Civil Liberties Aspects of Oswald Case

Following is the statement of the ACLU national office, is-sued last month, commenting on the civil liberties aspects of the Lee Harvey Oswald case.

The tragedy of John F. Ken-nedy's assassination defies ade-quate description. It was a brutal, evil deed that may change the course of history. The personal tragedy involved—for members of his family and even those who did not know him—is of ummeas-urable dimension. We all mourn his death.

did not know him—is of ummeasurable dimension. We all mourn his death.

At the same time, it would betray John F. Kennedy's own devotion to the traditions of freedom that are at the root of American life, if his death were permitted to obscure the gross departures from constitutional atandards which, in the opinion of the ACLU, marked the events subsequent to his assassination.

1. TRIAL BY TELEVISION, RADIO AND THE PRESS.

Justice Felix Frankfurter, while sitting on the Supreme Court, said that "not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community." One of the absolute essentials of the civilizad treatment about which Justice Frankfurter spoke is that an accused receive a fair trial before an impartial jury. It is our opinion that Lee Harvey Oswald, had he lived, would have been deprived of all opportunity to receive a fair trial by the conduct of the police and prosecuting officials in Dallas, under pressure from the public and the news media.

Convicted In Newspapers

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From the moment of his arrest until his murder two days
lates, Dawald was tried and convicted many times over in the
newspapers, on the radio, and
over television by the public
statements of the Dallas law enforcement officials. Time and
again high-ranking police and
prosecution officials stated their
complete satisfaction that Oswald
was the assassin. As their investigation uncovered one piece of
evidence after another, the results were broadcast to the public.
The accumulation of evidence

sults were broadcast to the public.

The accumulation of evidence was damning. The Dallas officials announced that the rifle was traced to Oswald; that Oswald's handwriting matched the handwriting of the letter ordering the rifle; that palm prints found near the warehouse window were Oswald's; that his wife said a rifle like the one used in the assasination had been in the garage of her living quarters but was now missing; that a photograph of Oswald holding the identical pistol and rifle used in the police officer's and President's slaying was found; that a paraffin test showed that he had recently fired a weapon; that Oswald had carried a long package to work on the day of the assasination; and that he was in the building from which the assassin's shots came.

All this evidence was described by the Dallas officials as auther.

which the assassin's shots came. All this evidence was described by the Dallas officials as authentic and incontestable proof that Oswald was the President's assassin. The cumulative effect of these public pronouncements was to impress indelibly on the public's mind that Oswald was indeed the slayer.

Fair Trial Impossible

Fair Trial Impossible
Under the best of circumstances, the enormity of the crime, which so inflamed the community, would have made it very difficult to find an unbiased jury. But the vast publicity in which the law enforcement officers participated made it simply impossible for Oswald to have received a fair trial on any of the charges against him. Where in Dallas, or anywhere

else in the State or Nation for that matter, could there be found twelve citizens who had not formed a firm and fixed opinion that he was guilty?

Supreme Court Precedent

Not six months ago, the Supreme Court of the United States in Rideau v. Louisiana reversed a murder conviction in Louisiana because a motion picture was made of a twenty minute "interview" between the defendant and the sheriff in which the defendant and the sheriff in which

Pressure On Police

We grant that the pressure on the police was extraordinary and the demands of the press enormous. This indeed was the crime of the century and the public's interest was intense. But precisely because of these circumstances, it was the responsibility of the Dallas officials to resist this pressure to assure that Oswald would be fairly tried on the monstrous charge against him. It is an ironic noie that, if Oswald had lived to stand trial, and were convicted, the courts would very likely have reversed the conviction because of the prejudicial pre-trial publicity. Thus, the spectacular publicity in which the officials took part would likely have defeated them in the end.

Vexing Problem

Vexing Problem

Vexing Problem

Although the primary responsibility for assuring that an accused is not prejudiced by pretrial publicity necessarily falls upon the law enforcement officials, television, radio and the press are not themselves without responsibility. Certainly the right of a free press (and the right of the public to be informed) compete with the right of an accused to a fair trial. This raises a vexing problem to which there is no easy solution. There is a legitimate interestmost intense in this case—in obtaining information which satisfies the public concern for energetic law enforcement. Failure to satisfy that interest might even have contributed to public unrest. Moreover, it could be argued that public exposure of police conduct will deter improper police practices Nonetheless, putting these competing interests in the balance, we believe that the paramount interest rests with the defendant's right to a fair trial and that the other interests are adequately served by the orderly disclosure of evidence at trial.

