds on which the state court made its decision
were that the ordinance violated free speech and free press provisions
of both state and federal constitutions since it was too vague, that it
denied distributors equal protection of the law by establishing "arbitrary
and unreasonable exemptions," and that it failed to specify "a clearly
defined standard of guilt."

**U.S. Post Office Censorship.** The ACLU testified at length
against a bill passed by the House that extended the censorship powers
of the Post Office Department. Appearing before a House Postal
Operations subcommittee, board chairman Ernest Angell warned that
though censorship is "inherently bad," the pending legislation was
particularly dangerous because it proposed wider authority for Post-
master General Summerfield—"a public official with (a) notoriously
poor record of judgment . . . ." The Union levelled three chief accusations
against the bill. First, the unlimited discretion granted the Postmaster
General to impound incoming mail by applying to such material the
vague standard of "the public interest" was "clearly unconstitutional,"
Angell said, in view of the Supreme Court's reversal of a Texas
municipal film ordinance that used almost identical language.

Second, the Union objected to extending the life of a 20-day admin-
istrative impounding order to 45 days. The Union said this would have
the effect of destroying a business without requiring any previous hearing and without any final determination by the Postmaster or a court that the material impounded actually was obscene. In addition, the ACLU testified, since there was no practical method of separating allegedly obscene mail from the disseminator's other mail, he is forced to expose his private correspondence to the Post Office. These provisions, said the Union, involve questions of unlawful search and impounding without a warrant in violation of the First and Fourth Amendments to the Constitution. The Union's third principal objection to the measure raised the general issue of censorship. "The powers of the censor are almost inevitably abused," Angell said, pointing to the fact that in recent years every act of the Postmaster in banning "obscene" material from the mails and every act of a movie censor board has been overturned by the courts as violations of freedom of speech and press. He suggested that instead of attempting to "evade" the court rulings that have narrowly defined obscenity, such as the U.S. Supreme Court opinion in the Roth case (See 1956-1957 Annual Report, pp. 37-39), the Post Office conform to such decisions. He further recommended that if the criminal obscenity statutes are deemed ineffective, the Post Office, like the Customs Bureau, should be required to bring an action in federal court to condemn the material.

Angell also took the occasion to condemn criticism by the Post Office of opposition to its censorship activities and of its refusal to accept court rulings on obscenity. The Post Office, he said, "has even gone to the extreme by attacking attorneys who have procured favorable court decisions for their clients. These lawyers," Angell continued, "are no more to be condemned than the attorneys for the Post Office who seek to obtain an 'obscenity' finding as to material which is later found by the courts to be protected by freedom of the press."

The first issue of Big Table, a literary magazine published in Chicago, was banned by postal authorities on the ground that two short stories contained "obscene, lewd, lascivious and filthy" prose. The Illinois Division of the ACLU believes Big Table is published with "serious literary purpose," however, and defended the magazine before a Post Office hearing examiner and has taken the case to the federal courts, to protect First Amendment rights. The Illinois Division said the Post Office Department "would do well to remember that its job is to deliver the mail, and that Americans are free to decide what they will read." The hearing examiner, however, said that although the magazine "would not arouse the interest of the average reader in sex, it goes beyond the customary limits of candor in literature."

The issue of alleged obscenity in movie advertising occupied postal officials, at least one state legislature and newspapers (see below). The focus of attention was the decision by a Post Office Department hearing
officer that postcards with a photograph of Goya's *The Naked Maja* could not go through the mails, although the Department conceded that neither the card nor the message on the back were obscene. It was the combination that officials objected to. The decision promptly raised the objections of the New York Civil Liberties Union which said it involved "a grave constitutional question of prior restraint." The questionable nature of the case was seen in the Justice Department's decision not to defend the Post Office's decision.

**Foreign Propaganda.** The massive censorship program aimed at foreign periodicals which the Post Office has conducted for the last nine years in the face of repeated ACLU protests may be headed for a U.S. Supreme Court test. Previous legal challenges have been mooted when, after cases were filed or scheduled for filing, postal authorities released the material in question. Such was the case in a suit filed by the Illinois Division of ACLU against the Chicago Postmaster, but a parallel suit for damages against the official still is alive, thus making a court test possible, but more difficult. The Chicago suit was filed on behalf of Mrs. Helen MacGill Hughes, managing editor of the *American Journal of Sociology*, against Chicago Postmaster Carl A. Schneider for illegally detaining two magazines sent to her from Prague, *Czechoslovak Woman* and *Czechoslovak Youth*. She demands their immediate delivery and $1,000 damages. The legal action was unusual since it made Schroeder a defendant as an individual, not a government officer, on the theory that he was acting beyond the scope of his authority and therefore could not have the protection of performing an official act. The ACLU contends that no law exists authorizing the Post Office to determine what is propaganda, let alone withholding or burning material it has so judged. The aim of the suit, said the Illinois Division, is "to force federal officials to recognize their constitutional duty to deliver even mail criticizing the United States and let each citizen decide for himself what is propaganda and what is truth." Until last December persons to whom foreign periodicals were mailed were not even notified that the material had reached this country but was considered "non-mailable" to them. In the Hughes case, the editor was notified in February that the two Czechoslovak magazines were being held and could be delivered only if they were "not for dissemination" and if Mrs. Hughes signed a form stating that she had "ordered, subscribed to or desired" the publications. In her suit Mrs. Hughes declared that because of her professional activities she may "disseminate" the magazines and their contents. She believes she was put on the mailing list of the magazines because she and her husband attended a UNESCO conference in Prague recently. After Mrs. Hughes declined to sign the required forms she was informed that her protest was being considered in Washington. The history of the current case stretches back to the early 1950's when
security tensions were at their peak. Libraries and research scholars, as well as average citizens, discovered they could not obtain publications from behind the Iron Curtain to which they had subscribed. Protests by the ACLU and other groups brought the lifting of the ban for libraries and scholars and then for non-specialists. The last government move has been the issuance of post card notices such as Mrs. Hughes received to deal with unsolicited material from overseas.

**Customs Bureau.** The seizure and release by U.S. Customs inspectors of an English version of Jean Genet's *Our Lady of Flowers* has resulted in charges of censorship by the ACLU and a denial by the U.S. Treasury Department that Customs officials practice over-all censorship. The case began when Daniel Bell, a member of the ACLU Board of Directors, had the book confiscated upon his return from Europe. He was told, he said, that because the book was published by the Olympia Press of Paris it was presumed to be "obscene," as were all other publications of the same firm. Bell was shown a list of books by the Customs inspector supposedly used as a guide for confiscation, including Samuel Beckett's *Molloy* and J. P. Dunleavy's *The Ginger Man*. Following a denial by Customs officials that a list of banned books exists, ACLU executive director Patrick Murphy Malin wrote an official letter of protest to Treasury secretary Robert Anderson charging that the reported ban on all Olympia Press books was an "indiscriminate" seizure. "Exclusion of all the titles of a given publisher," Malin said, "inevitably results in invasion of the individual's freedom to read, a right guaranteed by the First Amendment." Malin also emphasized that the existence of a list of proscribed books raises the issue of whether the determination of obscenity was made by judicial decree "or merely by administrative fiat." In reply, Acting Treasury Secretary A. Gilmore Flues denied that the Customs Bureau seized all Olympia Press books, but did not answer whether the Bureau maintained a general list of banned volumes. Flues admitted that Bell should have been informed of his right to contest the non-admittable classification on the grounds that *Our Lady of Flowers* was a so-called classic or a work of established literary or scientific merit.

**State Legislation.** Although Omaha's obscene literature ordinance was ruled unconstitutional on the grounds that its language was "vague and uncertain," a New Mexico state law defined pornography as material "designed in its entirety to stimulate human senses in a manner and to a degree offensive and corrupting to public morals." The new law lifted the state from the ranks of hold-outs among states that did not have an anti-obscenity statute on the books. In the reversal of the Omaha ordinance, the Nebraska Supreme Court took particular objection to the vague wording of a state anti-obscenity law which made it illegal
to sell publications "which, read as a whole, are of an obscene nature." The book in question was *Peyton Place*.

In Maryland, the American Book Publishers Council urged the veto of a bill restricting publications to what would be considered suitable for children under 18. The Governor signed the bill, however, although there was no early rush of convictions.

Massachusetts passed legislation by a narrow margin setting up a seven-member Obscene Literature Control Commission that would recommend prosecution to the Attorney General whenever periodicals considered obscene under the state law are "on sale or about to be placed on sale." The Civil Liberties Union of Massachusetts and other groups representing civic groups, church organizations and newspapers worked to defeat the bill, but their efforts succeeded only in eliminating phrases from the bill that directly encouraged censorship. Further opposition came, too, from the state Attorney General, who said that existing laws were sufficient to prevent the sale of pornography, and from the state representative who originally introduced the measure in 1957, but who now said he believed it would impose unconstitutional prior censorship. In neighboring Rhode Island, a Superior Court judge voided the state's 62-year-old obscenity law as "unconstitutional" on the grounds that the law was "virtually a carbon copy" of the Michigan statute reversed by the U.S. Supreme Court in the 1957 Butler case. In that decision the high court held that any literature banned because it was believed harmful to youth also interfered with the freedom of speech and choice of adults. A unanimous Virginia Supreme Court found the state's anti-obscenity law void on the same ground. A public debate on Rhode Island's Commission to Encourage Morality in Youth featured the secretary of the Commission and the chairman of the new Rhode Island Civil Liberties Union. The former defended the Commission's circulation of blacklists to book dealers and police by saying that methods used in the courts would only flood dockets and delay justice while more smut was sold and read. The ACLU spokesman pointed out that prior restraint was no solution to a problem best solved through education, good taste and the post-publication safeguards provided by existing anti-obscenity laws.

On the West Coast, legislators in Washington, Oregon and California scored mixed results in proposals to combat obscenity. Washington state lawmakers defeated a catch-all measure creating a censorship board in the Senate but passed two bills in the House. One measure made it a misdemeanor to deal in obscene material of any kind and the other designated prosecuting attorneys of each county to seek an injunction against such material. Defendants in such cases would be entitled to a jury trial with a judgment by the court to follow within two days of the conclusion of the trial. Oregon courts declared as unconstitutional-
tionally vague an anti-obscenity law passed in the last session of the legislature, while in California state representatives beat down five proposed changes that would tighten present anti-pornography laws after vigorous anti-censorship protest was registered.

**The Local Scene.** Increased activity in Cincinnati has resulted in seven convictions in less than two years under the city's anti-obscenity ordinance. Much of the public climate has been created by the Citizens for Decent Literature (see below), a group that in the fall of 1958 sponsored a national conference on obscenity. The group believes that although existing laws are adequate, enforcement is frequently "apathetic" and the public is "unaware of the severity of the problem."

Two incidents in California cities illustrate various aspects of local censorship. In Sacramento, six self-service newsstand racks selling *The Weekly People*, a publication of the Socialist Labor Party, were banned by the City Council. In San Francisco, police demanded that a nude painting entitled *Venus* be removed from a gallery window as pornographic. The owner refused and the ACLU affiliate in Northern California has expressed willingness to defend anyone arrested in the controversy.

In another affiliate action, the American Civil Liberties Union of Oregon protested the intention of the Benton County District Attorney to "sweep from Benton County sex magazines that go beyond what is felt to be the bounds of decency." A contrasting view of local censorship action has been submitted by an advisory committee set up by the Arlington, Va. County Board to consider the wisdom of recommending a local ordinance. The answer: it isn't wise. The committee said that although the state law should be clarified and tightened by means of more precise definitions, there was "little or no advantage" in adopting new legislation. The volume of pornographic material was small, the study concluded, periodicals play "a small part" in the pattern of delinquency, parents play "an important role," and so-called "voluntary" agreements with dealers tend to become coercive. The committee urged more community recreation facilities and a better library program.

Two nudist magazines which last year won a U.S. Supreme Court verdict that they were not obscene still are meeting harassment in various communities. Oklahoma police arrested two men on charges of selling *Sunshine and Health* and *Sun*. In New York City, the metropolis is being sued by publishers of the same magazines for $2,000,000 damages for allegedly suppressing the publications after the high court ruling. (See last year's Annual Report, p. 10.)

An end to legal action has been reached in the case of Lawrence E. Gichner, a Washington, D.C. businessman who has written widely on the subject of erotica, accused of violating a local statute prohibiting the possession and exhibition of indecent materials. The seized crates
of literature, figurines and photographs were released by police to a newly-established public foundation and in return Gichner waived his right to sue the Washington Police Department for illegal detention or illegal seizure. The ACLU strongly protested the seizure of Gichner's scholarly data and cooperating attorneys of the Union filed friend-of-the-court briefs on his behalf.

**NODL and Other Private Groups.** The latest example of a community in which a list of "offensive" publications compiled by the National Office of Decent Literature has been used as the basis for official censorship action is Watertown, N.Y. There, the local newspaper reported that a "quiet campaign" undertaken by law enforcement officials has resulted in the NODL list being circulated to some 80 book and magazine dealers. The local District Attorney, moreover, declared that under state law he is fully empowered to institute civil and/or criminal action against dealers who refuse to comply by removing the NODL targets from the stands. Two smaller communities, Valdosta, Ga. and Bay County, Mich., have abandoned the NODL list as a guide to banned publications. And in San Mateo County, Cal., a local group that intended to use the NODL list collapsed when public claims of vast support were deflated.

Described by the Indiana Civil Liberties Union as "a Gestapo maneuver that puts us to shame," a daylight raid by city police and sheriff's deputies of Marion County, Ind. was made on 16 drug stores, a distribution warehouse, a variety store and a book store in Indianapolis. Confiscated were 1,500 copies of more than 70 magazines, many of which are on display at newsstands from coast-to-coast. Behind the raid was the Citizens Committee for Decent Literature, a mid-west organization that is seeking expansion on a national scale. The action by the group aroused the scorn of newspaper editorialists as well as that of the ACLU. "Yesterday's whole procedure," commented The Indianapolis Times, "opens channels dangerous to the entire community. It could logically proceed to total censorship of books, motion pictures, television—even sermons to force the whole community to conform to the standards of a self-appointed few."

**Textbooks.** A resurgence of attempts by local and national right-wing groups to censor textbooks and other instructional materials has been noted by several groups, including the ACLU, which has been involved through its affiliates in combatting local instances of attempted censorship, and the National Education Association. Some of the vigilante groups, espousing such themes as "common-sense economics," favor the creation of local textbook review committees which label publications and authors as subversive, socialist or communistic. Such groups are also frequently ranged alongside critics of the public schools
who urge a return to the three R's without "fads and frills"—vocational, office and home arts training. One group, for example, America's Future, Inc., has set up a textbook evaluation committee whose aim will be directed particularly at history and social science texts. Schoolbooks on these subjects in the East Paterson, N.J. school system were "cleared" by school officials after 11 of the texts used were criticized in a book by Prof. E. Merrill Root, *Brainwashing in the High Schools*. In Levittown, L.I., however, authorities withdrew two articles used in supplementary reading by sixth-graders after their content was questioned in an editorial in the *National Review*, a conservative publication.

Another group active in the stepped-up drive against certain textbooks has been the Daughters of the American Revolution, whose members have sought the elimination of various volumes used in classrooms. In Connecticut DAR officials were refused a list of all texts used in the state's primary and secondary schools and in North Carolina the legislature killed a bill inspired by the DAR and other groups which would have put laymen on the State Textbook Commission. The Commission is composed of 12 professional educators who recommend books to the public schools. Florida and Illinois were other states in which legislatures defeated attempts to censor textbooks. In Florida the ACLU was injected into debate over the bill when one of the housewives who was testifying in its favor declared that a political science text she had examined portrayed the Union in the role of "Robin Hood." And a state representative complained that a high school textbook praised the ACLU as a group "dedicated to the overthrow of our government." The Florida CLU fired off a telegram to the critic demanding a retraction, but none was made. Neither have Florida newspapers printed the affiliate's denial of the charge, although another Florida state representative did defend the ACLU on the House floor.

**Libraries.** A flurry of censorship by public libraries appeared aimed at the best-selling novel *Lolita* (in Northern libraries) and at allegedly pro-integration sentiments contained in children's books (in Southern libraries). Institutions in Nutley and Newark, N.J. refused to buy copies of Vladimir Nabokov's book and said they wouldn't accept it even as a gift. The ACLU of Washington State met with librarians and is studying the book purchasing policy of the Seattle Public Library after it refused to buy the novel, and the Greater Miami chapter of the Union termed "incredible" the city library's decision to restrict the book's circulation after purchasing it. The affiliate said that since the book was bought with tax funds, it should be available. A little work, imagination and publicity showed how a Menlo Park, California member of the ACLU stirred officials of the San Mateo city and County libraries to stock *Lolita* after an initial decision to ban the book. Richard G. Gould said that after reading about the book's difficulties in Cincinnati
in the ACLU's weekly news service, he inquired locally of library officials and forwarded the fruits of his research to *The San Mateo Times*, which ran a two-column story. In less than a week, both libraries stocked the book in response to numerous public inquiries. In Cincinnati, the adventures of *Lolita* had no such happy ending. The Cincinnati CLU affiliate gave a free copy of the novel to the library director after he claimed that budgetary problems were behind the decision not to make it available to the public, but five days later *Lolita* returned to the CCLU office with the explanation by library officials that they had simply re-affirmed their original decision not to buy the book.

Pigs and rabbits were storm centers in libraries in Alabama and Florida. *The Rabbit's Wedding*, a children's book about the marriage of a white rabbit and a black rabbit, was removed from general circulation by the Alabama Public Library Service Division, which lends books to libraries throughout the state. The move, which still left the book available on a reserved basis, was taken after complaints that the book reflected an integrationist attitude. The children's story remained on the shelves of the Orlando, Fla. public library system despite charges that it was "an amazing example of brainwashing." As for the *Three Little Pigs*, they danced into the racial storm after a Miami segregationist said he would try to get it off the state's bookshelves because a new version involved black pigs, white pigs and black-and-white pigs. The Georgia Board of Education voted to require a stamp of approval from its literary committee on all library books after a Board member warned that pro-integration literature was worming its way into the libraries. *The Macon Telegraph* commented editorially that although it favors segregation, it disapproves of the censor's stamp.

**Handbills.** A police ban on the distribution of leaflets by the Socialist Labor Party was condemned by the Cleveland Civil Liberties Union as a violation of freedom of the press. Police had stopped the distribution on the grounds that recipients were littering the sidewalk outside the Public Music Hall. The ACLU of Southern California is carrying to the U.S. Supreme Court the test of the constitutionality of a Los Angeles ordinance which requires that all leaflets contain the names and addresses of both the publisher and distributor. The defendant maintains his right to anonymity is protected by the federal Constitution. The atom age has spurred at least two prosecutions for distributing handbills. In Champaign, Ill. legal action against three University of Illinois students was dropped by police after the Illinois Division of the ACLU attacked the constitutionality of the city's anti-handbill ordinance. The students were distributing a leaflet entitled "What Can You Do for World Peace." And in Brooklyn, N.Y. the Sanitation Department handed out a summons to a person distributing material of the Sane Nuclear Policy Committee, but two days later said
it would not appear in court after the group took its case to the New York Civil Liberties Union.

2. Motion Pictures

The Courts. Decisions by the U.S. Supreme Court, a Federal District Court judge in Chicago, and the Pennsylvania Supreme Court struck hard at state and local movie censorship. Despite such reversals in the courts, however, anti-obscenity drives were launched in several states and municipalities, largely because of a sharp upsurge in the activity of religious and women's organizations.

The high court wrote six opinions in unanimously upsetting New York State's ban on the movie version of *Lady Chatterley's Lover*. The verdict was hailed by the ACLU, which had supported the case, although only Justices Black and Douglas concurred in the basic ACLU position that all prior censorship of movies was unconstitutional. The main opinion by Justice Stewart explicitly avoided this issue, apparently leaving intact the right of New York or any other state to preview and prohibit pornographic motion picture scenes. Although the verdict was unanimous, a five-man majority held unconstitutional one portion of the New York film-licensing law. That section bars movies showing "acts of sexual immorality, perversion or lewdness" as being "desirable, acceptable or proper patterns of behavior." Four other members joined on narrower grounds. The majority opinion held the provision of the law unconstitutional because it banned films which appear to approve of immoral conduct but which are not in themselves obscene. "What New York has done," said the opinion, "is to prevent exhibition of a motion picture because that picture advocates an idea—that adultery under circumstances may be proper behavior. Yet the First Amendment's basic guarantee is of freedom to advocate ideas. The state, quite simply, has thus struck at the very heart of constitutionally protected liberty. (The Constitution) protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. . . ."

The Federal District Court in Chicago issued a ruling that may have wide repercussions in various communities seeking to restrict the showing of certain movies to adults. As a response to numerous legal decisions overturning outright banning of specific films, many localities are turning to classification of films according to their "acceptability" to certain age groups. In deciding that Chicago's "over 21" ordinance was vague and indefinite, Judge Philip L. Sullivan declared: "A picture is either 'obscene' or it is not. And this is true of the other standards mentioned . . . None of these criteria can change with the age of the beholder." He referred to U.S. Supreme Court decisions holding that a censorship statute is unconstitutional if it is so vague as not to give
censors a rational guide to action. This, Judge Sullivan said, was cer-
tainly the case with this particular provision. Judge Sullivan's opinion
was issued in the case of *Desire Under the Elms*, first released in
Chicago more than a year ago, and given a "limited" permit by the
six-woman police censor board after the Legion of Decency gave it a
"morally unobjectionable for adults" tag. Both labels are the equivalent
of "For Adults Only."

The Pennsylvania Supreme Court reversed the obscenity conviction of
the operator of a drive-in theater who was arrested, sentenced to three
months in jail and fined $200 for showing the movie *Uncover Girls*.
The case had been in the courts since October, 1956. The state ACLU
affiliate filed a brief on behalf of the defendant. The brief argued that a
section of the penal law forbidding the screening of a film that was
"lascivious, sacrilegious, obscene, indecent, or immoral, or such as might
tend to corrupt morals . . ." was unconstitutionally vague. However,
public furor caused the legislature to pass a new anti-obscenity law
conforming to the Supreme Court's *Roth* decision.

**State and Municipal Actions.** A wide variety of gains, losses and
stalemates were registered in eight states where the battle over movie
censorship reached the floor of the legislatures. In Pennsylvania a movie
censorship bill opposed by the ACLU of Pennsylvania passed the legis-
lature and may become a "model law" other states will seek to follow.
The affiliate called the statute "too vague and sweeping," and a court
test brought by the motion picture industry and backed by the ACLU
is under way. The new law is an effort to replace a pre-censoring statute voided by the courts. The new measure establishes a State Board
of Motion Picture Control to decide what films are "obscene," but
it could also bar from movie houses or television screens any film
deemed "unsuitable for children" if the movie showed as acceptable
conduct "the commission of any crime or the manifesting of contempt
of law." The ACLU pointed out this could mean an end to viewing
*Robin Hood* and *Tom Sawyer*.

Maryland, New York and Ohio considered but turned back bills to
classify films for "adults and children," with ACLU affiliates active in
opposition. Movie industry spokesmen expect the 1960 legislative ses-
sions in these and other states to focus on the classification technique.
Efforts were made in the Kansas legislature to end the state's censorship
board; Minnesota adopted a law bringing films and billboards under the
anti-obscenity laws; in Virginia a test case of the state's film censorship
agency was begun; and in Illinois, in the face of court rulings, several
films banned by the police were released.

In two California cases, the ACLU of Northern California represented
a store owner convicted of keeping obscene postcards and film for
sale although the man said he was simply keeping them as security
for a $50 loan, and the ACLU of Southern California is considering filing a friend-of-the-court brief on behalf of a Los Angeles theater owner against whom contempt proceedings have been threatened. The exhibitor refused to show eight films, seven of which were said to be educational or experimental, to a legislative sub-committee investigating pornography. He defied a subpoena on the grounds that films, like printed matter, are constitutionally protected as a medium of expression.

A Montgomery, Ala. movie theatre manager refused to show a film because of local conditions that, for once, were not related to protests over alleged obscenity. A. B. Covey cancelled a showing of *The Defiant Ones* because of fear of what local segregationists might do. The movie shows the escape from a chain gang by a Negro and a white man who are chained together for much of the film. Covey, who said he had fought back against censorship before, said that if it had not been for past instances of bombings and other violence, "I'd have told them to go to hell." But he said he feared for the safety of patrons after receiving a telegram of protest from the Montgomery Citizens Council.

**Legion of Decency.** The show business weekly *Variety* reported that groups of Roman Catholic laymen, "and to a lesser extent the hierarchy itself, are putting unprecedented pressure on state and local authorities" to retain or step up motion picture censorship. Where in the past such attempts were more often made "behind the scenes," *Variety* said, now "they're pretty much out in the open and lobbying vigorously in the name of 'decency' and 'morality' and the safeguarding of the young." In addition to its usual policy of condemning films, the Legion of Decency also may be moving toward a more "positive" approach of recommending movies it believes are particularly worthy. Early in 1959 Bishop William A. Scully, retiring chairman of the Roman Catholic Church's Committee for Motion Pictures, Radio and Television, told a conference that Catholic film-goers are urged to "give positive support at the box office" to promote the production of better movies. Within a month, the Legion of Decency had recommended its first film, *The Inn of the Sixth Happiness.* The Legion reported that during 1958 every American movie reviewed was approved according to one of its three favorable classifications.

**The Code.** A West Coast Commission of the Broadcasting and Film Commission of the National Council of Churches publicly condemned the "ineffectiveness" of the motion picture code and the current emphasis on films for sex and violence. It promised to prepare a "program" to "assist in creating better motion pictures." The statement, which apparently carried overtones of censorship and private pressure, was promptly criticized by other NCC leaders who eschewed any threat of censorship.

Newspaper censorship of movie advertisements on grounds of obscenity have been strenuously protested by film groups. The Los Angeles
Newspaper Publishers Association, for example, refused to accept ads for *The Naked Maja* containing reproductions of the Goya nude. The Motion Picture Association of America rejected as "unthinkable" a suggestion by the publishers that they be permitted to preview all such advertising. Chicago newspapers demanded that ads for *Anna Lucasta* be cleaned up before appearing and *The Columbus (Ohio) Dispatch* warned that movie advertisements may become subject to future "editing."

3. Radio and TV

**Equal Time.** Congress passed a bill exempting radio and television news programs from the controversial "equal time" provisions of Section 315 of the Federal Communications Act. The new amendment to Section 315 exempts from equal time demands by candidates during political campaigns "bona fide newscasts, news interviews, news documentaries (and) on-the-spot coverage of bona fide news events." The Congressional debate on the bill showed clearly that regularly scheduled panel news interviews were also freed of the requirements of Section 315. The bill, adopted as a result of a generally-condemned Federal Communications Commission decision in the case of Lar Daly, a perennial Mayoralty candidate in Chicago, continued the obligation of broadcasters "to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

In a statement submitted to House and Senate committees considering the amendment, the ACLU warned against broader revision of Section 315, proposed in the bill covering the actual speeches of candidates, because such changes would not only sharply alter the radio-TV industry, but change the shape of political campaigning. The Union supported the exemption of legitimate news shows from the law and such programs which did not provide "use" of a station's facilities on behalf of a political candidate. The ACLU emphasized that its interest in the Section 315 controversy was based on a twin purpose—to achieve "more access to broadcasting opportunities by candidates of the smaller parties, and more broadcasting discussion by the candidates of the two major parties."

The amended Section 315 overturned an FCC ruling which required broadcasters who feature a political candidate in a newscast to give equal time to his opponents. It arose after Daly appealed to the FCC following a TV appearance of Chicago's Mayor, Richard Daley, at a ceremonial function. The FCC upheld the demand for equal time, although previously the requirement had been interpreted to apply only to outright political campaign speeches. The ACLU criticized the FCC ruling in the Daly case. The key words in determining when Section 315 applies,
said the Union, are "use of a station's facilities." Contrary to the Commission's opinion, said the Union, "that 'use' is synonymous with public appearance, we believe a line can—and should—be drawn between bona fide newscasts where a candidate's direct use of the facilities is not involved, and programs—news or otherwise—where a candidate's appearance by length of time on a program or other methods of favoritism, amounts to 'use of a station's facilities.'"