Self Restraint Needed

Self Restraint Needed

If anything useful can emerge from the tragedy of the assassination, we hope that it would impress every local community—including its news media, police and prosecutors—with the importance of self-restraint where publicity in criminal matters is concerned. The primary concern must be focused on the rights of the accused. The administration of our criminal law, like the successful functioning of our democratic asciety in general, depends in the last analysis on the intelli-

Police Responsibility

Police Responsibility

The police have the responsibility of assuring the safety of their prisoners. Due process requires not only that the accused have a fair trial, but it also requires, of necessity, that no matter how heinous the charge against him, he may not be denied his day in court because of gross negligence by the police which results in his death or injury before trial.

3. THE RIGHT TO COUNSEL AND THE INTERROGATION.

The circumstances surrounding Oswald's detention are still ambiguous. We lack answers to such fundamental questions as: How much time elapsed before he was advised of his right to counsel? How much time elapsed before he was permitted access to a telephone to call his family and an attorney? During what periods and for how long was Oswald interrogated? W ha t methods of interrogation were used? Was he advised of his right to remain silent?

Right To Consult Counsel

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Right To Consult Counsel

Oswald should have had the right to consult counsel from the moment of his arrest if he so desired. Whether or not he wished immediately to avail himself of that right is uncertain, for the reports go both ways. At one point on Friday night, when Oswald was passed before the television cameras, he said he had been denied "legal representation." On the next day, however, the President of the Dallas Bar Association reported over television, just after a conference with Oswald, that he had offered the prisoner the services of the Association in arranging fo rounsel. He said that Oswald had declined for the time being, for he preferred John Abt, a New York attorney, or if he were not available, a lawyer connected with the Act.U, Until further information is disclosed, no purpose would be served by speculation on this issue.

ACLU Function

ACLU Function

(The ACLU ordinarily does not provide counsel for individuals merely because they are charged with crimes. It is not a legal aid organization providing counsel for indigents accused or for those who think they want to be represented by ACLU volunteer lawyers. That is not its function. It intervenes in cases when the constitutional rights of an accused are violated, but the ex-

tent of its intervention depends on the facts of the individual case. Ordinarily where there is a factual controversy as to whether the accused did or did not commit a crime, such as murder, the ACLU does not provide counsel to represent him at the trial. In such cases the Union usually files a friend of the court brief on the constitutional points either at the trial or appellate level. Because the crime with which Oswald was charged was of such ugly proportions, he might have had difficulty in obtaining counsel. That problem seems not to have been present, however, because the Dallas Bar Association, consistent with the highest standards of professional responsibility, offered its services in supplying counsel to Oswald. If it had become impossible for Oswald to obtain counsel, the ACLU because of its concern that all persons are entitled to legal defenie, no matter how unpopular their case, would have helped to secure the independent services of a lawyer.)

Declined To Request Counsel

The ACLU did exhibit an organizational interest during the period of time when Oswald was being interrogated because of his public complaint that he was being denied the opportunity to consult counsel. Three ACLU lawyers and the President of the Dallas Civil Liberties Union did go to the city jail late Friday night but were informed by police officers and the Justice of the Peace before whom Oswald had been first arraigned that Oswald had been advised of his right to counsel and that he had declined to request counsel. Since the attorneys had not been retained by either Oswald or his family, they had no right to see the prisoner nor to give him legal advice.)

Oswald's Interrogation

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The related question of Oswald's interrogation is difficult to assess with the limited information at our disposal. The ACLU has never said that the police are forbidden to interrogate a person taken into custody. We have said that any interrogation which takes place while a person is under arrest and in the police station must be surrounded by the strictest safeguards. Thus, before such questioning begins, we believe the prisoner should be taken before a magistrate and explicitly advised of his right to counsel and that he is under no compulsion to answer. We also believe that he should have the indefeasible right to consult with an attorney before any questions are put to him and during interrogation. The right to counsel is not satisfied merely by advising the accused of the right. He must be permitted to call an attorney, his family, or a friend in order to secure the services of an attorney. If he cannot afford to hire counsel, a lawyer should be promptly appointed to represent him. In this case, the advice of an attorney may well have resulted in the reduction of adverse publicity. In addition, an attorney may well have resulted in the reduction of adverse publicity. In addition, an attorney might have objected to Oswald's public transfer and thus might have averted his murder.