**Libel.** A major issue under Section 315 has been the question of a station's immunity from libel prosecution if it broadcasts defamatory statements made by a candidate who demands equal time. This matter was finally settled by the U.S. Supreme Court in favor of the station on the grounds that when Congress required broadcasters to grant equal time to opposing candidates but forbade them from censoring such political speeches, the station was inferentially granted immunity. Otherwise, said the Court, "all remarks even faintly objectionable would be excluded out of an excess of caution." The verdict came in the case of A. C. Townley, an independent candidate for U.S. Senator from North Dakota, who had demanded equal time under the law from station WDAY and then launched into a full scale attack on the North Dakota Farmers Educational and Cooperative Union, including the charge that the group was planning a Communist Soviet. The Farmers Union sued for libel, but was turned away by the state Supreme Court on the same general grounds cited by the high tribunal.

The ACLU had entered a friend-of-the-court brief before the U.S. Supreme Court warning that permitting stations to censor political speeches would open a Pandora's Box. "It would permit radio and television managers to deprive millions of Americans of the right to hear—free of prior restraint—the words of candidates for public office, by making such managers the final arbiters of the truthfulness, motives, intent and fairness of comment of a candidate who may make a statement which on its face is or might be defamatory." Other serious effects of an adverse ruling, said the Union, would probably be a sharp reduction in the number of political broadcasts, coupled with a rising ignorance by the population of key issues, as a result of scrupulously fair broadcasters who intend to take every precaution to avoid a libel suit.

**Editorializing on the Air.** The ACLU reversed a 10-year-old policy in May, 1959, approving the principle of permitting editorializing by radio and TV stations as a means of encouraging "the fullest exchange of information . . . in today's turbulent, complex world." To deny stations permission to editorialize is not furthering public discussion," said the Union in a policy statement. "It is, in effect, a blockade against much-needed discussion." The Union said that such editorializ-
ing should be "clearly identified" as the station's opinion and added the further condition that it be carried out within the framework of general balanced programming, including coverage of the specific subject discussed in the editorial. "There need not be an affirmative seeking out of an opposing view in every instance," said the ACLU statement, "except where the community concerned has no other adequate forum; but it should be made clear that opportunity will be offered for the presentation of a responsible opposing view seeking such opportunity."

**Diversity of Programming.** The ACLU supported the right of the FCC to request station applicants for a description of their programming. A new questionnaire by the FCC lists various categories to describe the applicant's programming in the fields of religion, news and public affairs and asks for the percentage of time devoted to each. One FCC Commissioner, T. A. M. Craven, had objected to the new form and the agency had asked interested parties to comment. The Union rejected Craven's fear that the FCC was "dictating" program content, declaring that "the mere requirement for . . . information covering broadly defined categories raises no censorship question. The central civil liberties concern," the Union said, "is that stations are not now meeting their responsibility to devote time to discussion of controversial issues and that the Program Service form does serve as a guide to stations and the Commission to enable them to meet this responsibility."

**Spectrum Allocation.** Although the ACLU has long advocated a study to determine how more radio-TV channels can be opened up to meet the public's need for greater diversity in programming, conflict between the executive and congressional branches of government have so far stalled a step forward in the program. A Senate proposal for a Presidential study commission, backed by the Union, died in the House in the closing days of the 85th Congress when the Administration supported a broader inquiry. The Administration made a similar proposal to the 86th Congress, but that was countered by a proposal by Rep. Oren Harris, chairman of the House Commerce Committee, to create a three-man Frequency Allocation Board to be appointed by the President as well as a new position, Government Frequency Administrator. Harris saw no difficulty in getting information from the military on its assigned space and how it is being utilized. This has been a major stumbling block in past efforts to evaluate spectrum allocations because space reserved for the military is a closely guarded secret. The sole encouraging note was the report that the FCC which governs civilian channels, and the Office of Civil and Defense Mobilization, which controls military frequencies, have undertaken talks aimed at "joint long-range programming." The demand of the ACLU, however, is for speedy action to review the entire spectrum problem. Otherwise,
declared a statement by the Union, "we face the possibility of military demands invading the space now allocated for non-government services, thus cutting into the all too few existing channels through which information is funneled to the public."

Other Actions. The majority of 15 Hollywood television producers polled by Variety agreed that advertising agencies, sponsors and networks no longer maintain the rigid blacklists which once were the Bibles of the industry. One producer explained it this way: "I think two things have happened. One, the whole situation has relaxed, and two, those who were really unacceptable have dropped out of the business." The New York State Council of Churches issued a statement during the 1959 legislative session expressing deep concern over the influence wielded by the mass media, but warning that uncritical support of legislation to curb excesses can do more harm than good if it violates basic civil rights. The Niagara Frontier (Buffalo) Branch of the ACLU commended Buffalo TV station WGR for "courage" in presenting a program featuring the Soviet Ambassador to the United States despite a demand for cancellation of the show by a local group. The Ambassador himself withdrew from the program, however, due to "unexpected circumstances."


The Federal Scene. The Air Force and the Navy were criticized for withholding potentially embarrassing information. Rep. John E. Moss, who had authored an anti-secrecy bill in the 85th Congress, accused President Eisenhower of flouting the law by permitting the Air Force to keep secret parts of a report criticizing its missile program. The President noted that the Air Force had made public a 37-page summary of the report and said the public interest would not be served by revealing the full document. An accusation against the Navy for allegedly "screening, editing and censoring" material came from Comptroller General Joseph Campbell, the government watchdog on spending. He said the Navy's refusal to turn over information to his auditors could provide an opportunity to conceal waste and extravagance. A detailed report by The New York Times on a top-secret atom test, Project Argus, caused a brief furor in Washington. The newspaper said it had suppressed the news for months in the interest of national security but finally decided to make it public when it learned that many scientists involved in the experiment favored public disclosure. Also, said The Times, it was faced with the possibility that other news media would break the story first. The Defense Department called a hurried press conference to announce the news after being informed of the newspaper's intention to print it anyway.
Following protests by Senators Richard L. Neuberger and William Fulbright, the International Cooperation Administration rescinded a "gag order" on communications between employees of the ICA's Indonesia Mission and members of Congress. The ban, which came in the midst of controversy over the operation of the Mutual Security Program in Indonesia, was criticized by the Union as "unadulterated censorship." The ACLU said it was aware of the "sensitive political nature of the Mission and that critical public comment on American policy overseas frequently assists Communist propagandists in their campaign to besmirch our foreign aid efforts;" but, added the Union, the gag on the Mission's employees and their families "so that their opinions may not be expressed is a gross violation of the First Amendment . . . demonstrating fear rather than faith in the basic democratic guarantee of free expression." After the ICA rescinded its ban, Senator Thomas C. Hennings, Jr., chairman of the Senate Constitutional Rights Subcommittee, announced a staff investigation to determine whether any other federal departments or agencies attempt to interfere with communications between their employees and members of Congress.

Sen. Hennings introduced a bill that seeks to amend a section of the Administrative Procedures Act to insure the public's right to know. Hennings said the Act now uses such loose language that it is invoked by government officials as authority for denying information. Most of the new bill would replace ambiguous phrases with specific wording.

The Courts. The U.S. Supreme Court ruled in two cases that government officials were absolutely immune from prosecution for libel if their public statements involved policies within their jurisdiction. The decisions meant that private citizens could not sue for libel even if the statements were false or malicious. The high court did not deal with the issue of immunity for newspapers which print officials' statements that later become the basis for a suit, but it was believed that in such instances the rule of "fair comment" would apply. This would, in effect, grant immunity for information media that reported substantially the facts of the statement.

The Maryland Court of Appeals cited freedom of the press provisions of the First Amendment in rejecting a special advertising tax on news media or their advertisers imposed by the City of Baltimore. After the court proceedings began, the city rescinded its ordinance and refunded $354,807.09 collected under the statute. The court said that a "single in kind tax," such as that on advertising revenue, can weaken a newspaper's power to disseminate news by striking at its source of revenue. "A tax may be just as serious a restraint . . . if enacted . . . by the purest of motives as one initiated and motivated by a hostile political leader."

"Right to know" bills permitting newsmen to study records and attend previously closed meetings have made progress in California,
Illinois, Massachusetts, New Mexico, North Dakota, Pennsylvania and Vermont. Legislation was killed, however, in Texas, Arizona, Kansas, Montana, South Carolina, West Virginia, Mississippi and Wyoming. Some progress was reported in New York in defeating government secrecy when legislators voted unanimously to disclose the names, salaries and duties of legislative employees. The vote came after newspaper stories revealed that scores of political appointees were collecting checks without apparently even putting in an appearance on the job. In the Middle West, a Bloomington, Ind. Circuit Court judge lifted his own restraining order on newspapers from publishing a city annexation ordinance.

**ACADEMIC FREEDOM**

1. Federal, State and Local Issues

**National Defense Education Act.** The ACLU condemned provisions of the 1958 National Defense Education Act which invaded the traditional freedom of colleges and universities from possible government control by conferring vastly increased authority on the U.S. Commissioner of Education. The Union statement, signed by executive director Patrick Murphy Malin and Louis M. Hacker, chairman of its Academic Freedom Committee, declared: "Experiment and diversity are chiefly endangered by the 1958 Act, not in its most publicized loyalty-oath provisions (to which we are opposed, as we always have been to such provisions), but in the broad wording of provisions which confer powers on the Commissioner. The wording of such provisions should be narrowed, and more effective consultation-advice-and-appeal machinery should be created to guarantee for educational institutions and the accrediting agencies established by them, their indispensable freedom to protect standards of admission and student performance."

Equally onerous to the Union were the loyalty oath provisions of the Act, which were retained after a close fight in the Senate. As the law now stands, a student seeking a loan from the Government for educational purposes allied with the defense program must take the oath of allegiance and also file an affidavit disclaiming membership in, or support of, any organization advocating illegal overthrow of the government. The loyalty oath provision was condemned by the Union as an "unwarranted invasion of personal rights" guaranteed by the First Amendment. In the field of education especially, noted the Union, the oath requirement is "particularly offensive because it violates the tradition of academic freedom." The Senate action, which came after two days of heated debate, killed attempts to repeal the oath provision based on the grounds that it made students "second-class citizens."
Leading universities and colleges also opposed the loyalty oath, several announcing their refusal to accept federal funds unless the oath were eliminated. In addition to national ACLU efforts to defeat the oath provision when it was being debated on the Senate floor, local affiliates of the Union were active in urging educational institutions and students to protest to the U.S. Commissioner of Education and to Representatives and Senators. The ACLU is considering a constitutional test of the oath provisions.

**Fulbright Awards.** Elsewhere on the national scene, the ACLU joined with academic circles in expressing grave concern over the refusal by the Board of Foreign Scholarships, which determines Fulbright awards, to confer a grant upon professor Bert J. Loewenberg of Sarah Lawrence College. Because of such protests the Presidentially-appointed Board is conducting a "thorough review" of selection procedures and criteria used in the Fulbright program. The concern is three-fold: persistent reports, despite official denials, that Loewenberg, a history professor, was turned down for "loyalty" reasons without a chance to appear at a hearing and hear the charges against him; the fact that the Board rejected the choice of two screening committees composed of scholars who had nominated Loewenberg; and fear that Loewenberg's rejection may keep top educators from applying for Fulbright awards or serving on various screening committees. The ACLU's major interest in the case came at a time when loyalty was widely assumed to be the issue. The Union urged the Board to "adhere scrupulously" to due process principles in according Loewenberg a hearing. The Board ultimately declared formally that Loewenberg had not been rejected on loyalty grounds. In a letter to the Conference Board of Associated Research Councils, composed of 40 screening committees, the eight members of the committee which screened Loewenberg called on the Board to issue an "open policy statement" clarifying any non-professional considerations which determine Fulbright awards, "emphasizing specifically what criteria of loyalty it follows and by what procedure it judges them." The eight professors threatened to resign if the Board of Foreign Scholarships did not make clear its stand.

The ACLU of Southern California and the American Federation of Teachers are backing a court test of the state Education Code under which probationary teachers in cities with fewer than 85,000 pupils may be dismissed without being told why and without a right to a hearing or an appeal. Probationary teachers in larger communities have these rights. In the small city of Long Beach, however, three probationary high school teachers are suing for reinstatement on the grounds that the local school board was "discriminatory and unfair" in discharging them for not being "good risks" for permanent employment. One teacher was fired for past political
activities, according to the ACLU affiliate, and the other two were dismissed for trying to save their colleague's job. Also in California, faculty members at four campuses of the University of California have voted to guarantee the privacy of their students' opinions from inquiry by future employers. The resolution was adopted after teachers learned that some students feared that their classroom opinions on religion, politics and public affairs might be used against them in looking for jobs after graduation. This issue is being studied by the national ACLU Academic Freedom Committee.

The ACLU of Washington State received the thanks of Obed Williamson who was reinstated at Eastern Washington College of Education after the affiliate's activity on his behalf. Williamson had been dismissed by the trustees during a previous state administration but with a new administration and two new members on the Board of Directors the teacher applied for a rehearing and was reinstated. He charged that his dismissal was a violation of his tenure. A Hunter College, N.Y. professor was reinstated after he was dismissed in 1954 during an investigation of communism on the campus. Charles W. Hughes, who admitted Communist Party membership from 1938 to 1941, was fired after he refused to tell a trial committee the names of other campus Communists. But under a subsequent ruling by the State Education Commissioner (see below) under which teachers were not required to name names, Hughes went back before the committee and cooperated by giving other information than identifying other Communists, past or present. A successful appeal aided by the New York Civil Liberties Union has won revalidation of a license for a teacher who was dismissed with this succinct but vague comment: "The Board of Examiners decided that you . . . had not shown the degree of candor to be expected of a teacher." An annual report by the New York City Board of Education on subversive activities disclosed that of a staff of 35,000, 126 were former Communists who investigation showed had left the Communist Party in good faith. Of 13 teachers who were called for questioning during the year about past or current membership in the Communist Party, the report said, seven admitted past membership but said they no longer subscribed to the Party's views; two denied they ever were members; two resigned or retired after being notified of their interviews; and two interviews are still pending.

State Legislation. Affiliates of the ACLU were involved in attempts by legislators in two states to undermine academic freedom. In Indiana, Rep. Chester Franke said the Indiana state university chapter of the Union was one of several organizations he referred to when he demanded to know from the university president why "Communist fronts and Communist-infiltrated" groups are permitted to operate freely on the campus. And in Nebraska, State Senator Jack
Romans attacked an assistant law professor by charging him with membership in the "notorious" American Veterans Committee and in the ACLU. Another University of Nebraska professor was condemned as a twice-convicted felon although the faculty member had received a full Presidential pardon on his conviction arising out of his status as a conscientious objector during World War II. Both Romans and Franke introduced strongly worded resolutions calling for an investigation of the state schools, but both failed to pass. A similar fate was met by a Texas legislative proposal that would have required teachers in all state-supported colleges to sign affidavits that they believe in a Supreme Being.

**Allen Ruling.** A legal battle that had begun four years ago finally ended in May, 1959. The long court fight stemmed from a New York City Board of Education resolution requiring teachers who were former Communists to identify colleagues they had known in the Party. State education commissioner James E. Allen's ruling that the resolution "engenders an atmosphere of suspicion and uneasiness in the schools" was upheld by the Court of Appeals, the highest tribunal in the state, after two lower courts had similarly affirmed his decision. The Court of Appeals did not rule that as a matter of principle Allen's reasoning was right, but that it had no power to overturn a decision that had not been "purely arbitrary." The majority opinion called it "noteworthy," however, that no other school board in the state "has found it necessary to conduct this type of investigation."

In neighboring New Jersey, the state commissioner of education upheld the dismissal of a Newark schoolteacher who refused to answer questions alleging Communist Party affiliation that were put to him four years ago by the House Un-American Activities Committee.

**Issues Within Educational Institutions.** The American Association of University Professors censured New York University and Fisk University of Nashville, Tenn. for violations of academic freedom. NYU was cited in connection with dismissals in 1951 and 1953 of Professors Lyman Bradley and Edwin Burgum which the AAUP said were carried out with insufficient evidence, without stating proper causes and without a disclosure of the reasoning employed by hearing tribunals. Fisk University was charged with a "serious violation" of academic freedom by refusing to renew the contract of Dr. Lee Lorch, a former City College of New York professor who had relied on the First Amendment's guarantees of free speech and assembly in refusing to answer all questions of the House Un-American Activities Committee about alleged past Communist affiliations. Dr. George C. Ball, a professor at Superior State College in Wisconsin, has been upheld by the state Supreme Court on his charge that he was dismissed without having a
fair trial. The court ordered him reinstated or given a new hearing. Dr. Ball was discharged on charges of inefficiency, and failure to cooperate with the college president, but he said he was fired for his criticism of some school policies. Ball's reinstatement was notable for the fact that the state's attorney general sharply criticized the dismissal of Ball and said he would receive no further cases in which academic freedom was threatened.

A recent analysis of the state of academic freedom during the turbulent years of the 1950's has been termed "deeply disquieting" by Louis Hacker, a board member of the ACLU and Professor of Economics at Columbia University. A study based on replies by 2,451 social scientists to questionnaires sent out by Columbia Professors Paul Lazarsfeld and Wagner Thielens, Jr. concluded that the majority of college teachers had toned-down their classroom statements, stopped political activity or membership in organizations and had otherwise withdrawn from potentially controversial activities. Hacker commented that an academic climate which had permitted almost 1,000 instances of disciplinary actions mostly concerned with political conduct or belief was made possible because professors had allowed universities to become governed by "non-academic trustees and regents, legislative authorities and an ever-growing body of university administrators—who both apply and succumb to pressures when times are out of joint."

**Student Rights.** The chancellor of the University of California at Berkeley has upheld a ruling by the dean of students that recognized campus student organizations may not take positions with respect to off-campus issues. The ACLU of Northern California protested the decision. Former California Attorney General Pat Brown (he is now Governor) ruled that discrimination in fraternities with chapters in state-supported schools probably is unconstitutional. The doubt arises over the issue of whether a university simply permits students to become members of such fraternities without granting any privileges in return and whether supervision of the student group is governed by persons having no university connection. Otherwise, Brown ruled, under the equal protection clause of the Fourteenth Amendment a state university without violating the Constitution could not give any aid whatsoever to a fraternity that discriminates. The Indiana University Civil Liberties Union also took up the same issue, requesting the college administration to seek the elimination of such clauses. The affiliate also proposed changes in judicial hearings for students living in Men's Residence Halls to protect due process rights. The Academic Freedom Committee of the national ACLU adopted a proposal calling for the "utmost procedural protection possible" for students facing expulsion because of cheating. The recommendations were for confrontation of witnesses, charges in writing, right to counsel and right to appeal.
Other Cases. Three California conscientious objectors were granted teaching credentials after a state Supreme Court judge had ruled in a fourth case that "moral turpitude" arising out of a conviction for draft evasion was not sufficient grounds for refusing him a teaching license. The applicant, Arthur P. Clark, was convicted after his draft board refused him C.O. status because he said he did not believe in a Supreme Being. A conscientious objector also ran into trouble in West Branch, Iowa when the American Legion pressured Donald Laughlin to resign his teaching contract. Laughlin, too, was convicted under the draft law. The Iowa Civil Liberties Union condemned the forced resignation, but said as there was no actual dismissal, there could be no appeal. ACLU affiliates were also active in Minnesota, where the Branch endorsed a mother's right to take her child out of school and provide her own education through a widely approved correspondence school; in Pennsylvania, where the Greater Philadelphia Branch urged the adoption of an adequate tenure policy for the state's 14 teachers' colleges; and in Cleveland, where the local group urged the state legislature to give non-tenure public school teachers due process rights they now do not enjoy.

2. Pressures Arising from the Integration Conflict

The struggle over school segregation was reflected in universities as well as in local school boards, in state legislatures and inside professional groups. (See also pp. 70-74.)

Rowland M. Hill, professor of English at Memphis State University, resigned after he was charged with "disloyalty" for signing a petition advocating integration of the city's public libraries. Seventy other MSU faculty members also signed the petition, but the university president reported that subsequently most of them have "voluntarily" requested that their names be stricken from the list. The university is seeking an appropriation from the state legislature for an expansion program. University president Jack Smith said he was "very embarrassed" by the petition and added: "I've been against integration and always will be, but I recognize the right of others to think as they will." In Louisiana, the cooperation of a Shreveport school board with the local White Citizens Council has drawn the fire of the Louisiana Civil Liberties Union. The ACLU affiliate denounced as a "suppression of freedom of thought" a questionnaire aimed at public school teachers distributed by the Council. The questions sought to learn the teachers' views on integration and if they supported the NAACP. The NAACP, meanwhile, filed a federal court suit demanding the reinstatement of six Negro public school teachers who were discharged when the schools of Moberly, Mo. were integrated. The suit charged the teachers were fired only because of their race. The six had experience in teaching of from
one to 30 years. And in Virginia, a new color line was drawn when the Falls Church school board refused to hire a teacher of Japanese descent because of her race although a member of the board described her as "perhaps even a little better qualified than the others." The rejected applicant, Mrs. Yukiko Tamashiro, is a third generation American of Japanese lineage who received her training at Wheaton College and New York University. She is now teaching at a private school in Virginia. Up North, the Indiana Civil Liberties Union protested the transfer of an Indianapolis public school teacher who was transferred after some parents protested she could no longer be an "effective" teacher because she was a partner in an interracial marriage.

A campaign of harassment against the Highlander Folk School, an adult education school, started by an investigating committee of the Tennessee legislature has been carried on by state and county police and the local district attorney. Behind the "intimidation," said The Nashville Tennessean, is the school's "candid advocacy of integration." The legislative probe was conducted under the guise of anti-communism, but the committee dropped charges of subversion because the evidence was "circumstantial." It voted to withdraw the school's charter, however, on a technicality. Nothing was done on that score, however. Instead, county and state police raided the institution in August, 1959 and arrested its 61-year-old educational director, Mrs. Septima P. Clark, on charges of illegally possessing liquor. Three other teachers were charged with unlawfully resisting arrest. The three teachers are white. Mrs. Clark is a Negro. A week later the district attorney petitioned a Circuit Court judge to padlock the school, which trains labor union officials in organizational techniques, as a "public nuisance." The suit alleged that the school "harbors and protects" persons violating the criminal laws of the state. After a three-day hearing, the judge refused to close down the school but did issue a temporary injunction padlocking the main building on the grounds that beer was sold there, without a license. The judge found no grounds for the state's accusations of immorality or the sale of whiskey. The school still faces a further court hearing, however, on the question of whether its charter should be revoked.

A disguised legislative purpose has also been charged in an investigation by Florida's Johns Committee into alleged homosexuality among the faculty at the University of Florida. Observers believe the ostensible aim of the probe was a pretext to deter racial integration. The first Negro is now attending the university's law school under a court order. The Florida Civil Liberties Union, as well as the press, have condemned the state legislative investigation, which so far has caused the dismissal of 15 staff members of the university, public school teachers and state employes. The Florida CLU deplored "the unfairness
of the situation that will have been created if a single innocent person has been expelled without trial before a court where rules of evidence prevail, without the opportunity to be confronted by hostile witnesses, without the opportunity to hear the evidence against him, and without the opportunity to subpoena witnesses in his own behalf.” The Florida chapter of the American Association of University Professors also condemned the investigation. A verdict by a three-judge federal court in Arkansas brought only a partial victory to a Little Rock teacher and three others who sued to protect their due process rights under the 14th Amendment. B. T. Shelton asked the court to strike down two state laws, but the court voided one and upheld the other. It voided a statute barring employment of any teacher belonging to the NAACP, but it affirmed a law requiring teachers to list the names of all organizations to which they belonged during the past five years. The statute is legal, the court ruled, because it does not make past or present membership grounds for dismissal or a bar to employment. Shelton had declared that the combined effect of both acts was to force him to disclose membership in an organization and then to deny him employment because of it.

RELIGION

1. Church and State: Education

Religious Teaching. The Illinois Division of the ACLU criticized a “Policy Statement on the Relation of Churches to the Public Schools” issued by the (Protestant) Church Federation of Greater Chicago after 10 years of study. The Federation asked for community comment on the statement before its adoption. The affiliate based its opposition on the strict adherence of church-state separation upheld in numerous court decisions, including constitutional protections for those who profess no formal religious belief. Noting that the church statement regards God as the “ultimate sanction” for moral, spiritual and ethical values in life, the Illinois Division asked: “... What of the minority which is content to find a non-theological basis for ethical values?”

Although the Federation endorsed the separation principle, its urging that church groups initiate discussions with school authorities aimed at “teaching the functional significance of religion for each grade or age-group,” was regarded by the ACLU as only “fomenting additional controversy in an already-troubled area.” In practice, the affiliate said, a theoretical distinction between “permitted and forbidden religious content” will either be submerged in sectarian instruction or will become the basis of a “neutral” state-engendered religion. Either alternative, said the statement, will result in unconstitutional conduct. The affiliate
also countered the Federation's assertion that "people of differing theological understandings ... can agree on the many practical ways in which religion functions in the lives of people; and that this way of thinking can be communicated without controversy...." Casting doubt on this conclusion, the Illinois Division asked:

"Is it clear as the Statement assumes that Catholics would agree that the 'consequences of faith in God' can be wholly separated from how one practices one's faith in God? Is it clear ... that Protestants share Catholics' views (on) birth control, censorship, church bingo or divorce ...? Or that those who adhere to no organized religion will agree on the many practical ways religion functions in the lives of people?" Concluded the Division's critique: "We sincerely hope that the Church Federation will urge its members to concentrate on religious education in the home and church, supplemented when desired by private or parochial schools. Under our form of democracy, here, not the public school, is where religious education belongs."

A test of religious teaching in the public schools of Dade (Miami) County, which have long been under attack, has been initiated by the Florida Civil Liberties Union in the state Circuit Court. "The operation of the program," said the petition by Harlow Chamberlin, "constitutes a utilization of the state's tax-established and tax-supported public system to aid religious groups to spread their faith ... (It) has resulted in and inevitably will result in divisiveness because of differences in religious beliefs and disbeliefs ... (It) effects an unlawful censorship of religion by the authorities of Dade County and a preference of one sect over another." Specifically, Chamberlin objected to the entire range of practices that are the concern of civil liberties groups all over the country. They include reading Bible verses, the Lord's Prayer and other prayers, Bible distribution; use of school facilities for religious instruction after school hours; observance of religious holidays by appropriate pageants of the three major faiths; the conduct of a religious census among pupils; and the imposition of religious tests on public school employees for both employment and evaluation purposes.

ACLU affiliates were also active in Ohio, where a successful protest by the OCLU ended Bible study in the Ashland public schools; and in Massachusetts, where a protest was sent to the school board of Scituate which refused to charge rent to an Episcopal group which used the school building for worship services. The attorney-general of Oklahoma has ruled that under the state law and his interpretation of U.S. Supreme Court decisions, the use of public schools by churches to conduct prayer meetings or religious instruction during a school day is forbidden.

A major test is shaping up in the state of Washington over the practice of Spokane of allowing public school students to be released from classes for non-credit religious instruction held outside school
property one hour a week. A friend-of-the-court brief filed by the Washington ACLU assailed the program as "segregation of non-Christian children" that would be equally in violation of the equal protection clause of the Fourteenth Amendment "as would be their segregation in separate schools or separate classrooms." Non-Christian children cannot take part in the program, although all Christian children can participate or not, as their parents desire. The Washington Constitution, which is stricter on church-state separation than the federal Constitution, was quoted in the ACLU brief to the effect that "all schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence." Other objections to the released time suit were based on separation of church and state guaranteed in the First Amendment.

In Wisconsin, a bill before the legislature providing for released time for religious instruction was abandoned after the attorney general said it probably was unconstitutional. The measure was backed by Roman Catholic and Lutheran organizations, but opposed as a violation of constitutional protections by the Wisconsin Civil Liberties Union, and representatives of Jewish, Protestant and Christian Science groups.

**Bible Reading and Distribution.** A special three-judge federal court held unconstitutional a section of the Pennsylvania law that provides for the reading of at least ten verses of the Bible, without comment, at the opening of each day of school. This first test in the federal courts of Bible reading in the public school, supported by the ACLU’s Greater Philadelphia Branch, was brought by church-going Unitarians, Mr. and Mrs. Edward Schempp. Permission to continue the Bible reading was granted pending a U.S. Supreme Court appeal by the school district, (See last year’s Annual Report, p. 27.) The lower federal court went to the heart of the constitutional issues raised by the suit when it declared that daily reading of the Bible by the authority of the state and of the teachers can hardly do less than "inculcate . . . various religious doctrines in childish minds" and therefore "amounts to religious instruction or promotion of religious education." Since this religious instruction is carried on "under the aegis" of the state, the Commonwealth of Pennsylvania “supported the establishment of religion . . . (which is) violative of the terms of the First Amendment.” The Bible, emphasized the court, is a religious work of religious significance, and to claim that it is primarily a work of history, art or literature "would seem to us unrealistic."

**Prayers.** The New York Civil Liberties Union will appeal a state Supreme Court verdict which held that the non-compulsory saying of the so-called "Regent’s Prayer" was constitutional. The 46-page opinion, however, said that because the reading of the non-denominational prayer
was "mandatory" in the Herricks School District in Long Island, N.Y.,
the procedure was "objectionable." The NYCLU said it was appealing
the decision because it "does not squarely hold that publicly-supported
schools and facilities may not be used for prayer and other religious
devotions, and because we feel that even non-compulsory regulations
pertaining to the saying of a prayer are unconstitutional." The court
opinion declared that the school board "may adopt a form of prayer so
long as it does not adopt the prayer of any sect or a prayer sectarian in
concept and does not make recitation of the adopted form compulsory."

In the Herricks School District, no student was permitted to leave the
classroom while the "Regent's Prayer" was spoken by a teacher or a
selected pupil. It was read with hands clasped together as though in
prayer. The text of the prayer is: "Almighty God, we acknowledge our
dependence on Thee and we beg Thy blessings upon us, our parents, our
teachers and our country." The recitation, said the NYCLU, constitutes
the teaching of religion contrary to the beliefs of the parents, students and
plaintiffs. The School Board asked the court to dismiss the suit for lack
of sufficient facts and on the grounds of improper judicial procedure.
The Board, joined by 16 residents who approve the prayer, also argued
that the children were not compelled to join in the recitation. In upstate
New York, the Niagara Frontier (Buffalo) Branch of the ACLU won
repeal of an order teaching the "Prayer of Saint Francis" to pupils of a
public school. A complaint supported by a legal memorandum by the
Greater Philadelphia Branch resulted in discontinuance of a "chapel"
program in a Swarthmore, Pa. junior high school.

**Religious Decorations.** One victory (in Levittown, L.I.) and one
defeat (in Westchester, N.Y.) were registered in cases involving the
errection of nativity scenes on public school property. Trustees of School
District Number Five, the largest on Long Island, upheld the action of
Wisdom Lane School officials in banning a nativity scene inside the
school. The district school superintendent, Fred Ambellan, said that
"while we have every intention of keeping God in the schools, we
cannot permit sectarianism—the advocating of a particular creed or
document—to become part of the school system." In Ossining, N.Y.
meanwhile, a state Supreme Court judge upheld the constitutionality of a
creche on the high school lawn, saying it was "an accommodation of a
religious group . . . not *per se* unconstitutional." The New York Civil
Liberties Union said the decision will be appealed, to the U.S. Supreme
Court, if necessary. An inquiry is under way by the Minnesota Branch
of the ACLU on a decision by town officials in suburbs of Minneapolis
and St. Paul permitting branches of the Junior Chamber of Commerce
to erect nativity scenes on village hall grounds and on approaches to a
court house. The affiliate suggested that churches and businessmen could
accomplish their purpose without violating church-state separation by
erecting the creches on private property, but the suggestion was rejected by the young businessman's group.

**Private and Parochial Schools.** Three weeks after the Civil Liberties Union of Massachusetts protested the free use of three Holyoke public schools by Catholic parochial school classes, church authorities announced that leases have been prepared for the school facilities providing for "appropriate (not token) payments." The situation arose in January, 1959 when the parochial school building was closed as a fire hazard and the pupils and their teachers, who are nuns, were invited by the Mayor to use the public schools until a new parish school is finished in September, 1960. The CLUM said that although it has the "utmost sympathy" for the parochial school children, "it is clear that (it) is a violation of the Federal and Massachusetts Constitutions." Under Article 148 of the amendments to the state Constitution, cited by the CLUM, "no grant, appropriation or use of public money or property . . . shall be made or authorized . . . for the purpose of . . . maintaining or aiding any school . . . wherein any denominational doctrine is inculcated."

The ACLU of Oregon is challenging a state law directing that students in the first eight grades of "standard schools"—the phrase includes parochial grammar schools—receive textbooks supplied and paid for by public funds. A suit by Oregon City taxpayers supported by the affiliate declared that furnishing texts to parochial schools is a violation of the First and Fourteenth Amendments to the Constitution and provisions of the state constitution barring state aid to religious institutions and the use of public school funds by other than public schools. The aim of constitutional guarantees protecting church-state separation, said the Oregon affiliate, is that "it protects religion from interference by the state and it protects the state from competition among religious groups for public support and subsidy."

**Bus Test.** The Connecticut Civil Liberties Union has published a 20-page pamphlet in connection with its campaign against a state school bus law. An introductory statement by the affiliate declared: "Transportation of pupils has become an essential function of our public school system; it is a large item in board of education budgets. To call it a health or safety service confuses the issue. The real issue from the standpoint of the CCLU is this: can public funds be used to support any part of private schools, especially parochial schools? The law permits a community, on a referendum, to transport its children to non-profit private schools. The CCLU believes that the use of tax funds to support such facilities for such private or denominational schools constitutes a violation of the principle of church-state separation.

School board officials in Jersey City, N.J. and in a Minneapolis suburb have discontinued the practice of asking students questions
about their religion. In Jersey City, an annual religious census was criticized as an unconstitutional "exploitation of school facilities" by the American Jewish Congress and in Minneapolis questions on religious affiliations were stricken from permanent pupil record forms after a conference with officials of the Minnesota Branch of the ACLU. The Ohio Civil Liberties Union objected to a ruling by the state attorney general that employment of members of a religious order who wear distinctive religious garb in public schools does not constitute improper or forbidden teaching of religious doctrine. The ACLU statement, which followed a lengthy study, said that wearing religious habits, in this case by Catholic nuns, violates the First Amendment prohibition against establishment of religion or bars against the free exercise of religion. The affiliate noted that Catholic authorities in New York and North Dakota have permitted nuns to wear lay clothing while teaching in public schools and said the Ohio controversy could be settled constitutionally if the same system were adopted. Also in Ohio, Governor DiSalle is studying the problem raised by compulsory education for Amish children. (See last year's Annual Report, p. 30.) The state insists on the right to require all persons to attend high school. A religious minority insists on the right to preserve its own way of life.

2. Church and State: The General Public

"Blue Laws." The U.S. Supreme Court was asked by the ACLU and its Ohio affiliate to review the problem of Sunday closings under "blue laws" that have become the focus of legal challenge and legislative debate in many states. The request, denied by the high court, stressed that since the tribunal had not declared its view on the constitutionality of such laws and local ordinances in 58 years, the opportunity was now at hand to clarify a confusing patchwork of legislation. The request noted that there was, in addition, a widespread non-observance of much Sunday closing laws, indicating "both a dissatisfaction with the principles behind such legislation and a clear lack of connection between these laws and the public health." The friend-of-the-court brief by the ACLU and the OCLU was filed in the case of Coleman Ullner, owner of a department store in a Cincinnati suburb, whose conviction of violating the Ohio blue law was upheld by the state Supreme Court. The brief declared that the law "is a clear violation of the constitutional provision guaranteeing freedom of religion," resulting "in an illegal discrimination between people of different religious sects." The ACLU and its affiliate said that the law makes no provision for citizens whose religion requires them to refrain from work on days other than Saturday or Sunday, imposing a five-day work week that amounts to "economic discrimination." The same is true for those who have no formal religious belief. The result, said the brief, "clearly aids the people of one religious group
over another by giving the former an advantage in their pursuit of economic gain. In essence, the state is imposing a serious financial obstacle in the path of free exercise of an individual's religious beliefs.” The ACLU asserted that the basis of the legislation is religious, not, as the state declared, a requirement that the people of Ohio have a certain amount of rest each week.

A landmark decision in Massachusetts by a special three-judge federal court overturned the state's Lord's Day Act as a violation of the Fourteenth Amendment, permitting a kosher supermarket in Springfield to remain open on Sunday. After tracing the legislation back to 1653, the court declared that the law furnished "special protection" to Christian sects which observe a Sunday Sabbath, "to the prejudice" of religious groups that observe another day. The Crown Kosher Supermarket closed each Friday at sundown to conform with the Sabbath laws of the Hebrew religion but opened on Sunday. The opinion said that the statute "arbitrarily" forced the store to remain shut on Sunday, resulting in a deprivation of liberty and property contrary to protections of the Fourteenth Amendment. The retail market earned more than a third of its week's gross business on Sunday. The state has appealed to the U.S. Supreme Court.

Although the federal court verdict in Massachusetts may be cited as a precedent in future court tests, two states moved to tighten existing blue laws. The New Jersey state legislature passed a bill designed to circumvent a Superior Court decision which ruled out an old measure because it applied to only 18 of the state's 21 counties. The new statute would apply to all counties except those which do not reject the ban in a referendum. And in Pennsylvania, stiff penalties were imposed for violations by raising fines for first offenses from $4 to $100. In the first batch of convictions under the law—225 arrests by a Bucks County justice of the peace who sought to show the law's unfairness, the state Supreme Court ruled that the "on view" arrests were illegal because the defendants did not have a hearing or an opportunity to defend themselves. The Greater Philadelphia Branch of the ACLU opposed the bill on the same reasoning used by the Massachusetts decision. A similar appeal has been made by the Branch in the case of the "Two Guys from Harrison" department store of Allentown, in which a temporary injunction against enforcement of the law has been issued pending a decision by a three-judge federal court.

Planned Parenthood. The groundwork for a future challenge in the U.S. Supreme Court of Connecticut's anti-birth control law may be in the making. An appeal has been taken to the state's highest court from a lower court ruling upholding the statute making it illegal to prescribe and use contraceptive devices. The plaintiffs, who include a Yale faculty member and three married couples, contend that the ban violates their due process rights under the Fourteenth Amendment.
law suits were brought by the chairman of the Obstetrics and Gynecology Dept. at Yale Medical School, who contends that the ban conflicts with his professional obligation as a physician to give contraceptive information; a 25-year-old housewife who maintains that another pregnancy "would almost inevitably result in death;" two couples whose last pregnancies ended in death and who contend that further attempts could "result in permanent emotional unbalance;" and a Yale instructor and his wife who seek to postpone conception until they are economically able to support children.

An additional court action was begun by three New Haven clergymen in May, 1959 contesting the law on the First Amendment ground that it deprives them of "the right freely to practice their religion." The clergymen said they are "bound by the teachings of the church and their own religious beliefs to counsel married parishioners on the use of contraceptive devices and to give such advice in pre-marital counseling."

The national ACLU asserted in a new policy statement that state laws prohibiting the sale and use of birth control devices are a violation of civil liberties. The Union said:

"The ACLU reaffirms its position that governmental restrictions on dissemination of contraceptive information or on advocacy of contraception, are violative of the First Amendment—including the guarantee of the free exercise of religion, in the sense of free speech for pastoral counseling of contraception. It asserts further that restrictions by State governments on the sale and use of contraceptive devices are violative of the due process guarantees of the Fourteenth Amendment, and infringe upon the right reserved to the people by the Ninth and Tenth Amendments to live, enjoy liberty and pursue happiness free of unnecessary governmental restraint."

A major court verdict in New Jersey held that the state law banning the sale of contraceptive devices "without just cause" was unconstitutional because it was too vague and ambiguous. The verdict resulted from the prosecution of a leading Newark druggist after two plainclothes detectives were sold contraceptive devices. Whether the decision will result in an effort to write a new state law was not immediately known.

An apparent effect of the successful effort in New York City to make birth control information available to hospital patients (see last year's Annual Report, p. 33) has been to spur similar attempts in numerous communities. In some cases, the Planned Parenthood Federation reported, all that was required to achieve at least improved referral services from local hospitals was an approach to local officials. However, in some instances, public controversies developed, notably in Pennsylvania and St. Paul, Minnesota. These were settled by compromises which seem to have made the information available.
Compulsory Worship. The ACLU of Northern California in three different cases protested the imposition of religious services on unwilling auditors. The sheriff of the Butte County jail supplied cotton to stuff the ears of prisoner Donald Smith after the affiliate acted on Smith's demand to await his trial in silence. Services are held in the felony cellblock where Smith is awaiting trial for forgery. And in San Francisco, the affiliate objected to a judge's probation order that an 18-year-old go to a Roman Catholic mass every Sunday for two years, on the ground that the state has no right to require support or adherence to any faith "as a condition of staying out of jail." Municipal Judge Andrew J. Eyman thought otherwise. "I think the Civil Liberties Union is crazy about this. I've done this several times in the past and I intend to continue," the judge declared. Judge Eyman was as good as his word. Shortly afterward he gave a 24-year-old college student arrested for disturbing the peace the choice of jail or probation on the condition he go to his Unitarian church each Sunday for a year. The youth chose probation but outside the courtroom said he did not think that going to church "should be connected with punishment."

Other Issues. Among the major changes asked in the Pennsylvania Constitution by the Greater Philadelphia Branch of the ACLU was repeal of the requirement that public officeholders believe in God and "a future state of rewards and punishments." The Minnesota Branch of the ACLU successfully protested instructions by the state FEPC that it was permissible to ask job applicants "Do you attend religious services?" if the question is accompanied by a statement not to identify the religious denomination or place of worship. The Branch regarded the question as a religious test for employment and it was soon dropped.

In other ACLU actions, the Oregon affiliate opposed acceptance by the city of Portland of a stone monolith with a "non-sectarian" version of the Ten Commandments that was offered as a gift to be erected in a public plaza. The New Jersey correspondent of the Union opposed the expenditure of the public funds of Hackettstown to help support the local YMCA, as a violation of church-state separation. The avowed purpose of the "Y" is to develop "Christian character and to aid in the building of a Christian society." The ACLU noted that the definition of "Christian" is at variance with the dogma of the Roman Catholic and Jewish faiths. The funds were not granted.

3. Problems of Conscience and Religious Freedom

Military Service. President Eisenhower was urged in March, 1959 to recommend to Congress an amendment to the present draft law permitting non-religious conscientious objectors to claim exemption
from military service. The law now allows prospective draftees to base exemption claims on a formal religious training and belief which includes the idea of a Supreme Being. The letter to the White House from ACLU executive director Patrick Murphy Malin said that although the current law "recognizes the fact that men will in good faith refuse to bear arms or to participate in any war, it fails to recognize . . . that a man's conscience, whether or not shaped by religious training or rooted in a belief in a Supreme Being, deserves the recognition and respect of the community regardless of disagreement with the source of his conviction. To recognize the principle, but to restrict its application, in effect sanctions state-prescribed dogma."

The ACLU declared that it was not asking for special benefits for conscientious objectors without formal religious training, "but only that their conviction be regarded as deserving of equal treatment." The proposed change, wrote Malin, "would assure that belief based on personal conviction, whether or not supported by a theistic philosophy, is recognized as in accordance with the First Amendment."

The U.S. Supreme Court has let stand a Maryland court decision holding that the University of Maryland had the right to deny matriculation by Kenneth Hanauer unless he agreed to take an ROTC course. In another court decision, the U.S. Court of Military Appeals affirmed the conviction of a former Marine Corps private who publicly criticized the Corps for refusing to release him as a C.O. The three-member tribunal did not consider claims of conscience made by Peter H. Green of Evanston, Ill. It confined itself to the question of whether his bad-conduct discharge had been legal. In a related case, the Department of the Army reversed itself and granted a general discharge under honorable conditions to an officer who became a conscientious objector. Lt. Richard Roark refused to wear his uniform or accept his pay. Initially, the Army sought to court-martial him, but later gave him the general discharge. Counsel for the Colorado Branch of the ACLU helped win further hearings in the case of an Air Force Finance Center employee who posted religious tracts on an office bulletin board, was given a brief psychiatric examination, and then asked to resign.

**The Atom Age.** The case of Earle L. Reynolds, who sailed with his family aboard the Phoenix into the forbidden waters of the Atomic Energy Commission Pacific testing grounds, is again on appeal. Reynolds, a pacifist, was convicted originally but the conviction was reversed on the grounds that a Honolulu federal judge had erred in refusing to allow Reynolds to conduct his own defense at a jury trial. A retrial resulted in a six months sentence. A second voyage to the same area by another pacifist, Orion Sherwood, resulted in a contempt-of-court conviction that is being appealed by the ACLU of Southern California. Sherwood had sailed in his ketch, Golden Rule, despite a restraining
order, but the affiliate charged that the action of the AEC in setting a "boundary" over 390,000 square miles of ocean was invalid because of a lack of notice or an opportunity for a hearing. The petition said the Honolulu court order had deprived Sherwood of his "right of movement and protest."

**Citizenship.** Mrs. Robert C. Nagler of Kalamazoo, Mich. was granted citizenship after intervention by the ACLU. Originally, an examiner of the Immigration and Naturalization Service recommended that she withdraw her petition for citizenship because she was raised as a Roman Catholic but no longer maintained formal church affiliation, rather than a member of one of the recognized "peace churches." Mrs. Nagler had said she would refuse military service but would perform work of national importance. After the Union informed the examiner's superiors that formal "peace church" affiliation is not required for conscientious objectors, Mrs. Nagler quickly was granted citizenship.

**Hutterites.** The Hutterites are a small Christian sect whose members live in thriving communities in Minnesota and the Dakotas under a religious practice that bars individual ownership of private property. Through their efficiency and industry, the Hutterites have managed to profitably increase their land holdings—a development that inspired an attempt to write restrictive legislation in Minnesota and South Dakota forbidding further expansion by the group. The Minnesota Branch opposed the measure as discriminatory against the Hutterites. The story in South Dakota is more complex. The legislature passed a law in 1955 barring the formation of new Hutterite communities and freezing land holdings at then-present acreage. Subsequently, the state moved against one settlement charging they had violated the statute by buying 80 additional acres. A lower state court found that the law was unconstitutionally vague and uncertain, but the state Supreme Court held the lower court in error because the Hutterite charter was granted subject to future legislative changes. Ironically, through a technicality, the higher court permitted the sect to keep the additional 80 acres, thus meeting a constitutional issue which Hutterites have pledged to take to the U.S. Supreme Court.

**GENERAL FREEDOM OF SPEECH AND ASSOCIATION**

1. **Right of Movement**

**Passports.** The 86th Congress, like the 85th, attempted to write new passport legislation in the wake of the U.S. Supreme Court decision more than a year ago which stated that Congress had not authorized
questioning an applicant's political beliefs. (See last year's Annual Report, pp. 35-36.) The ACLU reaffirmed a position taken at that time and testified anew before the Senate Foreign Relations Committee that passports ought to be denied only in time of war or when the individual faces a criminal prosecution. The Union declared that freedom of travel is a constitutional right that can be curbed legitimately only under "extraordinary circumstances . . . which clearly and presently threaten the continued life of our nation." In the absence of a clear and present danger, the ACLU said, "a person's beliefs and associations, no less his intention to speak critically of any aspect of American life . . . cannot be grounds upon which to deny him the necessary documents to travel abroad." The Union disputed the argument of the State Department that the Executive branch of government has the power to deny a passport under its responsibility to conduct foreign affairs, stating that "any purpose of foreign policy must not be implemented by methods which violate a constitutional freedom." The Union's testimony was made in support of a proposed law that would conform to civil liberties standards, and in opposition to an Administration bill that would deny passports to anyone who "knowingly engages in activities for the purpose of furthering the international Communist movement." Such vague language, said the ACLU, presents "substantial dangers to civil liberties" since although there are undoubtedly activities which aid the cause of communism, "there are also activities of which no one can say with certainty that they are the purpose of 'furthering the international Communist movement.'" Statements which disagree or discredit U.S. policy could conceivably be thus characterized, the ACLU said. Another flaw in the bill in the opinion of the ACLU was its authorization to use confidential information and sources in violation of the Sixth Amendment. Citing the U.S. Supreme Court's opinion in the case of William Greene (see p. 84), the Union urged adherence to the due process principle guaranteeing confrontation and cross-examination in hearings reviewing the denial of a passport, as well as in security proceedings. A report by the Bar Association of New York City partially agreed with the ACLU stand on confrontation of witnesses. A special committee of the Association was divided on the extent to which cross-examination should be permitted in passport cases, but agreed that some "trial-type" hearings should be introduced where applicants could examine government evidence. The House, late in the session, passed a passport control bill barring the use of confidential informants, but containing restrictive standards. The measure died in the Senate.

The ACLU reaffirmed a protest made to the State Department by its Northern California affiliate in demanding an explanation in the case of James Kershaw, a San Francisco theatrical stage manager, who had been barred from accompanying an acting troupe to the Brussels
World's Fair only a few days before their departure. No explanation was given. The ACLU said the action violated the "spirit of due process, which includes the right of the individual to confront his accuser and answer charges which have been made against him."

Upon receiving numerous complaints, including one from the Greater Philadelphia Branch, the ACLU urged the Passport Office of the State Department to discontinue the use of forms containing questions concerning Communist Party membership since the U.S. Supreme Court had ruled that there was no statutory grounds for such queries. After some delay in which the government claimed the expense of printing new forms was prohibitive, new forms were, in fact, distributed to most offices of the passport agency. The Philadelphia affiliate protested the continued use of the old questionnaire in its city, however, for as long as a year after the high court ruling. The new form was finally introduced in June, 1959.

**The Worthy Case.** The ACLU appealed to the U.S. Supreme Court a U.S. Court of Appeals ruling that travel restrictions imposed by the State Department were a matter of foreign policy and beyond the reach of the courts. The verdict came in the case of William Worthy, whose right to a passport has been defended by the Union since 1956, when the newsman visited Communist China and Hungary in defiance of a Departmental ban. (See last year's Annual Report, pp. 36-37.) Conceding that travel was a right, the unanimous three-judge opinion said that it could be restricted like any other right in the interests of others.

"A blustering inquisitor avowing his own freedom to go and do as he pleases can throw the whole international neighborhood into turmoil," the opinion said. The court rejected the argument of the ACLU-assigned attorney that travel to Communist China, by providing public information and understanding, would really help U.S. foreign policy. The court said: "This is an argument he (Worthy) should make to the President or Congress." The Union brief had relied chiefly on the constitutional argument that the correspondent had a right to travel freely and that geographical restrictions placed on travel by the State Department were not authorized by law.

**Travel to China by Newsmen.** So far, only one American reporter, John Louis Strohm, has been allowed to travel inside China by Communist officials. One U.S. author who was invited to lecture in Communist China has been prevented by the State Department from going. Waldo Frank filed suit in an effort to force the government to validate his passport on the grounds that the restrictions are unconstitutional and discriminatory. Frank was not one of a limited group of newsmen who received permission from the State Department to travel to the Chinese mainland in 1957. The permission was extended for another year for the selected news media.
**Powell-Schuman Case.** A U.S. commissioner dismissed a treason charge against John and Sylvia Powell, publishers of the *China Monthly Review,* and their associate, Julian Schuman, when the government failed to produce two major witnesses it said could back up the accusation. The trio had not been indicted. The magazine, printed in Shanghai, had attacked U.S. policy during the Korean War, including the charge that Americans used germ warfare during the Korean conflict, the government said. A sedition charge against the three ended in a ruling of a mistrial when a federal judge upheld the defendant's charge that headline treatment of his remarks by newspapers made a fair trial impossible. (See also p. 98.) The Northern California ACLU, in a statement in which the national ACLU concurred, attacked the indictment as a threat to free editorial expression and as a violation of due process.

2. The Vote: Minority Parties and the Right to Franchise

**Reapportionment.** The ACLU, recognizing the need for reapportionment of congressional districts as a significant civil liberties issue, urged passage of a bill before the House Judiciary Committee that would establish numerically equal districts that are continuous, or in one piece, and compact. This would grant approximate equality in voting strength to all districts within a state. The Union's stand followed adoption of a policy statement by the Board of Directors which asserted that to dilute the effectiveness of the vote is just as serious an act of discrimination as total denial of the vote. Where "total deprivation of the franchise" is the issue, "the evil lies in being represented by one for whom no vote was cast," the statement said. "In the case of mal-apportionment, the evil lies in being represented by one for whom—in relation to over-represented districts—the value of a single vote is diluted. . . . The difference is only one of degree." The Union said it decided to urge action by Congress because the courts have been reluctant to act ever since the U.S. Supreme Court refused to intervene in an Illinois case in 1946. That decision has been often cited to show that the question of reapportionment is "political" and therefore not subject to judicial review. Without going into the merits of the high court ruling, reached by the margin of a single vote, the Union said the fact of a judicial no-man's land "makes it all the more imperative that Congress act to eliminate this area of discrimination." The ACLU statement also emphasized the need for local reapportionment by state legislatures as well.

Action in the states to win reapportionment of congressional districts is up against tremendous political odds. Legislators are normally among the last in line clamoring for a shakeup in the legislature that could affect the "safety" of long-held seats. Neglect of the problem in most state capitals is illustrated by California, for example, where
a certain 12 per cent of the population can elect a majority of the state senate; and in Connecticut, where an even lower margin—10 per cent—can elect a majority of the lower house. In the only state in recent years where relief has been won—Minnesota—reform was achieved after a federal court accepted jurisdiction of a suit but gave the legislature two chances to rectify inequalities. Without enthusiasm, the state lawmakers voted to reduce the gap in voting effectiveness between various portions of the state from ratios of from 1 to 37 to 1 to 4 in one house and 1 to 5 in the other. The Minnesota Branch of the ACLU submitted a friend-of-the-court brief in the suit, which was based on the equal protection clause of the Fourteenth Amendment and judicial decisions which upheld the vote for Negroes in party primaries and to attend desegregated schools. Parallel Federal District Court suits also based on the discriminatory nature of existing political representation have been started in Florida and Tennessee.

**Minority Parties.** ACLU affiliates in New York and Illinois were instrumental in protecting the right of minority political parties to access to the ballot. In New York, the Appellate Division of the state Supreme Court reversed a decision by a state official in refusing a place on the ballot to the Independent Socialist Party because of a minor irregularity involving the signing of eight witnesses' statements on nominating petitions. Both the NYCLU and the national ACLU hailed the decision as signifying the need for a "thorough re-evaluation" of the state election laws to simplify the requirements for minority representation "and to eliminate the gloss of minutia challenge which has accumulated by court decisions through the years."

**Right to Vote.** The ACLU recommended two possible courses that would permit migratory workers all the "rights to which they are entitled as people in the United States." The suggestions, made in a report to the National Advisory Committee on Farm Labor, were: enactment of a federal law governing absentee voting similar to that formerly in effect for members of the armed forces, and special voting provisions for migrant labor by revision of state laws, to permit reduced residency requirements. All states require at least six months residency in addition to minimum residency in local areas. These requirements, the ACLU pointed out, deny migratory workers equal protection of the law in the right to cast their ballots. The various laws also deny equal protection in another pressing area, the Union said—eligibility qualifications for public assistance for the aged, the disabled, dependent children, and other categories of help which permanent residents may enjoy. The Union recommended an end to residency requirements altogether for public assistance or, failing that, an inter-state reciprocity agreement.
The Iowa Civil Liberties Union is involved in voting restrictions uncovered at Iowa State University and the University of Iowa. At the former institution, the affiliate is supporting a test case against the refusal of the Ames city clerk to register students for voting and at both schools it appears that a married student meeting residency requirements may vote but a single student with the same qualifications cannot. The ICLU is investigating.