Right To Keep Silent

Right To Keep Silent

Right To Keep Silent

If the right to keep silent or to consult an attorney is not made clear to the suspect, it is our view that any admissions or confessions should be inadmissible against the accused at trial. More than that, any set of circumstances—such as the duration and intensity of the questioning —which results in the involuntary extraction of incriminating statements from a prisoner renders those statements imadmissible.

In Oswald's case, it appears that the police interrogation did

not yield a confession. It is reported that Oswald continually asserted his innocence. Under those circumstances, the nature of his interrogation did not yield an unconstitutional confession, but the question whether the interrogation—given all the attendant circumstances—violated any constitutional standards must nonetheless be further explored.

4. THE RUBY CASE.

must nonetheless be further explored.

4. THE RUBY CASE.
The disaster of Oswaid's murder seems to have had its effect on the handling of the Jack Ruby ease. Immediately after the shooting, Ruby was taken out of the sight of the reporters and, as far as we know, was by and large kept from the news media thereaster. Official statements about Ruby to the press were apparently kept to a minimum. There was considerable publicity given to Ruby and his background, but the bulk of this information seems to have come from private sources and his attorney.

Conflicting Rumors

Conflicting Rumors

Conflicting Rumors

The greatest danger to Ruby's opportunity for a fair trial stems from conflicting rumors that he was part of a conspiracy. The rumors say that he was both in league with Oswald and in league with Oswald and in league with Oswald and in league with Oswald semiles. Whatever the truth, if any, about these rumors, the officials must have no part in generating or perpetuating them. He is charged with murder and should be tried for murder. Any official statement connecting him—however tenuously—with a plot, will defeat his right to be tried by an unbiased jury.

5. THE PRESIDENTIAL COMMISSION.

We wholeheartedly support the appointment of a Commission by President Johnson to investigate the assassination of President Kennedy. The Commission undoubtedly will concentrate on the facts of the assassination and all the relevant information that bears unon it. In addition, the public interest would be served if the Commission were to make a thorough examination of the treatment accorded Oswald, including his right to counsel, the nature of his interrogation, his physical security while under arrest, and the effect of pre-trial publicity on Oswald's right to a fair trial.

Normally, the ACLU would oppose any judicial or quasi-judicial inquiry into the facts of a crime charged against a man now dead. In the extraordinary circumstances of a presidential assassination, however, nothing is normal.

Accused Not Present

Accused Not Present

To hold an inquiry into the facts of the assassination in the absence of the individual charged with the crime presents the major objection that he is unable to provide his counsel with information bearing on his defense and the evidence against him. Evidence damaging on its face has, in other cases, been explained satisfactorily to jurors. No matter how scrupulously fair an inquiry now might be, there can be no substitute for the presence of the accused.

On the other hand, the ambiguities of the present state of facts about the crime and the major suspect ought to be resolved if possible. It would be dangerous, we think, to allow any lingering uncertainty over who killed the President.

FINANCIAL REPORT

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA For Year Ended October 31, 1963

Baard of Directors American Civil Liberties Union of Northern California 503 Market Street Son Francisco 94103

Son Francisco 94103

AUDIT OF BOOKS AND RECORDS FOR THE FISCAL YEAR
ENRED OCTOBER 31, 1963

We have examined the balance sheet of the American Civil Liberties Union
of Northern California as of October 31, 1963, and the related statement of
income and supense for the year then anded, Our examination was made in
accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedure
as we considered necessary in the circumstances.

The records are maintained on a cash basis, and accordingly reflect no
accruel of liabilities, Our examination indicated no material liabilities outstanding. Amounts payable for payroll taxes and minor items were subsequently
promptly paid and did not differ in any significant amount from those payable
at the close of the pravious year.

In our opinion the accompanying balance sheet and statement of income
and expense, subject to adjustment for the difference between book and market
value of treasury bonds, present fairly the financial position of the American
Civil Liberties Union of Northern California at October 31, 1963, and the results
of the year then anded, in conformity with generally accepted accounting principles. — Horwath & Horvath, Cariffied Public Accountants, 821 Market 51,
Sen Francisco 3, Calif.