3. Right of Assembly in Public Facilities

**Use of Public Schools.** One of the few remaining California loyalty oaths not overturned by state and federal courts was reversed by a Los Angeles Superior Court judge who ruled that an oath required for the use of public schools was unconstitutional. The test case was brought by the ACLU of Southern California, which said the requirement violated guarantees of speech and assembly, reversed the principle that a person was innocent until proven guilty, and encroached on the subject of subversion in which the federal government had pre-empted legislative authority. The ACLU of Southern California had refused as a matter of principle to sign an oath as a condition for using the Los Angeles High School auditorium for a Bill of Rights Day meeting.

The Freeport, L.I. Community Concert Association attacked as an "insidious form of censorship" the pressure that forced dancer Paul Draper to withdraw from a scheduled recital. The booking was cancelled after the local school board indicated it would not permit the auditorium to be used for his appearance. The move followed a protest to the board by the local American Legion post over the dancer's forthcoming concert and the receipt by the board of letters from 25 individuals expressing their objections.

**Public Meetings.** A convention by members of Jehovah's witnesses was finally held at the Iowa State Fair grounds in Des Moines after public and legislative protests caused fair grounds officials to reverse an original ban on the meeting. The original refusal was criticized as discriminatory by the mayor of Des Moines and an editorial in *The Des Moines Register* called it a repression of religious freedom. Another editorial, this time in the Minneapolis *Star*, condemned a statement by the mayor of the Minnesota city that he "believes in the principle of free speech and freedom of expression . . . except for subversives." The remark followed the granting of a permit to groups who had joined in a parade to oppose nuclear arms tests, but only after a municipal "security check" disclosed that the marchers are not "unwitting members of a Communist-front group." The mayor had indicated the permit would have been refused to the Quakers, pacifists and others if the parade was considered "subversive to the public peace"
as prescribed by a city ordinance. The Niagara Frontier (Buffalo) Branch of the ACLU met with the chief of Buffalo's anti-subversive activities police squad over the refusal by officials to allow a candidate on the Independent Socialist Party ticket to speak at Buffalo's Hadji Temple. Buffalo police called some of the sponsors of the meeting members of a "subversive organization."

**Seeger Case.** Folk singer Pete Seeger's right to appear in the auditorium of the Detroit Arts Commission has been upheld by a Wayne (Detroit) County Circuit Court. The suit was filed by the Detroit Labor Forum, assisted by the Metropolitan Detroit Branch, ACLU. The suit relied on Seeger's constitutional right to sing, the audience's right to hear him if it wished, and the public's right to use public facilities on a reasonable basis. The verdict by Judge Thomas J. Murphy upheld the petition in rejecting the Art Commission's argument that the singer's "controversial" background might create "disturbances." He said that Seeger's so-called controversial past was irrelevant to his intention of bringing "enjoyment to many, many people." Judge Murphy added that Seeger's concerts in other communities had not created disturbances and that if anyone threatened to create a row in Detroit, "the proper thing to do is call police and have them arrested."

**4. State and Local Controls**

**Legislative Investigations.** A California Superior Court judge ruled that state legislators can be sued for acts stemming from performance of their legislative duties. That was the effect of a decision by Judge Clarence Harden in San Diego involving a suit by a bar owner against the chairman and sergeant-at-arms of an Assembly rackets sub-committee. Judge Harden's refusal to dismiss a $50,000 damage suit could have wide repercussions in other ACLU actions where the issue of federal and state officials who exceed their authority is at stake. The Southern California affiliate filed a brief in the San Diego case, which developed after the sub-committee forced the witness to surrender a two-page document containing instructions from his attorney. The hearing had been televised over local stations. The state Attorney General had claimed that legislators, like members of the judiciary, have immunity from liability even when and if their acts exceed their authority. But Judge Harden ruled that the committee chairman and aide must stand trial.

A trio of bills were defeated in the Illinois legislature that would have outlawed the Communist Party, revived an investigation of alleged subversion and started a probe of so-called un-American public school textbooks. The Illinois Division of the ACLU wrote to all legislators that a bill creating a "seditive activity and subversive
propaganda" commission to study education, industry, labor and government was "clearly unconstitutional." The Division said the proposed measure invades an area already pre-empted by the federal government, violates free speech provisions of the Constitution, and sponsors "exposure for exposure's sake" in defiance of the U.S. Supreme Court. (This statement was written before the high court's decisions in the Baronblatt and Uphaus cases, see pp. 55-56 and 85-86.) The textbook bill would have authorized any group of 30 persons in the school district, or a school board itself, to set a special committee to study any books believed to be "antagonistic to or incompatible with the ideals and principles of the American constitutional form of government."

The U.S. Supreme Court applied to state investigations the rule of pertinency it laid down for federal inquiries when it reversed a contempt citation against David H. Scull, a Virginia Quaker who refused to answer a Virginia legislative committee's questions about race relations. The high court said the committee had not made clear how its questions were pertinent to the subject of the inquiry. Among the 31 questions Scull refused to answer were whether he belonged to the NAACP or associated with the ACLU or the Anti-Defamation League of B'nai B'rith. The three general subjects under inquiry were the tax status of racial organizations, school integration, and the unauthorized practice of law. The unanimous court verdict, however, said the committee had never explained to Scull how any of the questions put to him were related to those subjects. This was the same line of reasoning used by the tribunal in its 1957 Watkins case decision.

Right to License. The U.S. Supreme Court set aside a one-year suspension from practice of Harriet Bouslog Sawyer, a Honolulu lawyer censured by the Hawaii Bar Association for a public speech she made while representing a defendant during a 1952 Smith Act trial. Although there was no transcript of the speech, newspaper accounts said Mrs. Sawyer charged that "horrible and shocking" events were taking place at the trial and that "they just made up the rules as they went along." The Supreme Court of Hawaii suspended Mrs. Sawyer from practice on the grounds that her conduct had cast doubt on the integrity of the trial judge, but the U.S. Supreme Court said there was not enough in the record to support the accusation.

The Florida Supreme Court has upheld the decision of a lower court in dismissing a suit by the state to disbar attorney Leo Sheiner. (See last year's Annual Report, p. 41 and 1956-1957 report, p. 22.) The state had charged that Sheiner's refusal to answer questions of a U.S. Senate subcommittee on the grounds of the First and Fifth Amendments was fraudulent and unethical. But the lower court held that the state "had not met its burden of proving its motion to disbar by a clear preponderance of the evidence." The case of California lawyer
Raphael Konigsberg is still in its second round of legal action. (See last year's Annual Report, p. 39.) Under an order from the U.S. Supreme Court to rehear the case, the California State Bar again refused to certify Konigsberg after he refused to answer an examiner's questions about his political beliefs and associations. The ACLU of Southern California-sponsored action is now before the state Supreme Court a second time.

A San Francisco District Court of Appeal ruled that before police could revoke the license of a bar patronized by homosexuals, "there must be improper, illegal . . . or immoral acts of conduct committed on the premises to the knowledge of the licensee." The bar license was ordered reinstated. The ACLU filed a statement at a hearing on behalf of William Walker, proprietor of a controversial cafe in Washington, D.C. patronized by members of the so-called "beat generation." Licensing officials in the District served notice they intended to revoke the restaurant permit of the Coffee n' Confusion Cafe after complaints by neighborhood residents that the cafe was a public nuisance and violated police and health regulations. The Union brief was in line with its traditional defense of rights of freedom and assembly to unpopular individuals and groups. "The unorthodox, the unconventional, even the radical, must be allowed to meet and speak peaceably without restraint," the brief declared.

Out-of-State Affiliation. A petition circulated by the Louisiana Civil Liberties Union protesting legislative proposals to close down public schools in order to avoid desegregation is still a source of major civil liberties controversy in the state. (See last year's Annual Report, p. 25-26.) The uproar continued on two fronts: a new law barring all state and local organizations from having affiliation with out-of-state groups any of whose officers are Communists or Communist sympathizers; and a report by a state joint legislative committee that tried to link the ACLU to Communists. The affiliation measure was promptly denounced as "manifestly unconstitutional" by the Louisiana affiliate, which served notice that it would not comply with the law. So far there has been no indication that the state intends to enforce the measure or the LCLU's defiance of it as a test case. The LCLU said that since civic groups with national ties "are not informed of the membership of every officer and director" in headquarters and many local branches, "it is obviously impossible for anyone to truthfully attest to facts not within his knowledge." The law required that local officers sign affidavits that national officers do not belong to organizations cited by the House Un-American Activities Committee or the Attorney General's list of subversive organizations. The report by the joint legislative committee was refuted point by point by the LCLU in a 45-page analysis of the charges. The affiliate said the committee
had merely warmed-over old accusations of Communist sympathy against
the Union which the Union had answered effectively a long time ago.

5. Congressional Action

**House Un-American Activities Committee.** In one of the most
long-awaited civil liberties decisions in years, the U.S. Supreme Court
upheld the contempt conviction of Lloyd Barenblatt, former Vassar
College psychology instructor. *(See last year's Annual Report, pp. 41-42.)*
The Union had carried this key case to the high court. The closely-
divided court held 5-4 that legislative investigations of communism were
proper because the national interest involved in the defense against
communism was greater than the individual's interest in not disclosing
his political associations. This broad interpretation of congressional
power to investigate where the national security is at stake came as
a surprise to civil liberties observers. While there was some doubt that
the court would concur in the ACLU's contention that the HUAC's
mandate to investigate "un-American propaganda" invaded the First
Amendment, there was some indication on the basis of its recent deci-
sions that the tribunal would void Barenblatt's conviction on the grounds
that the questions put to him were not pertinent to the subjects under
inquiry, or were an invasion of the field of education. Instead, the
majority made these points: 1—First Amendment rights can be limited
where the public interest outweighs private interest—in this case the
international Communist menace which gives Congress the right to
investigate and therefore legislate to control the threat; 2—the claim
that the committee sought only to "expose" persons without pursuing a
legitimate legislative purpose is not supported either on the record in the
Barenblatt case or because of the court's lack of authority to judge the
committee's motives; 3—while a congressional committee may not probe
the content of what is taught in educational institutions, there is nothing
to prevent it from questioning a teacher about Communist Party activity,
just because he is a teacher; 4—The questions to Barenblatt and their
relation to the subject under inquiry—communism in education—were
clearly identified, in contrast to the "amorphous" questions put to Wat-
kins, the defendant in an earlier test case. Moreover, the court's 1957
Watkins decision did not make the HUAC's mandate totally invalid, but
simply criticized the fact that the committee's queries were not
"pertinent" to the subject of Communist infiltration of the labor move-
ment; 5—granting that the committee's mandate may be vague, the
House gave the panel "pervasive authority" to investigate Communist
activities as part of its concern with the national security.

The dissenting opinions viewed the heart of the Barenblatt case in
a sharply different perspective. Said the minority: "If the issue were
merely whether Congress intended to allow an investigation of com-
munism . . . it may well be that we could hold the data cited by the court sufficient to support a finding of intent . . . There are, of course, cases suggesting that a law which primarily regulates conduct but which might also indirectly affect speech can be upheld if the effect on speech is minor in relation to the need for control of the conduct. . . . (But) neither of these cases, nor any others, can be read as allowing legislative bodies to pass laws abridging freedom of speech, press and association merely because of hostility to views peacefully expressed in a place where the speaker had a right to be." The Committee's mandate, "on its face and as here applied, since it attempts inquiry into beliefs, not action—ideas and associations, not conduct, does just that . . . (The) court . . . fails to see what is here for all to see—that exposure and punishment is the aim of this committee and the reason for its existence. To deny this aim is to ignore the committee's own claims and the reports it has issued ever since it was established. . . ."

**Wilkinson Case.** The suit of Frank Wilkinson, now before the U.S. Circuit Court of Appeals, was distinguished from the Barenblatt case in an ACLU brief which pointed out that Wilkinson had not been subpoenaed until the HUAC discovered that he had arrived in Atlanta to organize public opposition to the committee's hearings into alleged Communist influence in the South. Wilkinson's activity, said the Union, was a perfectly proper exercise of the right of the people to petition the government for redress of grievances—a right protected by the Ninth Amendment. The brief also cited provisions of the First and Fourteenth Amendments that had been quoted in the Barenblatt case referring to the free speech and due process violations of the HUAC. Supporting Wilkinson's rights as a "lobbyist" the ACLU drew a parallel between his activity and those of a regular, registered lobbyist who is protected by court decisions from requiring to tell a congressional committee the recipients of his propaganda.

In the states, court suits and contempt violations prompted by various local appearances of the much-traveled HUAC continued to occupy ACLU affiliates. The ACLU of Northern California is defending Louis Earl Hartman, a San Francisco radio personality, who was convicted of contempt after refusing to answer the committee's questions. The Southern California affiliate won U.S. Supreme Court review of the dismissal of two former Los Angeles County social workers who refused to reply to HUAC questions and is defending a newspaper reporter and a plumber who challenged committee subpoenas on the grounds that its mandate is unconstitutional. The Northern and Southern California affiliates have been active on behalf of a reported 110 teachers whose names the HUAC sought to turn over to local school boards. The ACLU of Southern California filed a petition in Federal District Court in Los Angeles declaring that if the school boards are given the teachers' names
and other information they "will suffer irreparable injury and have no adequate remedy at law." Much of the committee's information, added the petition, is "unsworn . . . data from unidentified informants concerning the political and social beliefs, opinions and associations . . . which are entirely lawful and protected by the First Amendment." The legal action is an outgrowth of an earlier suit by the affiliate challenging the HUAC's right to investigate state education, which played a role in a decision by the committee to postpone indefinitely public hearings.

The Illinois Division of the ACLU criticized as a violation of constitutional liberties HUAC subpoenas issued to two persons who attacked Chicago hearings in a leaflet. The Division also supplied counsel to a University of Chicago student who refused, on First Amendment grounds, to answer questions put to him by the committee.

In Connecticut, an arbitrator ruled that an employe of the Singer Manufacturing Co. was entitled to his job back after he was fired in 1956 for pleading the Fifth Amendment before the HUAC. The arbitrator said "no question of loyalty was involved" and that "taking advantage of the Fifth Amendment is not a crime." In addition, after having long been denied unemployment insurance benefits, the employe was granted the benefits by state officials.

Congress vs. the Court. The mood of Congress was far less antagonistic toward the U.S. Supreme Court. Markedly toned down were the once-bitter debates which greeted controversial opinions by the tribunal. The reasons were two-fold: less antagonism by critics of the court over its decisions in the loyalty-security and race relations fields, and better organization by friends of the court against efforts to reverse the effect of sensitive verdicts. The simmering controversy, however, was not without legislative attempts to nullify or weaken high court verdicts involving the Smith Act's prohibition of advocacy of revolution, federal employe security program, passport applications, deportable aliens and the validity of state sedition laws. All such legislative proposals were opposed by the ACLU in testimony before the Senate Internal Security Sub-Committee on the grounds that they "merely promote the comfortable illusion of real security (while) diverting our energies from the arduous economic, political and other activities in the fields of foreign relations and domestic affairs in which our only true security in the perilous future lies.

"The best possible protection," declared the ACLU, "for our security is scrupulous observance of our constitutional guarantees. . . . Government devotion to free speech, due process and equal protection of the laws— not their restriction or neglect—inspires loyalty to the Government in the minds and hearts of (Americans) . . . and gains the confidence of uncommitted peoples." A bill which passed the House but died in the Senate permitted the states to enforce their own laws against
American Bar Ass'n vs. the Court. The American Civil Liberties Union criticized as "unprofessional and irresponsible" the adoption by the House of Delegates of the American Bar Association of a series of recommendations widely interpreted as an attack on the U.S. Supreme Court. The recommendations asked Congress to pass a series of bills that would reverse high court rulings in the loyalty-security field. The ACLU cited the following paragraph of the report of the ABA's Special Committee on Communist Tactics, Strategy and Objectives as an example of what it was objecting to: "The paralysis of our internal security grows largely from construction and interpretation centering around technicalities growing from our judicial process."

The reference to due process guarantees as "technicalities," commented the Union, "is certainly unprofessional and shows surprising disregard for ... the Bill of Rights. To state that our internal security is paralyzed is patently absurd." Such a conclusion is "near-hysterical," the statement added, and "unworthy of the standards of professional ethics." A ten-page analysis of the ABA committee's recommendations by the Union said they had done a disservice to the internal security of our country, the rights of the people within it, and the concept of equal justice under law as enunciated by the U.S. Supreme Court. The approach of the ABA, said the ACLU, reveals "an essentially negative concept of national security, an approach which has produced such sharp criticism of the various federal security programs."

The Smith Act. Although convictions and prosecutions of Communist Party leaders under the Smith Act have been reversed or dropped in every state in which they took place except Colorado, attention shifted to the membership clause of the Act, under which two Party leaders have been convicted. The clause makes it a crime knowingly to be a member of a party that teaches and advocates forcible overthrow of the government. The case furthest advanced in the courts is that of Junius Irving Scales, former Carolinas chairman of the Party. Scales was originally convicted under the membership clause but the U.S. Supreme Court overturned the verdict on the grounds that several government witnesses had a record of unreliability in other cases. After a second conviction the high court heard argument but ordered reargument on certain constitutional questions involved in the membership clause of the Smith Act. Seventeen other Party leaders also face legal action under the clause, although in some cases the indictments have been inactive for some time. Among those convicted under the membership clause are the former upstate...
New York chairman, John Francis Noto, and ex-secretary of the Party in Illinois, Claude Lightfoot. Future action awaits the outcome of the Scales case. The ACLU filed a brief in the Scales case declaring that his conviction "cannot stand without violating the First Amendment. The emphasis is on what the defendant thinks, rather than does," the brief continued. "Since the crux of the crime is association with groups advocating violent revolution, the danger is great that convictions will be based not on the acts or even the state of mind of the defendant, but rather the general antipathy towards those with whom he has associated. How can membership in a group advocating violent overthrow unaccompanied by any overt act, even when coupled with guilty knowledge and intent, create a clear and present danger?" asked the ACLU.

In Colorado, meanwhile, a Federal District Court jury convicted seven defendants under the general application of the Smith Act, making it a crime to conspire to advocate overthrow of the government.

Congress. The House passed a bill redefining the word "organize" in the Smith Act to nullify the 1957 U.S. Supreme Court decision freeing five California Communist leaders and ordering new trials for nine others, who were later released. (See last year's Annual Report, pp. 44-45.) The House bill was virtually the same as one passed in the 85th Congress and which died in the Senate in the closing days of the session; the Senate did not act in the 86th session. The ACLU opposed this latest proposal, as it did a companion Senate measure that would have toughened the Smith Act by prohibiting advocacy "without regard to the immediate probable effect of such action."

The pre-emption doctrine enunciated by the high court in its 1956 reversal of Pennsylvania Communist Steve Nelson's conviction under state sedition laws was cited by the Supreme Court of Louisiana in granting an appeal by Junesh Jenkins. Jenkins was tried and convicted under the state's Subversive Activities Law. His case was supported by the Louisiana Civil Liberties Union, which filed a brief in the case stressing the pre-emption doctrine. (See also Uphaus decision on pp. 85-86.)

LABOR

Congress. A new labor reform bill, the first general labor legislation since passage of the Taft-Hartley law, was adopted after considerable controversy. Approval of the statute came as the ACLU, reversing a seven-year policy in support of union self-regulation, adopted a new policy statement urging federal legislation to insure internal union democracy. The Union coupled its call for a moderate measure with a warning that "government intervention, here or elsewhere, is a necessary evil!" prompted by the need for a "bill of rights" for union members.
"Self-regulation alone cannot adequately protect the democratic rights of members within unions," the ACLU declared.

The Union statement said that the need for legislation grows out of the failure of union constitutions to protect the First Amendment rights of freedom of speech, press and assembly by expressly forbidding, in many cases, distribution of circulars or the organizing of opposition groups within the union. In addition, said the policy declaration, "few courts frankly repudiate the oppressive use of such clauses and openly protect the civil liberties of union members." In describing the essentials of a legislative "bill of rights" for union members, the ACLU made these points: First, every worker should have the right to participate fully in determining the policy of the union which represents him, including the right to full and equal membership, the right to criticize union officers and policies, the right to free and open elections, and the right to a financial accounting for union affairs. Second, every worker is entitled to equal treatment by the union, including protection against railroading or discrimination by a majority against a minority. Finally, every member, before being subjected to penalties, is entitled to a full and fair hearing before an unbiased tribunal with the right to an appeal. "A clear declaration of First Amendment rights for union members," said the ACLU statement, "is one of the most significant contributions the law can make to union democracy. It strengthens the law at its weakest point and protects the most basic rights of union citizenship."

The policy statement took exception as a violation of Fifth Amendment protections against self-incrimination, to the requirement that union officials and employers must report conflicts of interest and their financial transactions or suffer criminal penalties. The Union said that constitutional rights should not be sacrificed, even though it creates statutory rights for union members. The solution to this "admittedly difficult problem," the statement said, should "at least avoid an explicit compulsion to confess criminal conduct." While agreeing with certain safeguards for free and unfettered union elections, the Union criticized other sections of the law as infringements on civil liberties. Among these provisions was a prohibition against using union funds in such balloting. The ACLU said that although the aim was to prevent incumbent officers from increasing their advantage over electoral opponents, the provision might have the effect of cutting off the main resources of a rebel group by cutting off campaign contributions from their local unions, which probably are their greatest source of strength.

Other highlights of the legislation on which the Union policy statement commented were: the disqualification of ex-felonists from union office for five years was termed discriminatory against persons "who have paid their debt to society" and who might otherwise be "perfectly suitable candidates;" a similar five-year ban against ex-Communists
from holding union posts "shrink the very democratic process the legis-
lation is designed to further" and may also serve to "close the door
to individual reform;" an 18-month limit on trusteeships unless further
extended by court order was praised as a "substantial contribution to
union democracy;" and the elimination of the existing requirement that
union officials seeking to use the National Labor Relations Board sign
non-Communist affidavits was also hailed by the Union, which has long
maintained its opposition to such oaths as a denial of freedom of
association and conscience protected by the First Amendment.

**Government Workers.** A year-long study by the Labor Commit-
tee of the ACLU has resulted in adoption by the Board of Directors of
a major policy statement upholding the right of government employes
to form or join labor organizations of their own choosing. In addition,
the statement declared that there should be no blanket prohibition
against the right to strike by government workers and that union shop
agreements in government employment raise no violation of civil
liberties. The policy statement emphasized it was commenting only on
the civil liberties questions involved in the unionization of public
employes, not endorsing the wisdom of self-organization itself. Rejecting
the argument that a possible conflict of loyalties might affect the job
performance of a government worker who is also a union member, the
ACLU noted that such an evaluation, largely subjective, would be made
by officials of "widely varying competence." To allow such an "essential
civil liberty as freedom of association to be dependent on the orientation
of a single individual is fraught with danger," the Union warned. The
statement said that the solution of a possible conflict of loyalties should
rest on "objectively observable misconduct," and on vigorous attempts at
intelligent recruitment policies coupled with education towards a greater
understanding of "departmental goals and values."

On the right-to-strike issue, the ACLU said that a complete ban
should be in force only where "maintenance of uninterrupted service is
essential to the community." Even in such cases, continued the statement,
limitations on the right to strike should be dependent on the availability
of effective grievance machinery, including last-step arbitration; and
provisions for a fact-finding board to assure "informed consideration"
of issues that, in other circumstances, might be fought out through a
strike.

The ACLU statement discussed the competing free association argu-
ments raised by the union shop but concluded that since the Taft-Hartley
law does not bar such agreements, and since the ACLU itself has no
objection to the union shop in private employment, such agreements
in government employ do not involve a violation of civil liberties. The
ACLU opposes a union shop or any union activity where membership
is closed on account of race, creed, color or place of national origin.
IAM Dispute. Considerable attention was focused on two cases of alleged denial of internal union democracy concerning the International Association of Machinists, whose president, Albert J. Hayes, is chairman of the AFL-CIO Ethical Practices Committee. One case arose in Chicago where two men were expelled from the union as the climax of a four-year battle in which a dissident faction charged voiding of members' rights by a trusteeship imposed by the IAM and publicly urged the appointment of a Public Review Board to hear the complaint. The expulsion order was based, in part, on the men's "use of exaggerations, half truths . . ." and violating the union constitution's bar against circulating "false and malicious statements . . . attacking the . . . integrity of any . . . officer." The second case arose in Los Angeles where two IAM members were expelled after they publicly campaigned for a "right to work" law which the union opposed.

In actions by three ACLU affiliates, the New York Civil Liberties Union filed a brief before the state Court of Appeals charging that a state law barring ex-convicts from holding office in the longshoremen's union was an "unreasonable interference" with a man's right to work; the ACLU of Northern California has filed an appeal on behalf of a postal worker who was fired for picketing a San Francisco post office for the Postal Workers Union; and the Metropolitan Detroit Branch of the ACLU supported the right of protest of Dodge Auto Company employees who demonstrated against a company practice whereby the existing labor force worked overtime although unemployed employees were not rehired. A Chicago arbitrator has ruled against the "wholesale" use of lie detectors in rejecting management's bid to test all its welders in order to verify their piecework claims. The judgment, which did not rule out the use of lie detectors if specific employes were formally accused beforehand, objected in this case on the grounds that the reliability of the technique is not fully established; it is a violation of protections against self-incrimination; it is an unwarranted invasion of privacy.

Bias. Conflicting estimates of the prevalence of discrimination against Negroes by unions affiliated with the AFL-CIO has been offered by the merged federation and the NAACP.

A two-year study of 16 unions reported a gradual but steady movement toward integration, according to a 64-page survey published by several AFL-CIO unions in cooperation with the National Labor Service of the American Jewish Committee. The study cited the UAW as an example of a union with no Jim Crow locals although it has a substantial Southern membership and said that the International Union of Electrical Workers has won 25,000 new Southern members despite the frequent resort by employers to racist anti-union propaganda. Another
bright note was reported in the aftermath of a five-week strike by the Rubber Workers Union that was called after management fired a Negro. When the worker was ordered reinstated by an arbitrator, "the whites carried their Negro fellow-worker back into the plant on their shoulders," the report said. If this study accentuated the positive, the NAACP emphasized the negative. An 11-page documented memorandum said that discrimination in the labor movement follows a pattern of total exclusion from union membership, segregated locals, or a separate system of job promotions. The memorandum included affidavits alleging discrimination against Negroes by members of these unions: Railway Clerks, Papermakers, Hodcarriers, International Brotherhood of Electrical Workers, Plasterers, and Plumbers. "All too often," said the memorandum, "there is a significant disparity between the declared public policy of the National AFL-CIO and the day-to-day reality as experienced by Negro wage earners in the North as well as in the South." In a separate NAACP protest, the organization charged that Negro workers pressing for public school integration in Front Royal, Va. had been met with economic reprisals in which the American Viscose Corp. had been joined by the local Textile Workers Union affiliate.

**Court Decision.** The U.S. Court of Appeals in Ohio rejected an appeal by a group of Negroes that the Brotherhood of Locomotive Firemen had unconstitutionally denied them membership. The court rejected arguments advanced in briefs filed by the ACLU and the Ohio Civil Liberties Union that the denial, based on race, was in violation of the due process protections of the First Amendment and the equal protection rights of the Fourteenth Amendment. The brief also pointed to the parallel in which the courts had struck down "separate but equal" school facilities. The appeals court, however, ruled that the governing Railway Labor Act merely insures that all employees have a vote in choosing their bargaining agent, and does not prescribe what membership qualifications the bargaining agent should impose. The court also did not find that the Brotherhood adopted certain practices "for the purpose of discriminating against Negroes."

The Cleveland branch of the Ohio Civil Liberties Union opposed the conviction of seven persons for conspiring to file false non-Communist affidavits under the Taft-Hartley law. The branch objected to the admission of testimony by government witnesses under an exception to the rule barring hearsay. The government witnesses quoted some of the defendants' remarks and some remarks by persons who were co-conspirators but not defendants, to the effect that Communist Party policy would prescribe false resignation from the Party in order to evade the affidavit requirements of the law. The seven on trial were shown by the evidence to have been former members of the Commu-
nist Party. The Cleveland CLU said the government's case attempted to establish a conspiracy centering around the specific criminal act of filing a false oath. But in the prosecution's attempt, statements by alleged co-conspirators should not have been accepted as evidence "simply because the defendants were officers in the same political party," the affiliate said. This made the defendants guilty of conspiring to file false oaths simply by their association in a political party, a conviction based on guilt by association, the statement declared. The verdict has been appealed.

**Picketing.** Two ACLU affiliates protested restrictions against peaceful picketing in local labor disputes. The Indiana Civil Liberties Union filed a friend-of-the-court brief opposing an injunction to halt picketing of a retail store in Gary by the Fair Share Organization, a group seeking to place Negro employees in Lake County, Ind. The brief said that although a business firm may suffer financially as the result of picketing, free speech protections of the Constitution must be paramount. The Maryland Civil Liberties Union strongly objected to the arrest of an entire International Ladies Garment Workers Union picket line by Baltimore police in order to permit non-union employees to leave the factory at quitting time without having to face the striking workers. The MCLU said the arrests were discriminatory and "repugnant" to democratic principles.
II. EQUALITY BEFORE THE LAW

THE FEDERAL SCENE

Congress. What seemed to many persons to be excellent prospects for new civil rights legislation disappeared in mid-August, 1959 with the decision by Democratic and Republican leaders to defer a showdown on a new law until the second session of the 86th Congress. Among the several factors that lay behind the move to delay action were the key parliamentary positions occupied by Southern legislators, the fact that the new Congress would be meeting in a Presidential election year, and the almost frantic desire on the part of many congressmen to adjourn the session before the official visit of Soviet Premier Nikita Khrushchev in order to avoid extending him an invitation to address a joint session of both houses, as protocol would have suggested.

The switch came as a disappointment to the ACLU, which had urged Congress to give "paramount attention" to new enforcement powers for the federal government at the outset of the opening session. The appeal urged the granting of authority to seek civil injunctions in the courts where any violation of civil rights is involved. The 1957 civil rights law allowed government intervention only where the right to vote had been violated. The Union pursued its drive for inclusion of wider federal power in testimony before the Senate Constitutional Rights Subcommittee, but such a section was not included in a "moderate" bill that was considered but did not pass.

In another Senatorial battle closely related to the fight over civil rights, the ACLU and 16 other national organizations were defeated in their efforts to end the filibuster. The groups condemned a "compromise" plan sponsored by Majority Leader Lyndon Johnson permitting an end to debate by a vote of two-thirds of the Senators present and voting. The civil rights organizations had proposed that such a two-thirds vote take place two days after filing of a cloture petition, or that a simple majority of the entire Senate be sufficient to end debate after 15 days. The filibuster foes also lost an attempt to establish the "explicit constitutional right" of the Senate to determine its own rules "unfettered by the past" in each new Congress. By establishing this right the way would be open to change the basic cloture provision. The Johnson "compromise," however, maintained the Senate as a "continuing body," thus keeping alive the old two-thirds cloture rule that has blockaded effective civil rights legislation.

Civil Rights Commission. The federal Civil Rights Commission, whose life was extended for another two years in the closing days of Congress, reported to the President that constitutional guarantees were
being flaunted in open discrimination against Negro voters in the South. "Many Negro American citizens," said the Commission, "find it difficult and often impossible to vote. . . . Against the prejudice of registrars and jurors, the United States Government appears under present laws to be helpless to make good the guarantees of the United States Constitution." To remedy the situation described in the Commission's report—which included numerous instances of violence, economic pressure, and legal subterfuge—the panel made the following recommendations:

1—the appointment of temporary federal registrars to take over in areas where Negroes have been prevented from voting;
2—congressional legislation requiring state voting records to be maintained for five years and kept open for inspection;
3—a law permitting federal court suits compelling registrars to perform their functions in order to combat a common practice of hardly ever meeting at all;
4—compilation by the Census Bureau of comprehensive statistics on Negro and white voting and registration.

Although most of the Commission's attention was concerned with the voting problem, a section of its report devoted to education noted without comment that the U.S. Supreme Court decision on school desegregation must be accepted as "the authoritative interpretation of the law of the land." The three Northern members of the commission urged an end to federal aid to institutions of higher education if they bar any students for racial reasons. (For additional developments in education see pp. 70-74.) In its survey of the housing problem, (For more on housing (see pp. 74-75) the panel suggested that the best answer to discrimination in housing was to build more housing units and then provide equal access to them without racial bars. "The need is not for a pattern of integrated housing," the report said, "It is for equal opportunity to secure decent housing." To break down housing discrimination, the Commission urged the President to issue an executive order stating the constitutional objective of equal opportunity and directing all federal agencies to shape their policies and practices to achieve this goal.

Predictions that the Commission would meet with defiance in the South (See last year's Annual Report, pp. 51-52) have been amply confirmed by events in Alabama, Louisiana and Georgia.

In Alabama, when the Department of Justice filed a suit in behalf of several Negroes who alleged local registrars would not permit them to register, the registrars repeatedly refused to produce their voting lists; a federal court order authorized the Commission's staff to inspect them at the county court houses. Unfortunately the Alabama suit was dismissed because the defendant Board of Registrars had resigned, and the federal government moved to cite the state of Alabama as the defendant.
A similar suit was brought in Georgia but a federal District Court judge ruled that the 1957 Civil Rights Law was unconstitutional because it allowed the government to move against private citizens even though the particular case being prosecuted concerned "state action." A conflict arose in Louisiana where a third suit was instituted. The law's constitutionality was upheld, but a U.S. Court of Appeals invalidated the Commission's hearing procedures for failure to provide for the right of identification and confrontation and cross-examination of those persons who filed complaints with the Commission. All of these cases are being appealed.

**Armed Forces.** The ACLU criticized the refusal by the Air Force to transfer a Negro sergeant whose daughter was required to attend an off-base segregated school. In a letter to the Secretary of the Air Force, executive director Patrick Murphy Malin condemned the action as contrary to "the national policy of integration." The Negro airman asked for the transfer after officials at the Little Rock air base decided that under a law passed by Congress a new federally-financed school for Air Force personnel's children must follow the local segregated pattern. The refusal to honor the request for a transfer, said Malin, in effect enforces a practice which the U.S. Supreme Court has found to be unconstitutional. The school was later integrated in the fall of 1959 as an aftermath to the desegregation breakthrough in Little Rock.

**STATE AND LOCAL ACTION**

**Violence.** A report compiled by three nationally-known organizations revealed a record of 530 specific acts of violence in 11 southern states in the four years ending January 1, 1959. A joint statement by the three groups deplored the widespread erosion of civil liberties demonstrated by the acts of lawlessness and added: "We feel an obligation to call attention to the dangers posed by the record—dangers for which all of us, through silence or inaction, must share the responsibility." The groups which issued the joint report were the American Friends Service Committee, the Southern Regional Council, and the Department of Racial and Cultural Relations of the National Council of Churches. The itemized tally of violence based on press reports listed 45 bombings of homes, schools, churches and synagogues; dynamiting of two civic agency locations; the burning of two schools and a church, and 15 homes struck by gunfire. Personal deaths and injury included six Negroes killed, 29 persons—11 of them white—shot and wounded in racial incidents, and one Negro emasculated. The report found 95 acts of reprisal including vote purges and economic boycotts, as well as 210 instances of intimidation.
**NAACP Harassment.** The Alabama Supreme Court refused to be bound by a U.S. Supreme Court decision setting aside a $100,000 fine for contempt of court against the NAACP. (See last year's Annual Report, p. 40.) The state court's refusal was based on the belief that the Supreme Court had assumed the NAACP had turned over some of its records while refusing to turn over its membership rolls. Actually, said the Alabama tribunal, the organization had not complied with any court orders and therefore "is still in contempt." The action left it up to the NAACP to file an appeal in the federal courts, which can void the fine again if it sees fit. Similar curbs against the NAACP were found unconstitutional by a federal three-judge panel in Virginia. In Georgia, where the legislature also voted a demand for the group's financial records, the U.S. Supreme Court postponed hearing an appeal until the Georgia courts actually impose a fixed financial penalty. Arkansas passed a law prohibiting any state agency from hiring a member of the NAACP. The bill was part of a 15-part "package" designed to drive the organization from the state. The state Supreme Court, however, struck down a law that would have required the NAACP to report on its membership and finances.

After the Florida Supreme Court rejected a 1957 challenge by the Florida Civil Liberties Union of the authority of a state legislative committee to subpoena books and records (see last year's Annual Report, p. 53), 15 persons who refused to answer questions or produce NAACP records were ordered to do so by a lower state court. The Florida Supreme Court affirmed this order except for a few questions that it held were not pertinent. It said there was no showing that identifying persons as NAACP members would invade their constitutional rights. The U.S. Supreme Court refused to review this case so the matter is back before the lower state court to modify and make final its original order to respond to the state committee.

Less complicated but equally distasteful problems have beset the new Tampa Bay chapter of the Florida Civil Liberties Union. Unable to find an unsegregated meeting place on one occasion, the chapter met in a Negro undertaker's chapel.

**Voting Rights.** Asbury Howard, a Bessemer, Alabama Negro civic leader, completed his six-months sentence on a road gang in July, 1959, mooting an ACLU-supported appeal involving what the Union believes is a flagrant violation of civil rights. The ACLU is also supporting the appeal of Howard's son, Asbury, Jr. who was sentenced to a year in jail while trying to defend his father against an attack by 40 white men inside the City Hall. Howard was set upon after his conviction under a local ordinance forbidding publication of "intemperate matter tending to provoke a breach of the peace. . . ." His "crime" was to have a
newspaper cartoon copied into a poster in order to encourage Negro voting registration. Howard is head of the Bessemer Voters League. His son was convicted of disorderly conduct and resisting arrest for trying to help his father resist the mob while local police stood by doing nothing. Asbury, Jr. was also injured in the melee.

The ACLU had earlier emphasized the inaction of municipal police in protesting the attack to the Justice Department. The Union, in a letter by executive director Patrick Murphy Malin, urged an investigation by the government to determine if Howard's federal civil rights were violated on the grounds that since he was brought to City Hall under a "compulsory appearance," he was at least entitled to police protection while there. In addition, Malin cited the disregard of Howard's First Amendment rights of free speech in his arrest while seeking to reproduce a newspaper cartoon. But after an investigation the Justice Department refused to intervene in the case.

Less dramatic but equally significant discrimination against Negro voters in Florida was disclosed by the ACLU of Greater Miami in a report on registration practices in Dade (Miami) County. The analysis showed that Negro and white registrants are so identified in precinct voting lists, making possible the distribution of campaign literature slanted separately to each group. In addition, Negro voters are frequently compelled to make long trips to county headquarters, are forced to wait on unduly long lines, and often are met by hostility by county officials when seeking to register.

**Churches.** A number of Christian denominations have come out strongly against racial segregation. They include the Protestant Episcopal Bishops, the Roman Catholic Bishops of the U.S., and the Council of Bishops of the Methodist Church. In addition, two major groups have pledged financial aid to churches financially hurt by moves to integrate. These are the United Presbyterian Church in the USA and the Congressional Christian Churches. The southern membership of the Presbyterian unit also voted to oppose the use of church buildings as classrooms to circumvent the U.S. Supreme Court decision. Against this background, however, considerable discrimination is still reported to exist among Southern church membership and at least two ministers have been forced to resign because they publicly supported desegregation in church and school. The 9,000,000-member Southern Baptist convention, for example, was sharply split in an hour-long debate over a proposal that its leaders meet with Negro Baptists. The Southern Baptist Conference, meanwhile, joined with the Protestant Episcopal Church in South Florida and the National Conference of Methodist Youth to attack what they called a spreading effort to associate desegregation and subversion in the South. Eleven social action leaders called the movement a "southern version of McCarthyism."
Up North. The New York State Commission Against Discrimination reported that it received more complaints in the first nine months of 1958 than at any other similar period since the Commission was formed in 1945. Most of the complaints were filed by Negroes in the field of employment. The New York City Board of Education requested textbook publishers to reproduce "representation of non-white individuals" in their publications. The Michigan civil rights agency reported that although "no discrimination of any kind" exists in voting privileges and "little or no" school segregation, bias still continued against Negroes in housing, employment for Negro teachers, and police treatment of Negro prisoners.

In Minnesota, discrimination by a cemetery owner was found illegal in a case involving an American Indian who wished to be buried alongside her Scandinavian-American husband in a plot they own in Sunset Memorial Park. A state district court held that discrimination by a cemetery was contrary to the public policy of the state, as expressed by its legislature, in matters of bias because of race, color, creed or origin. The Minnesota Branch of ACLU backed the Indian woman.

Elsewhere in the North, California, Idaho and Nevada repealed their ban on marriages between whites and non-whites; Indiana and Oregon removed a race designation on their absentee ballot; California, Pennsylvania and Massachusetts established civil rights sections in their Attorneys General offices; the Oregon legislature formally ratified the Fifteenth Amendment protecting equal rights for whites and non-whites; and the California legislature approved the Fourteenth Amendment's guarantees against abridgement of citizens' rights.

In the field of equal rights for women, the U.S. Supreme Court refused to review a decision of a Texas court denying an application for admission of women to Texas A. & M. College. A new suit has been filed with ACLU support, relying on the protections of the Fourteenth Amendment. The Texas Supreme Court had ruled that Texas A. and M. was essentially a military school and that there are other state-supported schools with equal facilities available for women. A new suit backed by the ACLU has been filed which seeks to show that Texas A. and M. is not a military school and the exclusion of women violates the Fourteenth Amendment.

GENERAL DEVELOPMENTS

1. Education

The 1959 school year in the South was the first time in three years that classrooms reopened in an atmosphere of comparative calm. There was no major violence. There were no federal troops. In these "negative"
facts are a clue to some of the “positive” forecasts made by organizations deeply involved in the school integration struggle. The NAACP reported that “the beginning of the end” was in sight for advocates of massive resistance to desegregation. And the authoritative Southern Regional Council detected three currents which it thought would slowly carry forward the process of integration: 1—The growing isolation of the five “hard core” states of Alabama, Georgia, Louisiana, Mississippi and South Carolina—where not one Negro child has been admitted to an all-white school—“will mean a weakening of (their) influence in the region, in the national political parties, and in Congress.” 2—The “profoundly impressive” emergence of a citizens’ protest movement aimed at the closing of public schools—even by persons who believe in segregation. Such southerners, principally in Arkansas and Virginia, “have scaled their values and found that they believe in public schools more than in racial separation.” 3—The growing emancipation from narrow regional attitudes has given rise to a new kind of discussion about the race issue. Essentially, it is a search for an answer to historic problems in more rational terms. Can violence be tolerated? Can the cost of private schools be paid for? “Can we risk our recent economic gains by policies that will close schools and invite public disorder?”

If these are the new terms of public discussion, the SRC finds the murmuring of debate being held against a background of modest progress. At the end of the 1958-1959 school year, there were only 206 Negro youths enrolled side by side with white pupils in the 11 states of the South with the exception of Texas. Of these, 45 were in the federally-owned public schools of Oak Ridge, Tenn. The chief weapons of segregationist leaders remained the same: pupil placement laws in seven states; school closing statutes in nine states; private school plans with tuition grants in five states; and harassment of the NAACP by all the southern states with the exception of North Carolina.

Again, Little Rock. The start of classes in Little Rock, Ark. in August, 1959 was in marked contrast to the mob riots that focused the national and world spotlight on Central High in September 1957. Following a school board election in which segregationist candidates backed by Governor Orval Faubus lost, three Negro girls were admitted to Central High without incident. Although a jeering mob appeared on the first day of classes and was held back with night sticks and water hoses, the scene was mild compared to 1957. The school had been closed since the end of the 1957-58 school term, but a federal court overturned the state law under which Governor Faubus acted. Meanwhile, three private, all-white high schools that had been opened to evade the court ruling were closed because of financial difficulties. Shortly after integrated classes got underway at Central High, however, dynamite-wielding terrorists, who were quickly apprehended, bombed
the offices of the school board and the mayor. In the courts a U.S. Court of Appeals overturned a lower federal court and ruled that the state's pupil placement law was constitutional in a suit involving the Dollarway School District in Pine Bluffs. The decisions will be appealed. Also due for a legal test is a state law permitting segregated classes within integrated schools.

**Virginia.** Prince Edward County, site of one of the U.S. Supreme Court's original test cases in the 1954 school desegregation decision, is still the scene of a legal challenge that could make or break Virginia's efforts to circumvent the high court ruling. Following the reversal by the U.S. Court of Appeals of a lower federal court verdict that gave the county until 1965 to begin desegregation, parents of hundreds of children organized a private foundation to operate all-white schools. The school opened to 1,500 pupils housed in churches and civic buildings. The NAACP has appealed further, however, to force Prince Edward County to keep its public schools open. They were shut down under a state law that gives local communities "freedom of choice" on whether to admit qualified Negroes to white schools or whether to transfer financial support from the public school system to private segregated schools jointly financed by the state and the locality. In other Virginia communities there was slow, token progress towards integration in the wake of Governor J. Lindsay Almond's warning that the state cannot "suffer the catastrophe of permitting the public school system to be destroyed."

**North Carolina, Florida.** Two integration firsts will be registered in both states, where local school boards voted to permit enrollment of Negro students. The Craven County, N.C. board decided to allow children of Negro military personnel at a nearby Marine base to enter the previously all-white school rather than transport them 20 miles to an all-Negro school. And in Miami, four Negroes attended the Orchard Villa neighborhood school although white families have been moving out of the area in droves in anticipation of the change. The school was built to accommodate 400, but only eight whites showed up on the opening day of classes.

**Alabama, Georgia, Louisiana.** Two Alabama schools, one urban and one rural, will be converted to private operation to demonstrate the feasibility of the system if a change on a large scale becomes necessary, *Southern School News* reported. Governor John Patterson said the people of the state would rather scrap their public school system "than submit to integration of the races." Atlanta public school officials have been ordered by a federal court to produce a desegregation plan by December 1, 1959. But the ruling, which said the plan could be submitted contingent on action by the Georgia legislature, left doubt
whether Atlanta schools would begin a gradual process of integration or be closed under state laws. A deadline was also ordered by a federal judge in New Orleans, which gave officials until March 1, 1960 to present a plan of desegregation. Judge J. Skelly Wright suggested a grade-a-year plan, such as the one now in operation in Nashville, Tenn. for the third year. Also in Tennessee, Memphis State University enrolled eight Negroes for the first time.

**Border Areas.** The grade-a-year plan was also ordered by a federal court to be instituted in Delaware public schools although the NAACP, here as in Nashville, urged complete integration. Neighboring Maryland reported that 5,000 additional Negroes will enter previously all-white schools in the fall of 1959, although much of the expansion of desegregation is the result of a high Negro population in formerly all-white neighborhoods. This is the same situation as reported by the Missouri Advisory Committee of the federal Commission on Civil Rights, which said that population shifts have resulted in a large percentage of Negro children attending what are, in effect, Negro schools. Integration rulings would remain a "mockery," the Committee said, unless bias in housing were abolished. In the Southwest, Alluwe County in Oklahoma will integrate its schools for the first time, joining a number of counties that have already done so. A federal judge in Texas refused to order Dallas to integrate its schools in the fall of 1959, but he warned that integration is simply a matter of "when." In Houston, where an NAACP suit has been filed pressing for desegregated schools, a Negro woman defeated two white candidates in an election for the city's school board. Mrs. Charles E. White campaigned on a platform calling for peaceful desegregation of the schools.

**Action in the North.** The New York Civil Liberties Union formed a special committee to study issues raised by two cases in which courts have been asked to determine whether segregation exists in the schools of the nation's largest city. Both are appeals from decisions handed down in Children's Court. In one case, several Negro parents were found guilty of neglect in refusing to send their children to schools they branded inferior. In the second verdict, Justice Justine Wise Polier ruled that parents of two other Negro students were innocent of neglect because the schools to which they were assigned did, in fact, offer "inferior educational opportunities . . . by reason of racial discrimination." Justice Polier found no evidence of gerrymandering of school districts to promote segregation, but she did hold the Board of Education responsible for a policy barring forced transfer of teachers that resulted in a less qualified staff and reduced services in schools attended almost exclusively by Negro and Puerto Rican children. Pending the outcome of the appeal, the affected students are attending
another school. The issue of teacher assignments and transfers also arose in a disagreement between the New York City Board of Education and the city’s Commission on Intergroup Relations. COIR charged that “little or no” progress had been made toward integration because many teachers object to assignments in difficult areas and because zoning of school districts has reflected segregated housing patterns. A Board spokesman challenged COIR, declaring that “very considerable progress” had been made in eliminating segregation in the schools.

2. Housing

The ACLU adopted a new policy statement in June, 1959 urging state and local governments to take legal action against discrimination in the sale or rental of private housing on grounds of race, creed, color, national origin or political affiliation. The Union statement came as four states adopted new laws barring discrimination in private housing. The policy statement recognized that a conflict of civil liberties principles occurs in the private housing field between reserved private rights such as freedom of association and non-association, and non-discrimination. In choosing “on balance” between the alternatives, the Union declared that “the degree of public interest at stake in removing . . . discrimination from private housing is now large enough to demand its legal prohibition. The right to equal protection of the laws,” added the ACLU, “. . . makes such prohibition . . . not only desirable but constitutionally necessary, by federal, state, or local action—legislative, executive or judicial.” Noting that various states and cities will deal differently with legislation covering private housing discrimination, the Union said that neither its national office nor any of its 27 state affiliates need oppose or refrain from supporting such legislation just because it contains exceptions to the general prohibition of discrimination. The ACLU statement said the Union will take action on specific proposals as they arise.

Legislation. The 1959 legislative session witnessed unprecedented gains in combatting bigotry in housing. Four states—Colorado, Massachusetts, Connecticut and Oregon—prohibited discrimination or segregation in private housing, although the coverage of the statutes varied from state to state. The laws, the first enacted on the state level, were patterned after pioneer legislation adopted in New York City in December 1957 and in Pittsburgh a year later. In addition, California barred discrimination in publicly-aided housing. The state and local boxscore now shows 14 states and 32 cities with laws restricting racial or religious bias in housing.

The first test of the Washington state law prohibiting discrimination in publicly-assisted housing is before the state Supreme Court.
and may be fought all the way to the U.S. Supreme Court. The State Board Against Discrimination is appealing a ruling by a lower court that it could not compel a white couple to sell an FHA-insured home to a Negro family which had offered to buy it. The Superior Court judge found that because the white buyer, Navy Commander John J. O'Meara, purchased his FHA-insured home two years before the state passed the anti-discrimination law in 1957 he is free from the act's limitations.

The Appellate Division of the New Jersey Superior Court, meanwhile, upheld the constitutionality of the state law banning bias in publicly-aided housing in ordering the state's anti-discrimination agency to proceed with a discrimination complaint against William J. Levitt & Sons. (See last year's Annual Report, p. 61.) The builder had argued that since the homes he erects are not insured by a federal agency and because the individual home buyer obtains the FHA or VA mortgage on his own, the builder is not subject to the state law. The court rejected this contention as "without merit." The case against New Jersey's Levittown was supported by the Greater Philadelphia Branch of the ACLU in cooperation with a newly formed state group to fight discrimination in housing. Although no Negroes live in the New Jersey development, Negro families have bought homes from whites in the firm's two other projects in Pennsylvania and Long Island.

State and Local Issues. The Detroit Commission on Community Relations charged that the city's Public Housing Commission has continued a de facto policy of segregation despite a 1954 federal court ruling that held the practice to be unconstitutional. The housing body immediately denied the accusation and said that families of any race preferred to be located in areas near their work, churches and friends. "Occupancy patterns are controlled by the desires of the applicants," said the housing commission. Two Negro families moved into a building on Chicago's West Side under heavy police protection after previous rioting resulted in the arrest of 14 persons. The first Negro family moved into a Philadelphia suburb despite threats and property damage. The Rhode Island Committee on Discrimination in Housing reported to the ACLU that since mid-1957 the number of non-white families in public housing in Providence has grown from 40 to 325.

Welcoming Committees. Newspaper advertisements carrying statements of welcome and "covenants of open occupancy" have been appearing in many cities. Frequently signed by hundreds of local citizens, the campaigns against housing discrimination have been featured in communities from coast to coast, including Palo Alto, Cal.; Des Moines, Iowa, where the Iowa Civil Liberties Union was a sponsor; Philadelphia; and Bloomfield, N.J.
3. Employment

Legislation. The industrial states of California and Ohio joined 14 other states, including Alaska, which have fair employment practices laws enforced by commission procedures. Although Missouri failed to pass an FEP law, it did approve a bill barring discrimination in state employment—the first such measure in a Southern or border state. The measure has no criminal sanctions, however. Missouri also gave permanent status to a commission on human rights that was formed in 1958 on a temporary basis. Additional progress was registered in Connecticut and New Mexico, which strengthened their existing FEP laws; and in Oregon and Connecticut, which joined Massachusetts, Pennsylvania and New York in prohibiting discrimination because of age. Unsuccessful campaigns to pass or strengthen laws against job bias were waged in Arizona, Illinois, Maine, Nebraska, Nevada, South Dakota, Washington and Wisconsin. The sixteen states that do have enforceable FEP laws cover a population of approximately 70 million persons.

President's Committee on Government Employment Policy. The NAACP returned to the attack against this committee and against its counterpart in private employment, the President's Committee on Government Contracts. (See last year's Annual Report, p. 64.) "Agencies of the federal government," asserted the NAACP statement, "have done little during the past year to eliminate racial discrimination and segregation in the field of employment. The evidence clearly indicates that by action and inaction, directly and indirectly, the Executive branch has violated its own proclaimed policies of non-discrimination in both federal employment and in the operation of private firms holding government contracts. . . . The employment practices of contractors receiving federal monies could have a decisive impact on the job patterns of Negroes throughout the United States. However, there is widespread and flagrant violation of the anti-discrimination clause in the government contracts held by major, multiplant, national corporations. NAACP experience indicates that the twin Presidential committees have failed to enforce the government's non-discriminatory employment policy, vigorously and consistently."

Data paralleling the NAACP charge was presented by William Peters in his book, The Southern Temper. Among the evidence he cited was: Greensboro, N.C., houses more than 20 federal agencies, but only two—the Post Office and the Postal Transportation Service—employ Negroes in other than menial jobs. The U.S. Naval Shipyard in Charleston, S.C. employs 7,000 people of which 40 per cent are Negroes. But only half a dozen are supervisors and some of these hold "ghost" titles with few if any subordinates. In Atlanta, where the city administration has taken a leading role in integrating public facilities, only five Negroes are perma-
nently employed above the janitorial level among the city's 30 federal agencies. Peters also reported that bias by private companies holding government contracts has been dealt with ineffectively by the President's Committee. This is both because of the "built-in weakness" of the Committee's purely advisory role and because of its "avoidance of recommending sanctions in stubborn cases" of discrimination. Firms cited by Peters in this category included Boeing Aircraft in Wichita, Kan. General Motors and the Ford Motor Co. in its southern plants and four major oil companies with facilities in the South. The President's Committee on Government Employment Policy, in its third report to the President, appears to have taken at least oblique notice of such accusations as those voiced by the NAACP and Peters. "Federal employment at the lowest levels appears to be available to all groups, but as the scale rises a disparity develops between the total number of minorities employed and the number of minority-group members in the higher positions. This does not prove discrimination, but it poses the question. . . . Federal employment, like private employment may reflect the pattern and climate of the local community. Nevertheless, the agencies have displayed genuine concern in the elimination of discrimination when it appears."