Balance Sheet

AS AT OCTOBER 31, 1963

CURRENT ASSETS:	
Cash	
Wells Fargo Benk	
General account	\$ 4,502.00
Savings account	12 789 00
San Francisco Federal Savings and Loan Assn	10,357,00
Security Savings and Loan Association	10,000,00
Home Mutual Savings and Loan Association	9,124.00
Argonaut Savings and Loan Association	2,000.00
Patty cash funds	10.00
United States Treasury Roads Lat cost1*	4 500 00

TOTAL ASSETS \$53,282.00 LIABILITIES AND NET WORTH

CURRENT LIABILITY

Employees' payroll taxes withhold
Provision for 1963 Triannual raport
Provision for 1964 Biannial Conference

Obligated funds (see Schedule)

NET WORTH:
Balance at October 31, 1962 \$31,152,00

Ercass income over espenditures—
Year ended October 31, 1963 3,621.00 Net worth as at October 31, 1963 34.773.00 TOTAL LIABILITIES AND NET WORTH \$53,282.00

* A \$500 band is posted as bail in each of three different cases.

Statement on Oswald Case

Continued from Page 3—
now stand, Oswald has been publicly condemned by the officials
charged with his prosecution. If
he and he alone did the act it is
best that this be demonstrated
as conclusively as is now possible
so that whatever doubts there are
may be settled. Likewise, if this
is not so, that too must be established so that the search for the
killer may be continued.

Great care must be taken that
these events do not lead to a political witch-hunt either of the
left or right. The assassination
should not be made an excuse
for impairing any of our political
freedoms.

Atmosphere Of Reason

Atmosphere Of Reason

There may be, in the days and months ahead, in the emotion discharged by the assassination, a demand for restrictive action, including legislation, against certain political organizations and individuals — restrictions which could do great harm to such fundamental civil liberties as freedom of speech, press and association. Fortunately, there seems up to this point to have been a mature and sober reaction, in contrast to earlier periods of national distress. We are confident that this atmosphere of reason will contribute to the con-

Page 4 ACLU NEWS

tinuing strength of our free society.

President Kennedy would have been the first to decry any assault on vilal American freedoms, for he clearly understood the need for exercise of such freedom to keep our country a thriving, healthy democracy. As he said in a message to the ACLU in 1962:

"This country has passed

thriving, healthy democracy. As he said in a message to the ACLU in 1962:

"This country has passed through many periods of national peril. Now we are again in a period when risks are great, our burdens heavy, and our problems incapable of swift or easy solution.

"It is in times such as these that many men, weak in courage and frail in nerve, develop the tendency to turn suspiciously on their neighbors and leaders, Unable to face up to the dangers from without, they become convinced that the real danger is from within. Our hard-won freedoms are frequently abandoned in an effort to escape the burdens of responsible citizenship. At this moment in our history, the energies of all patriotic Americans must be focused primarily on our vital central problems.

"If we are to give the leadership the world requires of us, we must rededicate ourselves to the great principles of our constitution — the very principles which distinguish us from our adversaries in the world."

Free Speech Case

Reversed for

Lack of Evidence

The U. S. Supreme Coourt last wonth set aside the contempt of court conviction of two racists, leaders of the National States leaders of the NaACP and the Justice Department's proposal, that the convictions be reversed for

Lack of Evidence

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Lack of Evidence

The U. S. Supreme C

December 10, 1963 Statement of Income and Expense

TEAR ENDED OCTOBER 31, 1963		
INCOME:		
Memberships	\$54.594.00	
Special funds appeals		
Less portions directed		
to obligated funds		
Special gifts	3 937 00	
Memorial gifts	372,00	
Interest Income	1 877 00	
Publication sales, notary fees and miscellaneous	733.00	
TOTAL INCOME		\$61,449,00
Salarias		
Printing, stationery and office expense	36,480.00	
Pant	3,917.00	
Rent	3,735.00	
Postage	3,649.00	
ACLU Naws		
Taxes and insurance	1,740.00	
Telephone	1,126.00	
Retirement	741.00	
Travel and transportation	628.00	
Provision for 1963 Triannual report	600.00	
Employee hospitalization and insurance	459.00	
Audit	340.00	
Publications	483.00	
Furniture and equipment	242.00	
Annual meeting expense (net)	145.00	
Conterences expenses	252.00	
Membership campaign expenses	119.00	
Miscellaneous	135.00	
TOTAL EXPENDITURES		22500000
EXCESS OF INCOME OVER EXPENDITURES		\$ 3,621.00
	1000000	