In a statement to the ACLU, the Committee defended itself against the public charges made against it. The statement declared: "The Committee believes its record during the past four years is one of progress, although not one of mission accomplished. It has seen progress not only in the many instances of successful fair employment operations which are reported to it, but more in what it believes to be a changing climate of opinion in government operations with respect to the non-discrimination policy—a climate reflected in agency activities which are strengthening the effectiveness of the policy." The Committee noted with pride that it had held field conferences with nearly 3,000 federal administrators in 27 cities to discuss methods to implement its program.

State and Local Actions. A New York state Supreme Court justice overruled a finding by the State Commission Against Discrimination and barred the Arabian-American Oil Company from asking job applicants their religion.

In other areas, the Michigan FEPC charged that many boards of education in the state discriminate in the hiring and placement of teachers; the FEPC of Minneapolis reported that job bias continued to be a "sizable problem" in the city; the Philadelphia Commission on Human Relations announced it had investigated 101 complaints in 1958 alleging bias in employment, but could establish positive discrimination in only 17 cases; and in Washington, D.C. the District of Columbia Bar Association made good on its seventh attempt in 10
years and mustered the two-third vote necessary to admit Negro lawyers to membership. The margin was comfortable—45 votes.

4. Public Accommodations

Legislation. Progress made against bias in housing and employment was paralleled in winning wider access to public accommodations regardless of race, religion, or nationality. Maine became the 24th state to pass such an enforceable statute, and California, Connecticut, Kansas and Wisconsin improved the effectiveness of their existing laws. Washington passed a law forbidding applicants for financial credit to be asked their race, religion or national origin.

Enforced transit segregation ended in January, 1959 in Atlanta, one of the last major Southern cities where separate seating of whites and Negroes was required until overturned by a federal court edict. Despite the fact that the official ban was over, many Negroes continued—out of habit preference—to sit in the rear of the buses and trolleys. In Birmingham, however, where a local segregation ordinance is still in effect, the ACLU strongly protested the arrest of three local clergymen who challenged the law. The Union condemned "shocking violations of due process of law" in police treatment of the clergymen, who were held incommunicado in jail and denied access to their counsel. Three clerics from Montgomery, Ala. who were visiting their Birmingham colleagues were arrested for vagrancy, but the charges were later withdrawn. A fourth Negro minister in Birmingham was arrested and convicted of violating the state boycott law by urging his congregation not to ride on the city's segregated buses.

Recreational Facilities. The U.S. Supreme Court reaffirmed its stand against discrimination in tax-supported public facilities such as golf courses, parks and playgrounds in rejecting an appeal by the New Orleans city park association. The city of Atlanta desegregated its public library system, averting the possibility of an ACLU-supported court test by local Negro citizens. No public change of policy was announced to avoid a "fanfare," and the new policy seems to have attracted no outcries by segregationists. Other cities where libraries are open to all regardless of race include Nashville, Chattanooga, Little Rock, New Orleans, Richmond, Louisville, Charlotte, Durham, Miami, and Tallahassee. Segregated library facilities persist in major Alabama and South Carolina cities.

Pressure from the Ku Klux Klan and the local White Citizens Council has forced the resignation of the director of the Hale Memorial Hospital for tubercular patients at Tuscaloosa, Ala. In addition, the segregationist groups tried to force the ouster of two other hospital
employes and made threats to five nurses. The pressure began after
the extremist organizations charged that white nurses were required
to perform certain unspecified duties for Negro patients. The U.S.
Supreme Court refused to review a claim by three Negro doctors that
their exclusion from the James Walker Memorial Hospital in Wil-
mington, N.C. on racial grounds was unconstitutional. The court’s refusal
was based on the fact that the hospital was a purely private institution
and that “purely private conduct, however discriminatory or wrongful,”
does not fall within equal protection clauses of the Fourteenth
Amendment.

**AMERICAN INDIANS**

In the field of American Indian affairs the ACLU has begun to play
a leading role again, after several years of relative inactivity. The
Union’s Indian Civil Rights Committee, formed originally almost
thirty years ago, acquired a new chairman last fall—Dr. Burt W.
Aginsky, Professor of Anthropology and Sociology at City College of
New York. Under his leadership, the Committee held a number of
meetings, ironing out policy questions in a number of areas and taking
action in several specific cases.

On the thorny question of termination of federal trusteeship, opposed
by most Indians even though its proponents in Congress have offered
it as “emancipation,” the Committee agreed “to oppose forced termina-
tion and equally to oppose forced continuation of Indian tribal life and
culture. We believe that this is for the Indians in each case to decide
for themselves. Like American citizens of other ancestral and cultural
backgrounds, Indians should be free to merge with the general popula-
tion, or to continue their traditional way of life.”

After long debate, the Committee decided to support the Seneca
Indians in their action before the U.S. Supreme Court challenging
Congress’ right to take their lands in western New York State for the
Kinzua flood-control dam reservoir without passing a special act
specifically referring to the Treaty of 1794—signed by President George
Washington—guaranteeing to the Seneca Nation its ancestral lands in
perpetuity. Congress had merely passed a General Appropriations Act
which authorized the building of the dam but made no mention of
the Senecas or their treaty. On-the-spot investigation by Dr. Aginsky
convinced the Committee that inundation of their lands could destroy
the Seneca’s existence as a tribe and would bring to an end the religious
and cultural customs which give meaning to the life of their people.
The key point, made by Committee member Professor Charles Black
of the Yale Law School, was that just as the ACLU demands clarity in
anti-subversive legislation, so its concern for due process requires the
Union to demand equal clarity in Indian legislation. The ACLU communicated its views to the House Appropriations Committee, which a few days later voted to halt further work on the Kinzua dam (still fundamentally in the drawing board stage) pending further study of an alternate plan proposed by Arthur Morgan, former head of the TVA. This provision, however, was eliminated from the bill passed in the Senate. In conference, the Senate version was approved, leaving the way clear for the construction of the dam after the President's second veto was overridden.

The ACLU's Indian Committee also takes part in the deliberations of the Council on Indian Affairs, made up of representatives from some fifteen Indian-interest organizations (half of them church groups). Through this coordinating agency, the ACLU has established cordial relations with Secretary of the Interior Fred A. Seaton and Assistant Secretary Roger Ernst, who have had much to do with recent improvements in the government's approach to Indian affairs.
III. DUE PROCESS UNDER LAW

FEDERAL EXECUTIVE DEPARTMENTS

1. Citizenship, Naturalization, Deportation

*Political Asylum.* The ACLU won two important victories underscoring the principle that persons seeking political asylum are entitled to full and fair hearings by U.S. authorities in an atmosphere free of intimidation. Both cases involved escapees from Communist Poland whom the Immigration and Naturalization Service had originally set out to deport.

Polish seaman Richard Eibel was arrested during the summer of 1958 for overstaying his shore leave when he jumped his ship in New York. His claim of political asylum was rejected and Eibel was put back aboard his vessel. Quick intervention by the ACLU resulted in an interview for Eibel when the ship docked in Mobile, Ala., but the Union protested the fact that it was conducted on the very vessel, owned by the very government, from which Eibel was attempting to flee. The pressures of intimidation in such a setting, said the ACLU, violated principles of fair treatment and due process. When the vessel docked a few days later in New Orleans, an ACLU attorney won a writ of *habeas corpus* in the Federal District Court. Hours later the Immigration Service granted the 24-year-old sailor a 29-day conditional landing permitting him to leave the U.S. in the ship of a non-Communist country and re-enter as a non-quota immigrant. The Justice Department's original claim in denying Eibel political asylum was based on the allegation that he was not a bona fide political refugee and that present Polish policy is to allow its citizens to emigrate freely to the U.S. This was the same grounds on which asylum status was at first refused to Mrs. Krystyna Jurkiewicz and her 13-year-old son, Krzysztof, though they claimed they would be physically persecuted if forced to return to Poland. The mother and son came to the U.S. on a visitor's visa in December, 1957, but were turned down when they sought to change their status to that of immigrants seeking political asylum. As Mrs. Jurkiewicz and her son were about to be deported, the Union, with the aid of the Polish-American Immigration and Relief Committee, obtained a federal court injunction charging that the couple had been denied a hearing on their refugee status. Subsequently, they won a rehearing on their case and an opportunity to apply for visas under the provisions of the 1958 refugee act.

A practice deplored by the ACLU (*See last year's Annual Report, p. 71*) was similarly condemned by the U.S. Court of Appeals in over-
ruling the government's contention that a refugee from the 1956 Hungarian revolution, Gyula Paktorovics, who had no visa, could be deported without a hearing and other due process rights. ACLU affiliates in Colorado and Northern California won the suspension of deportation proceedings in cases involving an application of the U.S. Supreme Court ruling in the case of Clinton Jencks. In that decision the high court said that defendants in government cases are entitled to see the pre-trial statements of prosecution witnesses. The Colorado Branch gained new hearings for three Mexicans who had been charged with membership in the Communist Party and the ACLU of Northern California won withdrawal of the government case against a husband and wife accused of sympathy towards communism on the basis of confidential information. The couple have resided here since 1937.

The U.S. Supreme Court agreed to review a 1956 law passed by Congress cutting off Social Security payments to persons who have been deported. The government is appealing a verdict by a lower court that Ephram Nestor, now in Bulgaria, had a vested or property right to continued payments of $55.60 and that Congress could not arbitrarily cut off the allotments. The case of William Heikkila, meanwhile, may be heading to the high court for a second time. The government lost an attempt in the U.S. Court of Appeals to oust the Finnish-born draftsman on the grounds he had not filed his appeal from a deportation order within a 60-day limit. *(See last year's Annual Report, p. 69.)*

The ACLU registered its objection to a "serious retrogression" in the law affecting deportations contained in a proposal considered by the Senate. The suggestion was to return to pre-1952 legislation under which the Attorney General required individual congressional authorization to suspend deportation proceedings. Since 1952, the law has been that if Congress does not specifically reject the Attorney General's finding, his suggestion is permitted to stand. The Union applauded other sections of the pending measure, including liberalization of "national origins" quotas to end racial and ethnic discrimination, parole for escapees from totalitarianism, review of denials of visas and imposition of a 10-year statute of limitations on inauguration of deportation proceedings. The ACLU also had qualified praise for a section of the proposed legislation requiring "probable cause" for believing a person to be an alien before an immigration agent may question him without a warrant. Though calling the new language "an improvement" over existing law, the Union statement questioned "both the wisdom and the constitutionality" of this entire provision.

**Illegal Searches.** The ACLU of Northern California is protesting to the Immigration and Naturalization Service in Washington, D.C. the "dragnet methods" used by its San Francisco agents in invading factories, business offices and retail stores demanding to see the identi-
The affiliate condemned the illegal search on the grounds that agents should have "probable" reason to suspect a person as an alien before questioning him. The Southern California affiliate is suing the U.S. Border Patrol in the federal courts over the right of the unit to erect roadblocks anywhere but at the border. In another case, however, a California federal judge refused to bar evidence seized at a more distant checkpoint by the Border Patrol, relying on a federal statute which gives immigration officers the right to search for aliens "within a reasonable distance of the border."

**Restoration of Citizenship.** The Justice Department restored citizenship to 4,978 Japanese Americans—the last of a group of 5,409 Nisei who had renounced their citizenship in 1945 after three years of confinement in government "relocation centers" during World War II. The final property claims against government confiscation of Nisei property were signed in 1958. There were 26,558 settlements totaling $36,874,240.

### 2. Confinement of Mentally Ill

**Criminally Insane.** Two legislative proposals will be made to the forthcoming session of the New York state legislature liberalizing the law governing criminal acts of insane persons. The recommendations for change are based on a study by the state Bar Association. Under the proposal, the century-old McNaghten Rule will be modified to permit a defendant to plead insanity if a mental disease or defect deprived him of "substantial capacity" to know right from wrong or to make his conduct "conform to the requirements . . . of law." Under present law, which goes back to the 1843 English decision, a criminal cannot be excused for insanity unless he did not "know the nature and quality of the act he was doing," or "know that the act was wrong." The changes had the support of mental health groups, but was opposed by New York City District Attorney Frank Hogan on the grounds it would result in many more insanity acquittals.

**Commitment Procedures.** The Cleveland Civil Liberties Union is preparing changes in court procedures which would make it more difficult for next of kin and others to obtain detention warrants and which would make it mandatory to inform an incoming patient of his rights to a hearing and other legal privileges. The affiliate's concern was aroused by a local case in which a sane man was committed on the authority of his wife's statement and confined 11 days before he won his freedom. During his confinement he was not allowed to contact a lawyer. The episode did not involve any technical violations of law, however. A major reform in this direction was accomplished by the Washington state legislature, which passed a measure providing for
testified before a Senate subcommittee that only full confrontation "can avoid grave injustice," and pointed to other defects in due process that exist in security procedures. These include vague and inadequate charges, the introduction of irrelevant material, and the inability of an employe intelligently to appeal a hearing board's decision because he is not informed "what the findings are."

**William Vitarelli Case.** A unanimous court also cited the lack of confrontation of non-professional undercover witnesses in reversing the dismissal of Vitarelli, an Interior Department employe who was a schoolteacher on a Pacific Island. Instead of giving him a "fair (and) . . . dignified hearing," said the court, the Department subjected him to "a wide-ranging inquisition into (his) educational, social and political beliefs. Vitarelli was originally fired on security grounds, but when the U.S. Supreme Court ruled in 1956 that the federal employe security program applied only to "sensitive" positions, the government expunged the security charges against him and simply fired him all over again—this time giving no reason for the ouster. Echoes of the 1956 court decision in *Cole v. Young* again were heard in Congress as an attempt was made to widen the federal security program to cover all government workers, whether or not in sensitive positions. The ACLU strongly opposed the proposal to extend the program in the belief that such loyalty tests should be confined to "narrow limits, to sensitive jobs that directly affect the national security. The testing of reliability," declared the Union, "... is most often a matter of testing political reliability, of possible disloyalty. Searching out such defects involves extensive probing of private beliefs, opinions and associations. The methods that have been used have been . . . repressive and sometimes arbitrary."

**Willard Uphaus Case.** A closely divided U.S. Supreme Court upheld the contempt conviction of Uphaus, director of an adult camp called World Fellowship Center, who had refused to give the New Hampshire attorney general membership and other information about the group in a state probe of subversion. Uphaus claimed that the high court's ruling in the 1956 Nelson case had left the states powerless to investigate subversive activities because Congress had so completely preempted the field. But in an apparent clarification of the Nelson case verdict, the Uphaus majority said that what was intended previously was to head-off "a race between federal and state prosecutors to the courthouse door. . . . The opinion (in the Nelson case) made clear that a state could proceed with prosecution for sedition against the state itself. . . ." Since New Hampshire was investigating Uphaus in the interests of self-preservation, said the opinion, "this interest outweighs individual rights." The dissenting justices took the opposite view, adding that the state probe was one of "impermissible exposure for ex-
immediate examination of persons detained because of an alleged mental condition and for immediate notification of next of kin.

3. Loyalty and Security

Three important decisions by the U.S. Supreme Court promised to have far-reaching effects on loyalty-security investigations by the federal government and the states. One opinion (William L. Greene case) ruled that Congress and the President had not authorized hearing procedures without confrontation and cross-examination in the Industrial Security Program. A second opinion (William Vitarelli case) cited the lack of confrontation and cross-examination in reversing a dismissal under the government employee security regulations. The third verdict was in sharp contrast to the court’s previous rulings limiting the states’ power to investigate subversion: the high court upheld the power of New Hampshire to combat subversion in which the state itself was the target.

William L. Greene Case. The Supreme Court held that neither Congress nor the President had authorized an industrial security program in which defendants are not permitted to face their accusers. The opinion, which struck down a long protested procedure under the security system affecting 3,000,000 defense plant workers, was praised by the ACLU, which had filed a brief in the case, as “a long step . . . toward re-establishing the protection of due process for persons charged with being security risks.” Although the court explicitly declined to make its ruling on constitutional grounds, five of the justices agreed on language strongly suggesting that constitutional issues were involved. Three other justices wrote a separate concurrence on narrower grounds. The majority opinion stated, however, that “. . . where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government’s case must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . We have formalized these protections in the requirements of confrontation and cross-examination.” The brief filed by the Union emphasized the ACLU’s position favoring full confrontation and cross-examination in security proceedings. It noted that in the circumstances of the Greene case the government should be required to disclose these “neighbors, maiden aunts and casual busybodies” who testified against Greene or supplied derogatory information. Greene, an executive of a firm with which the Navy did considerable business, was suspended in 1953 after charges that he had associated with Communists, many of them former friends of an ex-wife. (See last year’s Annual Report, pp. 76-77.)

Three days after the court’s verdict in the Greene case, the ACLU
posure’s sake” which violated rights of free speech, assembly, and privacy.

**Government Agencies and Departments.** Responding to complaints by the ACLU of Northern California, the Atomic Energy Commission has reformed its practices on two counts: henceforth the AEC will inform individuals personally and privately that they are wanted for interrogation by security officers, rather than relying on transmission of such messages by third parties; and the agency reminded its field offices that there was no objection to the presence of counsel at informal interviews held prior to a security hearing. The latter change was made after the affiliate and the national ACLU protested a field office’s denial of such a request, followed by reluctant permission to allow counsel to be present. The Federal Communications Commission is also involved in action by the ACLU of Northern California, which is appealing an initial FCC decision upholding a loyalty oath requirement by some persons seeking to renew their radio licenses. The affiliate contended that the oath requirement violated due process and that Congress made no mention of political standards when it created the FCC in 1934. The U.S. Court of Appeals, acting in accordance with the Greene decision, ordered reinstatement by the Sperry Gyroscope Co. of an employee who had been dismissed for past membership in the Socialist Workers Party. The case was supported by the ACLU.

**SACB Listings.** The U.S. Court of Appeals ruled for the second time that the Communist Party is a subversive organization dominated by the Soviet Union and must file its income, expenditures and membership with the Department of Justice. The ruling upheld a finding by the Subversive Activities Control Board, which first ordered the Party to register in 1953. That conclusion was reaffirmed without new hearings after the U.S. Supreme Court ordered reconsideration because the testimony of three government witnesses had allegedly been perjured. The case is expected to go back to the high court again. The Washington Pension Union was finally ordered to register after two years of consideration by the SACB. The long-delayed decision came as the organization was virtually defunct, so that a court appeal urged by the ACLU affiliate is uncertain.

**State Loyalty Oaths.** Four years of legal action has resulted in a split decision for two University of Washington Professors, Howard L. Nostrand and Max Savelle. (See last year’s Annual Report, p. 77.) The pair, with the help of the ACLU of Washington, had sought to obtain a state-wide ban on a loyalty oath for public employees. The suit also sought to test the U.S. Attorney General’s list of subversive organi-
zations as the basis for determining loyalty. The state Supreme Court upheld the right of the state to require public employees to sign loyalty oaths before they are hired, but it threw out a provision of the law in which the Attorney General's list was used as the yardstick of subversive activity. The Oregon legislature repealed a loyalty oath for civil servants. The Greater Philadelphia Branch of the ACLU won revision of the state employment form to eliminate questions about the applicant's political beliefs. The National Municipal League upon the urging of the ACLU eliminated references to matters of loyalty from a model state civil service law the group has sponsored since 1953. Similar action has been urged on the National Civil Service League.

**Unemployment Insurance.** A New York state appellate court ruled that the state must pay unemployment insurance to William Albertson, who had worked for the Communist Party for seven weeks in 1956. As long as the Party is permitted to exist and employ personnel, and as long as the state accepts payments from the Party into its unemployment insurance fund, there is no ground on which to deny a former employee the benefits he claims, the court held. The case, supported by the New York Civil Liberties Union, is one of several in which ACLU affiliates have intervened. In Pennsylvania, the Pittsburgh chapter has filed a friend-of-the-court brief before the state Supreme Court on behalf of Evelyn Darin, who was denied unemployment compensation when she lost her job after pleading the Fifth Amendment before a congressional committee. The brief asserted that the denial violates due process guarantees of the Fourteenth Amendment and free association guarantees of the First Amendment. Two other Pittsburgh cases are pending, awaiting the outcome of the Darin case. In a similar Maryland case supported by the ACLU the state Court of Appeals decided that a person was entitled to benefits if he was fired for refusing to cooperate with an investigating committee, but was not entitled to benefits if he refused to tell his employer whether or not he was a member of the Communist Party during a grievance committee meeting arising out of his job suspension because of his Fifth Amendment plea before the outside investigators. The ACLU of Northern California entered a brief on behalf of Marion Syrek, who won his claim for unemployment benefits after being dismissed for refusing to sign a private employer's loyalty oath. A second decision by the same judge has been appealed to the state District Court of Appeals. In this case Syrek was refused benefits after he refused to apply for a state job because of the state's loyalty oath for public employees.

**Other State Actions.** Despite the strong protests of the Civil Liberties Union of Massachusetts and many other public and civic
groups, the state legislature passed a bill reviving a state Commission to Investigate and Study Communism. The California Senate was of a different mind. That body granted no appropriation to a committee that has investigated communism for many years.

4. Military Justice

Right of Political Association. Although the U.S. Supreme Court ruled in the Harmon case (See last year's Annual Report, pp. 79-80) that the Army could not issue less-than-honorable discharges on the basis of pre-induction political activity, the Army has continued to employ political considerations in its policy towards reservists and prospective draftees.

The Army's right to issue an undesirable discharge to a reservist accused of membership in two Communist-front organizations was upheld by a Washington, D.C. Federal District Court. The test case was brought by Monte M. Olenick of New York City, who contended that he was improperly given the undesirable discharge. The ACLU and the Workers Defense League, in a joint letter to Army Secretary Wilber M. Brucker, charged that the Army was still investigating former members of the Independent Socialist League and the Socialist Youth League although both organizations were removed from the Attorney General's list of subversive organizations in 1958. They are now defunct. The letter also expressed continued concern, however, "with the problem of the Army's stigmatizing for life by either refusing to accept for induction or discharging from the reserves on security grounds those who have elected to perform their duties under the various draft laws." The Army replied that while former ISL or SYL membership was not the basis for initiating an investigation, if an inquiry was begun because of other activities all aspects of a person's political life would be checked.

The ACLU and its affiliates, particularly in Northern California, have been active in opposing the Army security program aimed at inductees and reservists. The ACLU of Northern California has fought successfully seven cases involving membership in the Chinese-American Youth Club, an organization never cited as subversive by the Attorney General but one which has aroused the suspicion of Army authorities. In one case, however, the ACLU appeared after a draftee had been given an undesirable discharge. The affiliate was instrumental in eventually winning an honorable discharge but the veteran was not kept in the reserves.

The ACLU requested the Army to permit alleged parole violators to have legal counsel at proceedings to determine whether the parole privilege should be suspended. The Union contention is that parole
suspension is "akin to the commission of a fresh crime," from the prisoner's viewpoint, and that presence of counsel can avoid "serious prejudice both to the prisoner and to society."

**WIRETAPPING**

**Action in the States.** The Maryland Branch, ACLU joined with the Baltimore Evening Sun to defeat the unrestricted use of an advanced "wireless tap" that can record conversations from a distance of several hundred feet. Following an editorial in the Sun and a supporting letter from the ACLU affiliate, the Baltimore County Council approved a measure requiring a court order for electronic eavesdropping on conversations where no instrument is used. The Connecticut Civil Liberties Union opposed two wiretap bills that were defeated in the legislature. One proposal would have granted a court order for a tap when "there is reasonable ground to believe that evidence of a crime may thus be obtained." The other recommendation would have permitted wire tapping with the consent of a home owner to investigate obscene calls.

**U.S. Supreme Court.** The high court refused to review an old ruling that evidence obtained by government agents wearing hidden microphones as they pretended to collaborate with criminals was constitutionally admissible. The high court also declined to review a case in which the district attorney of Lancaster County, Pa. had been sued for an injunction to prevent him from using evidence in a state court said to have been obtained in violation of federal wiretap laws. The Greater Philadelphia Branch filed a friend-of-the-court brief.

**ILLEGAL POLICE PRACTICES**

**Illegal Detentions.** A 47-page study by the Illinois Division of the ACLU revealing more than 20,000 illegal detentions by Chicago police has received widespread acclaim from legal figures, politicians, journalists and other public officials. Only Chicago police appeared irked by the report. The Detective Bureau returned its copy unopened. The survey, conducted in nine of the city's 16 Municipal Court branches, was based on a projection of a large sampling of 1956 criminal cases. It indicated that 20,000 defendants were held for at least 17 hours before they were booked; 2,000 were illegally detained two days or longer; and 350 held three days or more without charge, without bail, and without due process of law. "The practice of secretly holding arrested persons for the purpose of questioning them in a police station is not only a violation of personal liberty," commented the report; "it
is also a poor substitute for effective police work." Among the recommendations for reform urged by the Illinois Division were: notification by police of an arrested person's constitutional rights, permission by Municipal Court judges to cite police officers for contempt if they are found guilty of illegally holding prisoners; a daily public accounting of the number of prisoners held by police and other pertinent information on their detention; creation of an independent municipal bureau to investigate impartially citizens' complaints against police.

In other actions by mid-west ACLU affiliates, the Cleveland Civil Liberties Union obtained the release of two men held incommunicado by police for two days and the Detroit affiliate urged the creation of a night court to facilitate immediate hearings for arrested persons. The Rhode Island state chairman of the ACLU, a committee of the state Bar Association and the NAACP finally won the release of two migrant workers held as material witnesses in a murder trial from October, 1958 until June, 1959. Because of a failure by police to forward the men's mail, they did not even get a lawyer until February. The state Supreme Court ruled that since the pair were not given a sufficient hearing their due process rights under the Constitution had been violated.

A suit for false arrest by an Indianapolis couple is being supported by the Indiana CLU against two policemen who barged into the couple's apartment without a warrant and used their official positions to demand payment for a bill from a gas station. In two episodes of false arrest against nudists, the Michigan Supreme Court attacked the invasion of due process rights by police who descended on their camp fully clothed but missing a warrant; and in Arkansas the proprietor of a nudist camp pleaded guilty for purposes of appeal to charges of possessing "obscene" literature, but obtained withdrawal of charges of indecent exposure. In Arkansas it is now a crime even to advocate nudism, but the civil liberties restriction on this right of untrammeled association has yet to be tested.

**Brutality.** The city of Chicago and 16 policemen have been sued for $3,000,000 by 13 Puerto Ricans on charges of false arrest and brutality. The suit was filed in the Federal District Court, which ruled that the city was immune from suit but that the policemen, as individuals, were not. The national ACLU has asked the Justice Department to investigate the episode. The suit charged that police rounded up the 13 in a dragnet, beat them, and held them more than 24 hours without granting permission to contact lawyers or post bail. The roundup was reported to be sparked by some tension between Italians and Puerto Ricans on Chicago's west side. The Illinois affiliate is appealing a refusal for a writ of habeas corpus on behalf of Emil Reck, convicted of murder in 1936 after 70 hours' detention during which he was
allegedly beaten, then confessed. Reck was sentenced and is serving a 199-year prison term. The Northern California ACLU, meanwhile, successfully defended a Negro who was brutally beaten by Oakland police, then arrested on a phony charge of drunkenness. A similarly unprovoked assault was the basis of a complaint by the Niagara Frontier (Buffalo) Branch to local police who were charged with beating a man awaiting a booking for carrying a loaded firearm without a license. A number of states and communities have passed "posting" laws designed to protect the rights of prisoners and reduce the number of illegal detentions and other violations of due process by informing the accused of their protections under the law. Such information is usually posted in police stations and courts. Illinois, where the ACLU affiliate supported such legislation, is the latest state to approve a "posting" law.