Challenge Use Of Lie Test in ANC Program

The American Civil Liberties Union will shortly file an amirus curiae brief in the District Court of Appeal challenging the decision of the Contra Costa Country Superior Court that a person eligible for aid to needy children may be denied aid because of her refusal to obey the order of the district attorney that she take a lie detector test. The district attorney required the test to substantiate the information the recipient had previously given him concerning the father of her child.

The appellant in the case is the

concerning the father of her child.

The appellant in the case is the State Board of Social Welfare, represented by the Attorney General, which had decided that the woman was eligible for the aid under the needy children program. The ACLU's brief will be prepared with the aid of volunteer attorney George Duke and will argue that the use of the unreliable polygraph as a requirement for aid recipients is an arbitrary discrimination as compared with other recipients of government benefits and implies an assumption of disbelief in the oral and written statements which the recipient had previously made under oath concerning her eligibility for benefits. There is also a problem of self-incrimination in the lie detector tests although the privilege was not "claimed" in this case.

Transactions in Obligated Funds

		Rec	elpts					
	Balance	Special	Colpis		OR.	spen-		Balance
Character =	10-31-62	Appeal	Off	har		itures	Transfers	10-31-63
DEFENSE FUNDS:		110	5.0	0.77		******	transfers	495.00
General Defense fund	\$9,150.00	\$4,418,00	\$	6.00		248.00	{\$2,243.00}	\$11,083,00
John W. Mass vs. San Francisco			17	0.00		4.70.00	(+2,243.00)	\$11,083,00
School Board	925.00	45.00				859.00		
Lundquist vs. MEBA	11 050 001					522.00	1.501.00	00.101
Postel Workers case	1117.001					322.00	1,581.00	77
Plantman and H.U.A.C.	364.00	55.00				14.00	117,00	405.00
Teachers Loyalty Oath cases	72.00	11.00				398.00		
Jack Owens case	[2,097.00]	1,178.00	1.81	7.00		125.00	405.00	[315.00]
Shaver cose	[190.00]	62,00	.1456.1	,,,,,		12.00	140.00	
Goldberger saze	144.00					95.00	140.00	-
Custom Services cansorship cases	193.00		BO	0.00		30.00	+:	49.00
Heilberg case	100		100	0.00		35.00		963.00
Brecaro case	100	15.00				35.00		(35.00)
Burks case	1000		22	9.00		109.00		15.00
Sokal case		23.00	3.2	7.00		107.00		220.00
Belshaw case		83,00				275.00		23.00
Forstner case						14.00		[275.00]
						14.00		{14.00}
TOTAL DEFENSE PUNDS	\$7,385.00	4,629.00	2,95	2.00	2	746.00	-0-	12,220,00
OTHER FUNDS:								
Both Livermore Memorial Fund	2 134 00		10	6.00				
Lawrence Sears Memorial Fund	495.00		1.09	0,00				272.00
Boyd Memorial Library Fund	260.00	9.00						495.00
"Operation Correction"	1 088 00	7,00	1,398			338.00		(69.00)
Sacramento Fund	1,000		1.000		110	563,00		1,920.00
			1,000	0.00				1,000.00
TOTAL OTHER FUNDS	\$2,009.00	9.00	2,50	.00		901.00		3,518.00
TOTAL OBLIGATED FUNDS	\$9,394.00	\$4,638,00	\$5,453	00.1	\$3,	647.00		\$15,838.00
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newspaper. The Civil Liberties Union con-

tended that in a case involving free speech and assembly, a dience instead of having to be ap-

The first right of a cittzen Is the right To be responsible,

JOIN TODAY

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AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA

ration membership						*		\$ 100
Sustaining Membership								50
business and Professional Membershi	ip					15		25
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Associate Membership					٠.	٠.		10
Annual Membership					٠.			- 6
Junior Membership (under 21)			٠.					. 2
ACLU News Subscription							. \$	2.00
NAME								
ADDRESS								
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503 Market Stre	tet							

Son Francisco, S