**Illegal Search and Seizure.** The U.S. Supreme Court, by a bare majority, upheld the right of a Baltimore public health inspector to enter a private home without a warrant to search for unsanitary conditions. The majority opinion said that the Fourth Amendment's bar against illegal search and seizure was meant to apply to a search for criminal evidence, not to a community's efforts to maintain sanitary health standards. The dissenting view feared the decision would open the door to Fourth Amendment violations. Standing alone, said the minority, the ruling "greatly dilutes the right of privacy which every homeowner had a right to believe was part of our American heritage." An Ohio case before the court, supported by the ACLU, raised the same constitutional issue. The ACLU and its affiliates were active in many cities in opposing illegal search and seizure. A five-page protest by the Indiana Civil Liberties Union similarly took strong exception to three examples of illegal search and seizure, as well as three other episodes in which police shot and killed fleeing suspects. The illegal searches, which all took place in private homes or apartments between the hours of midnight and 5 a.m., involved a hunt for four grocery store robbers; questioning of parents about their son, who was not charged with a crime; and the arrest of a man who had not paid 24 traffic tickets. A San Francisco high school teacher who defended her son against illegal arrest by a policeman who had no warrant to enter her home is being defended by the ACLU of Northern California. The St. Louis Civil Liberties Committee opposed a legislative proposal seeking to arm police with authority to arrest and search merely on the suspicion that a crime was about to be committed.

**Registration Ordinances.** A protest by the American Civil Liberties Union to the Mountainside, N.J. Borough Council outlined the Union's basic objections to local ordinances requiring persons with criminal records to register and submit to fingerprinting by police. The
Union said such laws infringe on two constitutionally protected rights—privacy and freedom of movement—in adding to a punishment for which the former prisoner has already served his time. "For those who feel that an ex-convict must always carry a criminal brand," said the ACLU, "we submit this only hinders his reform." The ACLU of Southern California is waging a three-front war against registration ordinances in Los Angeles, Long Beach and Beverly Hills. The Los Angeles law, challenged on the basis of due process and equal protection guarantees, was punctured in a 1957 U.S. Supreme Court decision (See last year's Annual Report, p. 88) but in 1958 the court reversed itself in declaring that ignorance of the registration law was no excuse. Cleveland and Cincinnati ACLU affiliates have protested police actions in which ex-convicts who live or pass through the Cleveland suburb of Shaker Heights must register with authorities under a local ordinance; and whereby Cincinnati citizens have been stopped on the streets by police who demand their identity, their business, and information on past criminal records.

**Vagrancy and Disorderly Conduct.** The U.S. Supreme Court has agreed to review a unique case involving convictions for vagrancy, loitering and disorderly conduct against Sam Thompson of Louisville, who charges he was a victim of police harassment because he retained counsel to fight his first loitering and vagrancy arrest. The charge on this arrest was "filed away" under state law, permitting no further action. (See last year's Annual Report, p. 91.) In his third arrest, occurring within the space of approximately a week, Thompson was fined $10 on each of two charges. This conviction is under appeal to the high court, for under Kentucky law, no conviction in Police Court may be reviewed in any state court if the fine is less than $20. The petition filed with the U.S. Supreme Court declared that although Thompson was the victim of police "reprisal,"... the denial of due process... is aggravated by Kentucky's failure to provide corrective judicial process...."

The California affiliates strongly supported a bill repealing that state's antiquated vagrancy law. The bill was vetoed by the Governor, however. As the North Beach section of San Francisco has spawned its "beats," so it has spawned a rash of vagrancy cases brought by the police. The Northern California affiliate has defended a number of such prosecutions, including a barefoot girl, a youth who stood on a street corner talking to friends, a registered nurse being driven home from a late date, and an artist who was told he would be arrested every week until he got a haircut, a shave, a suit and a tie.

ACLU affiliates were active in a wide variety of cases in which due process was violated through a denial of counsel. The Cleveland Civil
Liberties Union has been advised to file an appeal in the case of a young woman convicted on vice charges solely on strength of her own admissions and without an attorney at her trial. A California court freed a defendant of petty theft, ruling that any person charged with a crime has a right to counsel whether he can pay for legal advice or not. The ACLU of Oregon filed a friend-of-the-court brief defending the rights of prisoners in the state penitentiary who charged that prison authorities were obstructing their rights to file court petitions by confiscating their legal papers, demanding censorship powers, and refusing access to research facilities. The ACLU supported a Texas man who claimed the right to act as his own counsel in a stolen property case, now before the U.S. Court of Appeals.

Reform. Two policy changes long championed by the Greater Philadelphia Branch of the Union finally were adopted when a directive was issued requiring police to notify the next of kin of the arrest of a prisoner and when a citizens' Police Review Board was created to hear complaints against members of the police force. The Board made its first recommendation for disciplinary action against an officer, which was accepted by the Police Commissioner, who still has review power. A number of ACLU complaints are still before the panel, which beset by a lack of funds, needs to hire a professional investigator and staff. Volunteer personnel is currently used. Persons arrested in Massachusetts for alleged misdemeanors and felonies are being informed of their rights in a new pamphlet prepared with the help of the CLUM, police, lawyers and state officials. And in the capital of the Bay State, newspapermen are now permitted by the police department to attend hearings on citizens' complaints against members of the force. "Evidence of progress" was also noted by the Ohio Civil Liberties Union, which praised a series of reforms in the processing of civilian complaints of police brutality in Columbus, Ohio. The new system insures privacy, right of counsel, and the availability of trial transcripts at their own expense to persons not directly involved.

Shoplifting. The ACLU made clear its objections to an anti-shoplifting law considered by the District of Columbia which grants store owners immunity in connection with the arrest of suspects. The Union said the proposal runs contrary to protections in the Fourth Amendment guaranteeing personal security by granting shopkeepers the power to arrest merely on the suspicion of a crime. In addition, the exemption from liability for assault and battery of the arrested person leaves a "gaping loophole" which merchants may use to inflict beatings, the Union warned. In other legislation, Oregon passed a law permitting arrest of shoplifters by policemen without a warrant, the governor of Indiana vetoed a bill which would have granted a merchant immunity
from libel in accusing an alleged shoplifter; and the Illinois Division of the ACLU is testing a new state law allowing merchants to detain persons on a "probable" suspicion of theft.

Other Cases. A California judge has ruled that police roadblocks are illegal because use of the public highways cannot be interrupted unless there is reasonable grounds to believe that the driver has committed a crime. The case involved a truck driver arrested for driving with a suspended license. The Pennsylvania Department of Revenue, answering the ACLU affiliate protest on roadblocks, replied that they "probably will not be repeated" as a way of catching up with license evaders. The New York Civil Liberties Union is testing police regulations requiring cabaret performers to be fingerprinted and licensed. Governor Caleb Boggs of Delaware heeded protests by the ACLU and other organizations and vetoed a bill which would have made whipping the mandatory punishment for convicted robbers. Existing state law grants judges authority to order 40 lashes (in addition to fine and imprisonment), but no judge has done so since 1952.

COURT PROCEEDINGS

U.S. Supreme Court Decisions. Among the several verdicts handed down by the court affecting criminal procedure, the one that evoked the most public comment was the opinion holding that the double jeopardy safeguard of the Fifth Amendment does not apply to a state prosecution for the same offense that had been tried in a federal court or vice versa. In one of two cases on which the issue was decided, the defendant, Alphonse Bartkus, was acquitted in a Federal District Court of bank robbery. Subsequently he was indicted by the state of Illinois and convicted on the same charge. In the second case, Louis Abbate and Michael Falcone were convicted in an Illinois court of conspiring to dynamite the property of another state (Mississippi) and then found guilty in a federal prosecution of conspiring to destroy parts of a federally operated and controlled communications system (telephone facilities). Facts used in both trials were identical. The basis of the majority opinion was the belief that in a country with both federal and state sovereignties, prosecution by one could not prevent a similar prosecution by the other. The dissenters in the Bartkus case warned that "the power to try a second time will be used, as have all similar procedures, to make scapegoats of helpless, political, religious, or racial minorities and those who differ, who do not conform and who resist tyranny."

Shortly after the high court decisions, Attorney General William P. Rogers urged federal law enforcement officials to act with self-restraint in keeping second prosecutions for the same crime down to a minimum.
Rogers said that government and state officials should cooperate on deciding the proper jurisdiction for prosecution that will best serve the public interest. His warning was praised by ACLU as a sign that the government would not seize on the ruling to seek multiple prosecutions "and thus increase hardships on the defendants."

In another decision followed closely by the ACLU, the Supreme Court ruled that federal narcotics authorities had "probable cause" when they arrested James Draper without a warrant on information provided by an informant. ACLU attorneys had argued that Draper's rights under the Fourth Amendment had been abridged because "reasonable grounds" had not existed to make the arrest without a warrant. Federal agents did not act after the commission of a crime, but before, said the brief, and "arrest on suspicion alone . . . cannot be sustained." But the majority opinion held that since the government's information came from a previously reliable source, arresting officers met the test of "probable cause" required by the Fourth Amendment before a warrant for arrest can be issued.

The so-called Jencks Act, passed by Congress in 1957 to restrict the application of the court's ruling in the case of Clinton E. Jencks (See last year's Annual Report, p. 90 and 1956-57 Annual Report, p. 9), was broadly upheld by a closely divided tribunal. The ACLU had expressed several reservations regarding the legislation. The court said that Congress had authorized the making of statements in possession of the government available to the defense only under the condition that they are written statements made by a government witness to a government agent and signed or approved by him, or stenographically or authorized recorded statements which are a "substantially verbatim recital" recorded at the same time the statement was given to a federal agent. Since such statements are only permissible for the purpose of impeaching the witness, they must be produced only if they relate to the subject matter of the witness' testimony. When it is doubtful that the statements must be made available under the statute, the court advised an in camera determination by the trial judge.

Fair Trial. The ACLU asked the U.S. Supreme Court to rule that under the Fourteenth Amendment one of the attributes of a fair trial is that the defendant be convicted on the same statute that he was originally charged with violating. The unusual case involved an Ohio couple whose 11-year-old daughter was a ward of the Juvenile Court because of an earlier charge of neglect. When the couple falsified her age to make possible her marriage in another state the parents were convicted of tending to cause the delinquency of their daughter. On appeal, however, the Ohio Supreme Court said the parents could not be convicted on the statute used as the basis for trial in the lower court. Instead, the state Supreme Court upheld the conviction on other
grounds: that the child's marriage probably would either make her a habitual truant from school or else cause her to impair the morals of her classmates if she did attend school. The Supreme Court refused to review the case.

The ACLU has intervened in two convictions for murder marred by due process violations. In Maine, the state Supreme Court will consider an appeal from a refusal by a lower court to grant a new trial to Paul Dwyer, who has just been released on parole after 22 years in prison on a charge for which the local deputy sheriff was himself convicted a year later. The police official was released on habeas corpus after serving 12 years. Dwyer contends that his plea of guilty was made under a threat by the deputy sheriff that he would kill Dwyer's mother. He also charges that his rights to a fair trial were denied because his court-appointed defense counsel knew of the coercion and yet did not disclose them to the court after Dwyer suddenly reversed his plea of innocence. Dwyer further claimed that his rights were violated when he was held incommunicado. The Union also asked the U.S. Supreme Court to review the murder conviction of James Morris Fletcher on the grounds that the due process clause of the Fourteenth Amendment guarantees defendants in state courts the right to fair, impartial juries. Union-supported counsel for Fletcher contends that he was not given a fair trial because the trial judge refused the defense permission to challenge two jurors: one was the son-in-law of the chief of county detectives who was a key witness in the case; the other was related to the slain person. The Fletcher case goes to the high court from the Pennsylvania Supreme Court, which had denied a writ of habeas corpus sought by the ACLU. The U.S. Court of Appeals in Washington, D.C., meanwhile, extended the restrictions against illegally obtained evidence in federal trials by barring such evidence when obtained by state law enforcement officers. This prohibition had formerly applied only to federal agents.

The alleged exclusion of minority groups from juries figured in an order for a new trial ordered by a U.S. Court of Appeals in the case of a Mississippi Negro sentenced to death and also in Chicago, where court officials denied a charge by an ACLU attorney that prejudice was apparently at work in keeping Puerto Ricans off juries. In two actions by ACLU affiliates, the Connecticut CLU hailed the elimination of a law requiring a five-year sentence for users of narcotics and the ACLU of Southern California, in a major policy statement, branded the death penalty as cruel and unusual punishment contrary to protections of the Eighth Amendment. The national ACLU Board considered the issue of capital punishment and concluded that though at this time it was not a civil liberties issue, "in particular cases the character of the punishment combined with the surrounding circumstances of the case, might raise a civil liberties issue." The discriminatory manner in which capital
punishment is meted out, as against Negroes in the South, is of civil liberties concern.

Right to Counsel. The ACLU endorsed, with two reservations, a "public defender" bill giving legal representation to indigent clients facing criminal prosecution in federal courts. The bill passed the Senate but died in the House Judiciary Committee. The reservations expressed by the Union concerned the inadequacy of payment for the court-appointed lawyer and the problem of preserving the necessary independence of the public defender from the prosecuting agency and the judiciary.

The lack of effective legal advice was cited by a Federal District Court in Nebraska in granting a writ of habeas corpus to a young part Sioux Indian convicted of murder. The case was actively pursued by a volunteer committee of lawyers and laymen who finally won their case when Loyd Grandsinger was three weeks away from the electric chair. The federal court granted the writ on the grounds of ineffective assistance of defense counsel at Grandsinger's murder trial, and the admission by the attorney that he had tampered with a key piece of evidence. This "perverted (the trial) into a virtual legal lynching," said the court.

In another dramatic case, Lino Urrutia, who learned to read and write in prison schools, won reversal of a 1934 conviction for passing counterfeit money on the grounds that he was not informed of his right to a court-appointed attorney.

Rights of Juveniles. The ACLU of Pennsylvania proposed several major changes in the state's Juvenile Court Act, but thus far the chief success of the proposals has been scored on the local court level in Philadelphia, where most of the suggested reforms have been accepted in principle. The major recommendation of the affiliate provides that each juvenile who denies the accusations against him has the right to full disclosure of evidence, confrontation and cross-examination of witnesses and application of the rules of evidence prevailing in other Pennsylvania courts. At the basis of the denial of due process for juveniles, said the affiliate, is the practice whereby neither a child nor his lawyer are permitted to see a probation officer's report which may recommend disposition of a case to a judge on the basis of hearsay evidence and simple gossip. The ACLU of Pennsylvania, as well as the ACLU of Southern California, have been following closely the enforcement of local curfew ordinances. The former reported a marked improvement in the fairness of procedures following conferences with court officials, but the Southern California affiliate is supporting an appeal to the U.S. Supreme Court of the Los Angeles curfew law on the grounds that it is an unreasonable restriction on children and parents and is arbitrarily enforced "only against members of minority races."

Practices similar to those protested by the ACLU of Pennsylvania
have been criticized by the Kentucky Civil Liberties Union in a friend-
of-the-court brief filed on behalf of 16-year-old Richard Goben, convicted
in a robbery case. The Kentucky affiliate said he has been deprived of
at least four constitutional rights under laws governing juveniles: denial
of the right to confront witnesses, to a public trial, to bail, and the
privilege against self-incrimination. The brief also challenged the right
of the state’s Welfare Department to transfer Goben for trial because
the Department lacked "appropriate facilities." The transfer was made
despite a court order remandng Goben to the Department for custody.

Pre-Trial Publicity. Federal District Court Judge Louis E. Good-
man sparked a debate over the rights and responsibilities of a free
press when he declared a mistrial in San Francisco solely on the basis
of what newspapers had printed. The mistrial was declared in the case
of John and Sylvia Powell and Julian Schuman, who were charged with
sedition in connection with the publication of the China Monthly
Review, a Shanghai magazine which had published an article charging
that the U.S. had used germ warfare in the Korean War. (See also p. 49.)
Judge Goodman’s action followed publication by newspapers of testi-
mony that had been given in the absence of the jury to enable the court
to decide its admissibility. In ruling that it was not admissible, Judge
Goodman commented that such evidence was barred from the sedition
trial but would be permitted in a treason trial because of broader rules
of evidence. San Francisco papers took up the judge’s statement that the
testimony in question was prima facie evidence of treason under such
headlines as “Guilty of Treason,” and “Judge Flays Defendants.” News-
papers defended themselves against the court’s accusations by saying
they had printed only what the judge had said. They rejected his sug-
gestion that the press be barred from court arguments where the jury
is excused. But Judge Goodman charged that the newspaper stories
had made a fair trial impossible. “Freedom of the press,” he wrote, “is
not for the benefit of the press but for the benefit of the people.”

Reporter’s Privilege. After 15 months of study, the ACLU
adopted a policy statement opposing all attempts at legislating a com-
promise between conflicting civil liberties principles involved in freedom
of the press and an individual’s right to know his accuser. The debate
surrounding attempts in Congress and various state legislatures to grant
reporters complete or limited immunity from disclosing sources of
information was prompted by the contempt conviction of New York
Herald Tribune columnist Marie Torre. Miss Torre was ordered to reveal
the name of a CBS television executive to whom she attributed derogatory
remarks about singer Judy Garland. Miss Garland said she needed to
know the identity of Miss Torre’s informant in connection with her
civil libel suit against the network. Miss Torre refused, claiming the free-
press protection of the reporter’s privilege not to disclose sources of
information, and served 10 days in jail on a contempt conviction upheld by the U.S. Court of Appeals. The unanimous opinion, written by Judge Potter Stewart before he was named to the U.S. Supreme Court, declared: "The concept that it is the duty of a witness to testify in a court of law has roots fully as deep in our history as does the guarantee of a free press. . . . We do not hesitate to conclude that (the freedom of the press) must give place under the Constitution to a paramount public interest in the fair administration of justice."

The ACLU summed up the civil liberties dilemma this way: "On one hand there is the vital public right, implied by the First Amendment, to the freest and fullest flow of public information. . . . On the other hand, there is the vital public and private right to the unhampered administration of justice, including . . . the right of a litigant or defendant to compel the production of relevant testimony. . . . (The Union) believes, in short, in the value of both principles, but it does not believe it is possible to combine them into a common formula by legislative action." A second basis on which the ACLU opposed legislation on the subject was the problem of accurate definitions, who or what constituted a "source," a "reporter," or "national security."

**TV, Photography in Courtrooms.** Representatives of the American Bar Association, newspapers and television stations are studying the feasibility of a scientific study to determine whether the presence of radio and photographic equipment affects the fairness of a trial. At present, the ABA opposes photography and broadcasting of trials on the grounds that resulting visual and psychological distractions would obstruct the judicial process. The Oklahoma Court of Criminal Appeals, however, took a firm opposing estimate of the impact of electronics in a courtroom in upholding the conviction of a man whose trial for burglary had been televised. The state's highest criminal court held that TV was an adjunct of the press, and that both are constitutionally entitled to report courtroom proceedings. In addition, the court said that opposition to TV was "a baseless boogey constructed out of pure speculation." The opinion said also that the defendant's right to privacy had not been invaded as a result of the televised trial since the defendant had already "emerged from seclusion" with his apprehension for the crime. A further gain for radio and TV reporters was registered in Los Angeles where a Municipal Court judge permitted televising of a pre-trial hearing of a widely-publicized murder charge under carefully restricted ground rules. The judge said he would not permit TV coverage of the trial itself. The Florida Supreme Court upheld a lower court conviction for contempt against two TV photographers who took pictures of an accused man against his wishes and in defiance of the judge's order banning photographs.
The participation of the United States in creating international law for civil liberties and human rights remains blocked by the continuing opposition in the U.S. Senate to the ratification of treaties for that purpose. Although the so-called Bricker amendment to the Constitution is no longer an active issue, hostility remains to using treaties as a means of strengthening civil liberties, to implied international concern with American domestic law, and to any invasion of states’ rights.

It was expected that a test of sentiment would arise with the announced intention of the State Department to submit the International Labor Organization treaty against forced labor. That treaty was submitted in the spring of 1959 after a long delay, but with comment by both State and Labor Departments indicating that its provisions are matters for state, not federal action. So ratification was not possible.

In one other respect a heartening position was taken by the Administration, speaking through the President, Vice-President and State Department, in favor of repealing the so-called Connolly amendment to U.S. ratification of the treaty establishing the International Court of Justice. That amendment practically makes the United States the sole judge of what cases the court can hear involving the United States, thus negating the basic principle of its jurisdiction over legal contests arising between member states. A proposed repeal was introduced by Senator Humphrey but no action was taken on it.

At the United Nations the U.S. delegation showed no change from its previous position against covenants or treaties as instruments for advancing civil and human rights. No advances were made by the United Nations in the field of human rights beyond studies, reports, regional seminars and advisory services to governments. All complaints of violations of rights wait for action on the completion of the long-debated human rights covenants.

**U.S. TERRITORIES**

**Puerto Rico.** While Puerto Rico is an autonomous Commonwealth, not a territory of the U.S., laws of Congress apply to it as to all other parts of the United States. A bill was introduced in Congress by the resident commissioner of Puerto Rico to amend the law fixing its relation to the United States by clarifying many provisions and permitting Puerto Rico greater autonomy. No action was taken.

A survey of civil rights under the Puerto Rican constitution and laws, under way since 1956, was completed in August 1959 by the
commission appointed by Governor Luis Muñoz Marin at the suggestion of Roger Baldwin, who had been invited by the governor to serve as adviser. The unanimous 168-page report of seven lawyers, based on extensive research by a University of Puerto Rico team, was warmly received, although critical of many phases of law and practice. The governor announced his intention of adopting several recommendations.

**Virgin Islands.** The Organic Act Commission appointed by the legislature of the Virgin Islands continued to press for a resident commissioner in Washington and an elective governor, though no action was taken in Congress. The Department of the Interior has not yet approved the changes, and without its approval Congressional action is unlikely. Minor amendments to the Organic Act were adopted.

A proposal to create town governments in the islands to take over some functions now exercised solely by the legislature was agreed to in form, and the Union has assumed the obligation of drafting it.

**Pacific Islands.** The only issue of civil liberties that arose in Pacific territories (Guam, Samoa, and the Trust Territory) was the exclusion of visitors by the Navy from Guam. Efforts were made in several cases to overcome Navy refusals by suits in court, and in each case they were mooted by permitting the applicant to enter. The Union was asked to aid by intervention with officials in Washington, and is so doing. It should be noted that Guam, like the Virgin Islands, has been seeking to get representation in Washington through a Resident Commissioner. In that case, too, approval by the Interior Department is essential.

**Okinawa.** Representations to the Defense Department concerning civil rights and self-government in the Ryuku islands (of which Okinawa is the largest) resulted in an invitation to Roger Baldwin to visit them in the course of a tour around the world in the summer of 1959. He stopped off for three days as the guest of the high commissioner, General Donald P. Boorh, who afforded him every opportunity to meet and hear Okinawan complaints and desires. The Okinawans chiefly want greater control of their executive and judicial branches, more contact with Japan and relaxation of security measures. Opposition to the military base, with a universal desire for a quite impractical prompt return to Japan, was freely voiced.

Roger Baldwin drafted a series of recommendations to the Defense Department and the High Commissioner, who expressed his intention of encouraging the fullest possible self-government as rapidly as the Okinawans could take over. Some policy decisions, however, will obviously have to be made in Washington, since the issue of self-government and civil rights in Okinawa has agitated Japanese opinion for some years, and affects relations between the U.S. and Japan.
STRUCTURE AND PERSONNEL

MEMBERSHIP

A member of the Union shall be a person or organization paying dues of two dollars or more annually to the national American Civil Liberties Union or one of its affiliates. The National Committee is elected by the members of the Union, and the Board of Directors is elected by the members of the Board of Directors, the National Committee, and the members of the boards of affiliates.

Corporation Officers

Chairman—Ernest Angell
Secretary—Dorothy Kenyon
Assistant Secretary—Rowland Watts
Treasurer—B. W. Huebsch
Assistant Treasurers—
    John F. Finerty, Patrick Murphy Malin,
    Alan Reitman, Rowland Watts

Executive Director—Patrick Murphy Malin

Personnel Changes

Board of Directors. One of the members listed in the 1957-58 Annual Report, Mr. Jessup, has retired from the Board. The board membership is now 34 of the 35 authorized in the Constitution.

National Committee. The terms of four members listed in the 1957-58 Annual Report, Bishop James Chamberlain Baker, Rev. Harry Emerson Fosdick, John Nevin Sayre and Joseph Schlossberg expired. Seven new members were elected, J. Garner Anthony, Prof. Clarence E. Ayres, Victor Fischer, Prof. Wesley H. Maurer, Sylvan Meyer, Jose Trias-Monge, John B. Orr, Jr. and Marion A. Wright.

The national committee now numbers 78 out of the maximum 80 provided in the Constitution.

Staff. There have been several changes since the 1957-58 Annual Report was published. Irving Ferman, Washington director, resigned in June, 1959 to become the executive vice-chairman of the President’s Committee on Government Contracts. Jeffrey E. Fuller, assistant director, resigned in September, 1959 to join the Reply-O Letter Company. Lawrence Speiser was named Washington director and Mrs. Marie Runyon, membership secretary, was appointed membership director. Other internal changes are the naming of Alan Reitman, assistant director, as associate director, Rowland Watts and Melvin L. Wulf, staff counsel and assistant staff counsel, as legal director and assistant legal director, Miss Lillian Ford and Mrs. Penelope Wright as executive assistants, and Jeffrey E. Fuller as a staff associate.
ACLU AFFILIATES

Arizona: ARIZONA CIVIL LIBERTIES UNION—806 East Camelback Road, Phoenix. Eugene R. Michaud, President (and Chairman, Northern Area, Phoenix), Cornelius Steelink, Vice-President (and Chairman, Southern Area, Tucson).

California: ACLU OF NORTHERN CALIFORNIA*—503 Market Street, San Francisco 5. John Henry Merryman, Chairman. Ernest Besig, Director, Chapter in Marin County.


Florida: FLORIDA CIVIL LIBERTIES UNION—Burton T. Wilson, Chairman. Mrs. Clarence Rainwater, Box 88, Miami 56, Secretary. Chapter in Tampa-St. Petersburg.

Illinois: ILLINOIS DIVISION, ACLU*—19 South LaSalle Street, Chicago 3. Tyler Thompson, Chairman. Kenneth Douty, Executive Director.


Iowa: IOWA CIVIL LIBERTIES UNION—Kenneth Everhart, 2112 Washington Avenue, Des Moines, Chairman. Henry Damiano, Secretary.


Louisiana: LOUISIANA CIVIL LIBERTIES UNION—Waldo McNeir, President. Harold N. Lee, 801 Broadway, New Orleans 18, Secretary.

Maryland: MARYLAND BRANCH, ACLU†—Dr. H. Bentley Glass, President. Jack L. Levin, Chairman, Executive Board. Mrs. Fred E. Weisgal, 5740 Cross Country Boulevard, Baltimore 9, Secretary.


* Indicates a full-time office is maintained.
† Part-time office maintained.
Michigan: Metropolitan Detroit Branch, ACLU—Harold Norris, Chairman. Ernest Mazey, 20574 Buffalo Street, Detroit 34, Executive Secretary.

Lansing Civil Liberties Union—Milton Rokeach, Chairman. Mrs. Pat Larrowe, Secretary-Treasurer, 343 Wildwood Drive, East Lansing.

Minnesota: Minnesota Branch, ACLU†—Midland Bank Building, Minneapolis 1. Robert G. Zumwinkle, President. Marshman Wattson, Executive Secretary.

Missouri: St. Louis Civil Liberties Committee. H. Hadley Grimm, President. Miss Carolyn Werner, 520 Kingsland, St. Louis 30, Secretary.


Niagara Frontier (Buffalo) Branch, ACLU—Robert North, Jr., 16 St. James Place, Buffalo 22, Chairman.

Ohio: Ohio Civil Liberties Union*—710 Ninth Chester Bldg., Cleveland 14. Sidney D. Josephs, Chairman. Mrs. Vivian J. Donaldson, Executive Secretary. Chapters in Akron, Cincinnati, Cleveland, Columbus, Dayton, Oberlin, Toledo, Yellow Springs and Youngstown.


Rhode Island: Rhode Island Affiliate, ACLU. Milton Stanzler, 1009 Hospital Trust Building, Providence 3, Chairman.

Utah: ACLU of Utah—Adam M. Duncan, 1935 South Main Street, Salt Lake City 15, Chairman.


Wisconsin: Wisconsin Civil Liberties Union—408 West Gorham Street, Madison 3. Morris H. Rubin, Chairman. Mrs. Esther Kaplan, Executive Secretary.

* Indicates a full-time office is maintained.
† Part-time office 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, 534 Second Avenue, Anchorage
Arkansas—Mrs. Ruth Arnold, Box 41, Little Rock
Delaware—William Prickett, 1310 King Street, Box 1329, Wilmington 99
Georgia—Morgan C. Stanford, 1431 Candler Building, Atlanta 3
Hawaii—Miss Mildred Towle, 431 Namahana Street, Honolulu
Idaho—Alvin Denman, Idaho Falls
Kansas—Raymond Briman, New England Building, Topeka
Maine—Prof. Warren B. Catlin, Bowdoin College, Brunswick
Mississippi—Jo Drake Arrington, 411 Hawes Building, Gulfport
Montana—Leo C. Graybill, 609 Third Avenue North, Great Falls
Nebraska—Prof. Frederick K. Beutel, University of Nebraska, Lincoln
New Hampshire—Winthrop Wadleigh, 45 Market Street, Manchester
New Jersey—Emil Oxfeld, 744 Broad Street, Newark 2
New Mexico—Edward G. Parham, 124 Richmond Drive, S.E., Albuquerque
North Carolina—James Mattocks, Professional Building, High Point
North Dakota—Harold W. Bangert, 400 American Life Building, Fargo
Oklahoma—Rev. Frank O. Holmes, First Unitarian Church, Oklahoma City
South Carolina—John Bolt Culbertson, P.O. Box 1325, Greenville
South Dakota—Benjamin Margulies, 418 Syndicate Building, Sioux Falls
Tennessee—Leroy J. Ellis III, Commerce Union Bank Building, Nashville
Texas—Prof. Clarence E. Ayres, University of Texas, Austin 12
Vermont—Louis Lisman, 166 College Street, Burlington
Virginia—David H. Scull, Annandale
West Virginia—Horace S. Meldahl, P.O. Box 1, Charleston
Wyoming—Rev. John P. McConnell, 408 South 11th Street, Laramie

Puerto Rico—Guillermo Cintron Ayuso, P.O. Box No. 4566, San Juan
Virgin Islands—George H. T. Dudley, Box 117, Charlotte Amalie, St. Thomas

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MEMBERSHIP AND FINANCES

Fiscal Year February 1, 1958, through January 31, 1959

The membership enrollment of the national ACLU and its integrated affiliates grew from about 39,900 at the start of the fiscal year to almost 41,700 at the end, a net increase of close to five per cent. Almost six thousand new members were signed up, but over 4,000 had to be dropped for non-payment of dues, etc.

The ACLU of Washington State, which re-integrated its membership with the national organization’s in February 1959, ended the 1958-59 fiscal year with an enrollment of about 900, two hundred of whom were not then on the national roster. The Northern California ACLU, which maintains its membership separately, had about 4,000 members of its own, many of whom belonged individually to the national organization. Counting Washington’s additional 200 and allowing for some overlap in Northern California, the Union on January 31, 1959, had altogether about 45,000 members.

Membership dues and contributions received by the national ACLU and its integrated affiliates totalled about $390,500, some $30,000 and 8% ahead of the previous fiscal year. With $7,500 from other sources, the year’s current income added up to $398,000, but even this record figure did not match the cost of the year’s operations, almost $410,500. The year’s $12,500 current-income deficit would not have occurred if contributions received in January 1959, the last month of the fiscal year, had not fallen some $14,000 below expectations. (When this drop was called to the attention of the Union’s members in the February 1959 Civil Liberties, their response was such that the $14,000 sag was made up by the end of April.)

Bequests totalling almost $7,800 were received from the estates of former members and added to the ACLU’s reserves. However, because of the $12,500 current-account deficit and the writing-off of a previously-carried $3,200 asset, the Union’s Net Worth declined from $74,100 at the start of the twelve months to $66,300 at the end.

The average member contributed $9.37 during the year. About 15% of the Union’s members gave less than $5, 50% between $5 and $9, 30% between $10 and $24, 3% between $25 and $49, 1% between $50 and $99, and 1% $100 and up. Members contributing $200 or more during the 1958-59 fiscal year were:

William Prescott Allen, Texas; Amalgamated Clothing Workers of America, New York; Mr. and Mrs. Ralph Atkinson, California; Mrs. Evelyn Preston Baldwin, New Jersey; Howard K. Beale, Sr., Wisconsin; Mrs. Helen Beardsley, California; Mr. and Mrs. William Benesch, Pennsylvania; William Benton, New York; Mr. and Mrs. Edgar Bernhard, Illinois; Mrs. Esther Smith Byrne, California; Sidney F. Brody, California; Miss Julia C. Bryant, Connecticut; F. G. Burg,
California; Andrew H. Burnett, California; Montague Casper, New York; Mr. and Mrs. Roger S. Clapp, Massachusetts; Miss Fanny Travis Cochran, Pennsylvania; Edward T. Cone, New Jersey; Professor and Mrs. Albert S. Coolidge, Massachusetts; Mr. and Mrs. David Cooper, Virginia; Mr. and Mrs. John Cowles, Jr., Minnesota; Stephen T. Crary, Rhode Island; Mrs. Margaret DeSilver, New York; Mrs. Francis R. Dewing, Massachusetts; Robert T. Drake, Illinois; Joseph L. Eichler, California; Dr. Robert H. Ellis, Oregon; Edward J. Ennis, New York; W. R. Everett, Minnesota; Henry G. Ferguson, District of Columbia; Walter T. Fisher, Illinois; Mrs. Stanton A. Friedberg, Illinois; Harvey Furgatch, California; Miss Gloria Gartz, California; Herbert G. Graetz, Massachusetts; Richard Grumbacher, Maryland; Mr. and Mrs. Wilbur G. Hallauer, Washington; Mr. and Mrs. Gilbert Harrison, District of Columbia; Thomas B. Harvey, Pennsylvania; Dr. and Mrs. George H. Hogle, California; International Ladies' Garment Workers' Union, New York; Mrs. Sophia Yarnall Jacobs, New York; J. M. Kaplan, New York; Mr. and Mrs. Albert A. Kaufman, New Jersey; W. S. Kiskadden, California; Mrs. William Korn (for the Mayer Family), New York; Dr. Austin Lamont, Pennsylvania; Robert Maxwell Lauer, Delaware; Carter Lee, District of Columbia; Hon. Herbert H. Lehman, New York; Alan Jay Lerner, New York; Mrs. Salim Lewis, New York; Mrs. Sanford Lowengart, California; Mr. and Mrs. Patrick Murphy Malin, New York; Arnold H. Maremont, Illinois; Mrs. May R. Melcher, Michigan; Merle H. Miller, Indiana; Sybil Jane Moore, California; Seniel Ostrow, California; Mrs. Gertrude Pascal, New York; Dr. Linus Pauling, Jr., Hawaii; Frank C. Pierson, Pennsylvania; Miss Annie J. Pitou, California; Dr. Dallas Pratt, New York; George D. Pratt, Jr., Connecticut; H. Oliver Rea, New York; Mr. and Mrs. Chester Rick, New York; Mrs. Alice F. Schott, California; A. Joseph Seltzer, Michigan; Henry W. Shelton, California; Mrs. Guatia Erickson Short, California; Mr. and Mrs. Herbert Sieck, Illinois; Mrs. Eleanor Lloyd Smith, California; Lloyd M. Smith, California; John Stahl, California; Mrs. Charles S. Stein, Jr., California; Mr. and Mrs. Arthur I. Stephens, Illinois; J. David Stern, New York; Miss Ann R. Stokes, Pennsylvania; Mr. and Mrs. Lee Thomas, Kentucky; Miss Anne L. Thorp, Massachusetts; George B. Thorp, New York; Sidney R. Troxell, California; John B. Turner, New York; Mr. and Mrs. Frank Untermyer, Illinois; Philip Wain, California; Duane E. Wilder, Pennsylvania; Harold Willens, California; Miss Mary C. Wing, New York; Mrs. Betty Zukor, California. Two anonymous gifts of $500, one of $450, two of $300, one of $250, one of $245, and one of $200, were also received.

In addition to its regular fiscal operations, the Union continued to supervise the Roger N. Baldwin-ACLU Escrow Account, administered by the Fiduciary Trust Company. During 1958-59 the Account's book-value Net Worth declined from about $37,700 to $35,600, but the market value of its securities rose from approximately $53,800 to $66,600.

1958-59 MEMBERSHIP ENROLLMENT

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<thead>
<tr>
<th>NUMBER OF MEMBERS FEBRUARY 1, 1958</th>
<th>39,871</th>
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<tbody>
<tr>
<td>New members enrolled during fiscal year</td>
<td>5,961</td>
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<td>Dropped: deceased, resigned, delinquent, etc</td>
<td>4,145</td>
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<td><strong>Net increase during fiscal year</strong></td>
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<td>NUMBER OF MEMBERS JANUARY 31, 1959</td>
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### Incomes

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<tr>
<td>New members’ initial dues payments</td>
<td>5,961</td>
<td>$39,856.00</td>
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<tr>
<td>Membership renewals</td>
<td>28,196</td>
<td>$290,939.00</td>
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<tr>
<td>Special Funds contributions</td>
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<td>$59,689.62</td>
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<tr>
<td><strong>Total, Membership Income</strong></td>
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<td><strong>$394,484.62</strong></td>
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<tr>
<td>Transfers to integrated affiliates from joint</td>
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<tr>
<td>membership income, i.e., all contributions</td>
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<tr>
<td>from members in each affiliate’s area, except</td>
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<tr>
<td>those earmarked for specific national or local</td>
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<tr>
<td>purpose.</td>
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<tr>
<td>Executive Director’s honorariums</td>
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<tr>
<td>Sale of pamphlets</td>
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<td>From ACLU-Roger N. Baldwin Escrow Account</td>
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<td><strong>Total, Regular Income</strong></td>
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<td><strong>$396,518.05</strong></td>
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<td>Extraordinary contributions earmarked for</td>
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<tr>
<td>national office Legal Expansion Fund</td>
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<tr>
<td><strong>Total, All Income</strong></td>
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<td><strong>$495,967.65</strong></td>
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### Expenditures

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<tr>
<th>Expenditure Type</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>New members’ initial dues payments</td>
<td>5,961</td>
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<td></td>
<td>$59,689.62</td>
</tr>
<tr>
<td><strong>Total, Membership Income</strong></td>
<td></td>
<td><strong>$394,484.62</strong></td>
</tr>
<tr>
<td>Transfers to integrated affiliates from joint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>membership income, i.e., all contributions from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>members in each affiliate’s area, except those</td>
<td></td>
<td></td>
</tr>
<tr>
<td>earmarked for specific national or local purpose</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive Director’s honorariums</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of pamphlets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>From ACLU-Roger N. Baldwin Escrow Account</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total, Regular Income</strong></td>
<td></td>
<td><strong>$396,518.05</strong></td>
</tr>
<tr>
<td>Extraordinary contributions earmarked for national</td>
<td></td>
<td></td>
</tr>
<tr>
<td>office Legal Expansion Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total, All Income</strong></td>
<td></td>
<td><strong>$495,967.65</strong></td>
</tr>
</tbody>
</table>

### Affiliates (1) Number

<table>
<thead>
<tr>
<th>Affiliates’ Total Income</th>
<th>Number</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Southern California</td>
<td></td>
<td>$9,500.00</td>
</tr>
<tr>
<td>N.Y.C.L.U.</td>
<td></td>
<td>$14,998.45</td>
</tr>
<tr>
<td>Illinois Division</td>
<td></td>
<td>$466.55</td>
</tr>
<tr>
<td>Penna. &amp; Phila. Brs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.L.U. of Massachusetts</td>
<td></td>
<td>3,766.44</td>
</tr>
<tr>
<td>Ohio C.L.U.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana C.L.U.</td>
<td></td>
<td>1,194.94</td>
</tr>
<tr>
<td>Minnesota Branch</td>
<td></td>
<td>1,861.01</td>
</tr>
<tr>
<td>Colorado Branch</td>
<td></td>
<td>1,949.47</td>
</tr>
<tr>
<td>Connecticut C.L.U.</td>
<td></td>
<td>3,161.65</td>
</tr>
<tr>
<td>Louisiana C.L.U.</td>
<td></td>
<td>593.87</td>
</tr>
<tr>
<td>Maryland Branch</td>
<td></td>
<td>279.20</td>
</tr>
<tr>
<td>St. Louis Committee</td>
<td></td>
<td>1,141.44</td>
</tr>
<tr>
<td>Greater Mami Branch</td>
<td></td>
<td>279.20</td>
</tr>
<tr>
<td>Detroit Branch</td>
<td></td>
<td>1,141.44</td>
</tr>
<tr>
<td>Wisconsin C.L.U.</td>
<td></td>
<td>1,003.71</td>
</tr>
<tr>
<td>ACLU of Oregon</td>
<td></td>
<td>1,141.44</td>
</tr>
<tr>
<td>Iowa C.L.U.</td>
<td></td>
<td>1,003.71</td>
</tr>
<tr>
<td>Kentucky C.L.U.</td>
<td></td>
<td>999.25</td>
</tr>
<tr>
<td>Niagara Br. (Buffalo)</td>
<td></td>
<td>1,163.40</td>
</tr>
<tr>
<td>Lansing C.L.U.</td>
<td></td>
<td>1,163.40</td>
</tr>
<tr>
<td><strong>Total, All Income</strong></td>
<td></td>
<td><strong>$147,748.35</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Requests from Estates of Former Members:</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evelyn T. D. Morley</td>
<td>$69,746.60</td>
</tr>
<tr>
<td>Ella M. Kellogg</td>
<td>500.00</td>
</tr>
<tr>
<td>Louis Jacob Kitcher</td>
<td>250.00</td>
</tr>
<tr>
<td>Frances W. Emerson</td>
<td>50.00</td>
</tr>
<tr>
<td>John Moriarty</td>
<td>20.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,794.60</strong></td>
</tr>
</tbody>
</table>
## General Administration

### Salaries
- Eight executives (including three part-time) $53,825.00
- Five executive assistants $15,911.96
- Sixteen clerical employees (one part-time) $55,686.65

### Other Administrative Expenses
- Postage $10,874.32
- Equipment, supplies, services, etc. $7,699.53
- Rent $7,200.00
- Payroll taxes and insurance $4,772.52
- Stationery $3,678.38
- Telephone and telegraph $2,424.64
- Travel—Executive Director and Staff Counsel $2,898.06
- Audit $2,214.39
- Books, subscriptions, clippings, etc. $2,100.00
- Bank charges $821.57
- Board meetings $153.53

### Law Books
- Six hundred volumes U.S. Federal Reporter, Federal Digest, and Federal Supplement $1,500.00
- Washington Office

### Litigation
- Barenblatt Un-American Activities Committee test case $2,610.62
- Worthy v. State Department passport case $975.99
- Greene v. Defense Department security case $720.95
- Ostrofsky v. Maryland Security Board $95,660.00
- California church loyalty oath case $285.84
- Patterson Oregon Bar admission case $235.97
- Ebel (Polish seaman) right to hearing case $128.55
- McEvoy v. State Department passport case $166.43
- Martinez-Fiscalo deportation case $158.95
- Rockwell Kent-Briehl v. State Department passport case $155.20
- Trop v. State Department loss of citizenship case $155.33
- Gans v. Ohio marriage of minor due process case $62.48
- Ullner v. Ohio Sunday Blue Law case $62.00
- Forty-three cases under $50 $2,005.50

### Additional Information
- Full details on these cases will be found elsewhere in this Report. It should be noted that expenditures indicated above cover only out-of-pocket items such as printing of briefs, travel, long distance phone calls, etc. The Union's cooperating attorneys work without fee.

### Washington Office
- Salaries, director and secretary $13,754.00
- Administrative expenses $6,662.56

### Total
- $24,161.65

---

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**Education: Pamphlets, etc.**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>To National Civil Liberties Clearing House budget</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Membership survey questionnaire</td>
<td>$524.00</td>
</tr>
<tr>
<td>Pamphlet on civil liberties in labor unions</td>
<td>$489.50</td>
</tr>
<tr>
<td>Pamphlet on A.A.U.'s 1953 &quot;Rights and Responsibilities of Universities and Faculties&quot;</td>
<td>$303.50</td>
</tr>
<tr>
<td>Public Relations Committee expenditures</td>
<td>$174.22</td>
</tr>
<tr>
<td>&quot;Private Group Censorship and the N.O.D.L.&quot;</td>
<td>$160.00</td>
</tr>
<tr>
<td>&quot;Academic Freedom and Civil Liberties of Students&quot;</td>
<td>$157.00</td>
</tr>
<tr>
<td>Reprint of The Bill of Rights folder</td>
<td>$134.50</td>
</tr>
<tr>
<td>Report on 85th Congress</td>
<td>$87.05</td>
</tr>
<tr>
<td>&quot;Scrutiny of Professors&quot;</td>
<td>$82.34</td>
</tr>
<tr>
<td>&quot;Feelings Run Strong on Immigration&quot;</td>
<td>$50.00</td>
</tr>
<tr>
<td>&quot;The School Bus Question&quot;</td>
<td>$50.00</td>
</tr>
<tr>
<td>Miscellaneous reprints, etc.</td>
<td>$73.79</td>
</tr>
</tbody>
</table>

**Total** $3,399.40

**Functional Committees: Meeting Expenses, etc.**

<table>
<thead>
<tr>
<th>Committee</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Civil Rights Committee</td>
<td>$405.24</td>
</tr>
<tr>
<td>Academic Freedom Committee</td>
<td>$366.12</td>
</tr>
<tr>
<td>Labor Civil Rights Committee</td>
<td>$288.09</td>
</tr>
<tr>
<td>Race Relations and Equality Committee</td>
<td>$194.28</td>
</tr>
<tr>
<td>Alien Civil Rights Committee</td>
<td>$104.50</td>
</tr>
<tr>
<td>Five committees, under $50</td>
<td>$91.28</td>
</tr>
</tbody>
</table>

**Total** $1,695.23

**International Civil Liberties**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee meetings, Mr. Baldwin's travel, etc.</td>
<td>$1,092.06</td>
</tr>
</tbody>
</table>

**Arthur Garfield Hays Civil Liberties Memorial**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to Hays program at N.Y.U. Law School</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Expenses incurred: fund-raising, etc.</td>
<td>$218.92</td>
</tr>
</tbody>
</table>

**Total** $1,218.92

**ACLU Corporation and Affiliate Operations**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958 Biennial Conference, New York, N.Y.</td>
<td>$2,580.38</td>
</tr>
<tr>
<td>Joint Finance Committee, Nominating Committee, etc.</td>
<td>$1,474.73</td>
</tr>
<tr>
<td>National office executives' affiliate travel</td>
<td>$378.79</td>
</tr>
</tbody>
</table>

**Total** $4,433.90

**Separable Membership Services**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>New membership recruitment, total expenditures</td>
<td>$20,402.45</td>
</tr>
<tr>
<td>1957-58 Annual Report, printing costs</td>
<td>$8,588.00</td>
</tr>
<tr>
<td>To Southern California ACLU, promotional allowance</td>
<td>$6,329.37</td>
</tr>
<tr>
<td>Civil Liberties, printing costs</td>
<td>$6,099.86</td>
</tr>
<tr>
<td>Special Funds appeals, total expenditures</td>
<td>$4,967.28</td>
</tr>
<tr>
<td>Separable membership maintenance costs</td>
<td>$4,023.32</td>
</tr>
</tbody>
</table>

**Total** $50,410.28

**Expenditures, Grand Total** $410,437.34

**Total, Current Income** $398,073.05

**Deficit, 1958-59 Current Account** $(12,364.29)
# BALANCE SHEET

as of January 31, 1959

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$53,595.69</td>
</tr>
<tr>
<td>Accounts receivable:</td>
<td></td>
</tr>
<tr>
<td>Airlines deposit</td>
<td>425.00</td>
</tr>
<tr>
<td>Overpayments to affiliates, current account</td>
<td>5,364.32</td>
</tr>
<tr>
<td>Loans receivable:</td>
<td></td>
</tr>
<tr>
<td>Indiana Civil Liberties Union</td>
<td>1,126.23</td>
</tr>
<tr>
<td>Ohio Civil Liberties Union</td>
<td>1,050.00</td>
</tr>
<tr>
<td>Illinois Division</td>
<td>800.00</td>
</tr>
<tr>
<td>Greater Philadelphia Branch</td>
<td>448.00</td>
</tr>
<tr>
<td>Prepaid expenses due in 1959-60 fiscal year:</td>
<td></td>
</tr>
<tr>
<td>Bail, Wilkinson case</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Advance, on 38th Annual Report</td>
<td>5,500.00</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$69,309.24</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unexpended earmarked funds:</td>
<td></td>
</tr>
<tr>
<td>Mr. Baldwin's drawing account</td>
<td>$2.60</td>
</tr>
<tr>
<td>Staff savings bond purchases</td>
<td>107.85</td>
</tr>
<tr>
<td>Received in advance from Baldwin salary account</td>
<td>600.00</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>253.12</td>
</tr>
<tr>
<td>Withholding taxes payable</td>
<td>2,018.62</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td><strong>$2,982.19</strong></td>
</tr>
</tbody>
</table>

**NET WORTH, February 1, 1958** $37,742.66  
**Income from investments, net** 2,438.47  
**Paid to ACLU for Mr. Baldwin’s part-time salary** 3,600.00  
**EXCESS, expenditures over income** ($1,161.53)  


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## Certificate

In our opinion, the attached financial statements present fairly the financial position of American Civil Liberties Union, Inc., and of the Roger N. Baldwin-ACLU Escrow Account at January 31, 1959, and the results of their respective operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Appel and Englander  
Certified Public Accountants

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

Contributions to the American Civil Liberties Union are not deductible for income tax purposes, since the Treasury Department has held that a "substantial part" of the Union's activities is directed toward influencing legislation. The ACLU itself pays no taxes other than Social Security, Old Age Benefit and Workmen's Compensation levies in connection with its employees' salaries.
You may order by number from ACLU at 170 Fifth Avenue, New York 10, N.Y. All prices are postpaid. Quantity price schedule, in general: 25 or more copies—deduct 20% from single copy price; 100 or more—deduct 40%. Single copies of any available pamphlets will be mailed free to contributing members (dues of $5 and up) on request. Please indicate membership category when ordering.

A-59. ACLU 1958-59 Annual Report, WORK AHEAD IN HOPE. 112 pp. 75¢
A-56. 1955-56 Report, Liberty is ALWAYS UNFINISHED BUSINESS. 96 pp. 50¢

A-55. 1954-55 Report. CLEARING THE MAIN CHANNELS. 144 pp. 50¢
2. THE BILL OF RIGHTS. Text of first ten amendments. 4 pp. Free
4. THE CONNECTICUT SCHOOL BUS LAW. 1959. 20 pp. 15¢
5. MARINE CORPS AND CIVIL LIBERTIES AT PARRIS ISLAND. 1957. 11 pp. 5¢

(Continued inside back cover)

Join the American Civil Liberties Union!

ACLU members in these categories receive Civil Liberties each month, this 1958-59 Annual Report (and future annual reports), and their choice of pamphlets:

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

Associate Members at $2 receive Civil Liberties and the Annual Report. Weekly bulletin is available on request to contributors of $10 and over.

Members living in the following states and city areas also belong to the respective local ACLU organization, without payment of additional dues: Arizona, Southern California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Washington (State); Wisconsin and Buffalo, Detroit, Lansing, New York, Philadelphia and St. Louis. If you live in one of these areas, your chapter will automatically receive a share of your contribution. The more you give the larger its share. Be as generous as you can!

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

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

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

PLEASE PRINT CLEARLY

NAME
ADDRESS
CITY ZONE STATE
Occupation

112 Annual Report, 1958-59
6. ARTHUR GARFIELD HAYS 1881-1954, by Roger N. Baldwin. 4 pp. Free

7. ACADEMIC FREEDOM: PHILADELPHIA EPISODES. 1954. 36 pp. 25¢

9. IF YOU ARE ARRESTED: your rights and obligations. 1956. 4 pp. Free

10. THE SUPREME COURT AND CIVIL LIBERTIES, legal analysis by Osmond K. Fraenkel. 1955. 106 pp. 50¢

10-a. 195- SUPPLEMENT to pamphlet No. 10, by O. K. Fraenkel. 32 pp. 25¢

11. ACADEMIC DUE PROCESS— in academic freedom cases. 1956. 8 pp. 10¢

12. ACADEMIC FREEDOM & ACADEMIC RESPONSIBILITY. 1956. 16 pp. 10¢

13. CASE AGAINST N.Y. SECURITY LAW, by NYCLU. 1957. 12 pp. 5¢


16. TWENTY QUESTIONS ON CIVIL LIBERTIES. 1958. 2 pp. Free

17. DEMOCRACY IN LABOR UNIONS: three ACLU policy statements. 1958. 32 pp. 35¢

18. CONFORMITY IN THE ARTS, by Elmer Rice. 1953. 4 pp. 5¢


21. ACADEMIC FREEDOM AND CIVIL LIBERTIES OF STUDENTS. Policy statement. 1958. 9 pp. mimeographed. 10¢

22. "HENCEFORWARD SHALL BE FREE." Excerpts from Emancipation Proclamation, etc. 1956. 4 pp. 5¢

24. HAVE WE THE COURAGE TO BE FREE? by Arthur Hays Sulzberger. 1953. 8 pp. 10¢


27. SECURITY PROGRAM: PHILADELPHIA EPISODES. 1956. 16 pp. 25¢


Published by others, distributed by ACLU


31. FEELINGS RUN STRONG ON IMMIGRATION, by Joan Christie Davis. America. 1958. 4 pp. 5¢

33. THE ALTERNATIVE, by Archibald MacLeish. Roger N. Baldwin Civil Liberties Foundation. 1955. 24 pp. 25¢

35. THE TRUTH ABOUT SEGREGATION IN WASHINGTON'S SCHOOLS. Washington Post and Times-Herald. 1959. 25 pp. 15¢


37. THIRTY-FIVE YEARS WITH FREEDOM OF SPEECH, by Zechariah Chafee, Jr. Baldwin Edu. 1952. 40 pp. 25¢

38. WHAT YOU CAN'T SEE ON TV, by Wm. Peters. Redbook. 1957. 5 pp. 10¢

39. WORKSHOP IN DEMOCRACY. A New York conference. 1959. 24 pp. 10¢


41. FAMOUS WORDS OF FREEDOM. Freedom House. 1955. 23 pp. 10¢

42. WHERE GOVERNMENT MAY NOT TRESPASS, by Henry Steele Commager. New York Times. 4 pp. 5¢

43. LETTER NOBODY WROTE, by B. N. Scott. Nation. 1957. 5 pp. 5¢

44. UNIVERSAL DECLARATION OF HUMAN RIGHTS. U.N. 1948. 8 pp. 5¢


47. ACLU STATEMENT ON JURY TRIAL AMENDMENT TO 1957 CIVIL RIGHTS BILL. Cong. Record. 1 pp. Free

48. PRESENTING THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN, the world organization with which ACLU is affiliated. 1957. 6 pp. Free

49. SCRUTINY OF PROFESSORS, by Louis Jougin. AAUP Bulletin. 1958. 12 pp. 10¢
YOU HAVE AN INTEREST
IN CIVIL LIBERTIES!
SO — JOIN* THE
AMERICAN CIVIL LIBERTIES UNION!

The ACLU is the only permanent national non-partisan organization defending the Bill of Rights for everyone—without distinction or compromise. It depends on its members for all its funds.

The Union 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.

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

See Membership Blank on Page 112

BEQUESTS TO THE ACLU

During the past nine years the national American Civil Liberties Union has received by bequest a total of $109,000 from the estates of fifty persons. (Some affiliates have also received bequests.) The legacies have ranged from $20 to $25,000.

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

Anyone desiring to make such provision in his or her will may wish to use this language: “I give $_________________ to the American Civil Liberties Union, Inc., a New York Corporation.” If the testator is in an area where there is an ACLU affiliate, and wishes the affiliate to share directly in the bequest, the proportion to be so shared should be specified.