American Civil Liberties Union

NEWS

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Sacramento Report

Right of Privacy Upheld in State Legislature

Privacy, a right essential to the preservation of a free society, has received a great deal of attention in the 1968 session of the California legislature.

Two bills, AB 598 (Biddle) and SB 1090 (Wedworth) which would have legalized police wiretapping and electronic eavesdropping, have been rejected by the Assembly's committee on Criminal Procedure.

Federal Law

One of the most notorious provisions of the Federal omnibus crime bill, signed into law by President Johnson in June, is the one permitting court approved wiretapping and eavesdropping. But that provision of the Federal law does have its brighter side. It prohibits wiretapping and eavesdropping by state and local officials unless there is a state law which substantially complies with the procedures set forth in the federal law.

No Police Wiretapping

AB 598 and SB 1089 were patterned after the federal law and would have permitted extensive invasions of privacy in California, invasions the police maintained that they had the power to make before the federal law preempted the field. The Criminal Procedure Committee's refusal to enact wiretapping legislation means that no police wiretapping or eavesdropping, other than that performed by federal officials, is legal in California. Unofficial wiretapping and eavesdropping was outlawed in the 1967 session of the legislature.

Non-Criminal Searches

Another bill which, as originally drafted, had a great potential for permitting state invasion of privacy is SB 1089 (Wedworth). SB 1089 is the Attorney General's attempt to deal with ACLUNC's victory in the United States Supreme Court case of **Camara v. Municipal Court of San Francisco. Camara** held that non-criminal searches, those used to promote compliance with administrative regulations, must meet Fourth Amendment standards, including a warrant procedure. SB 1089 pro-

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Nick Cipy Wins Reinstatement To Teamsters

On July 12 Federal District Court Judge Lloyd H. Burke entered a judgment in favor of Nick Cipy against International Brotherhood of Teamsters sustaining the position taken by Cipy's ACLUNC attorneys that Cipy was deprived of constitutional rights by being expelled from the union. The case was handled by volunteer attorney Jerrold Levitin who proved to the satisfaction of Judge Burke that Cipy was expelled from the Teamsters' Union in violation of his constitutional rights to criticize union officials. Cipy had charged that the union officials were corrupt and this charge led to his expulsion from the union in a decision finally affirmed by presently-jailed Teamster president James R. Hoffa. The union claimed that Cipy was expelled for persistence in making "groundless" charges.

Judge Burke held that so far Cipy had not suffered any monetary damages by being expelled from the union but ordered that unless he was reinstated to full membership in the union on or before July 26, 1968, the sum of $50 per day be paid by the union until reinstatement is consummated. Mr. Cipy has already received several awards of damages through NLRB proceedings after the union refused to send him out on jobs through its hiring hall.

ACLU Challenges Curfew In Berkeley and Richmond

ACLU attorneys, led by an active group of volunteers from the Berkeley-Albany Chapter, are closely watching the criminal cases in the municipal courts in Berkeley and Richmond involving alleged curfew violations during civil disturbances in those cities last month. After examination of the pertinent ordinances and authorizations for the curfews in the two areas, the ACLU's Board of Directors authorized legal challenges on the grounds that these curfews are broader than necessary to handle an emergency and as delegating legislative powers to administrative personnel without any proper standards or guidelines.

Dictatorial Powers

As an example, under the curfew ordinance of the City of Berkeley the City Manager may at any time declare a state of emergency and proceed to write any penal laws he wishes and have these enforced by the police department and the courts. This kind of delegation of legislative authority is clearly dangerous to values fundamental to freedom and provides a simple method for the deprivation of all liberties of a population in a whole city. The fact that essential liberties such as freedom of speech and assembly, freedom of movement, and freedom to leave your own home may be dispensed with so easily, should give pause to those who believe that civil liberties are solidly cemented in our country.

Racial Discrimination

The ACLU is particularly concerned with the operation of the curfew in the Richmond area. A large number of complaints have been received all verifying the allegation that police officials in Richmond enforced the curfew against black people and did not enforce it against whites. White persons on the streets were told to go home; black persons were arrested. Also independently verified by the cross-checking of many complaints is the allegation that police officials in Richmond used racial epithets against members of minority groups. Many of the curfew violation cases in Berkeley and Richmond have been dismissed by prosecuting officials, but ACLU will continue to represent defendants charged with curfew violations until a legal decision on the matter can be obtained.

Police Brutality Charged

ACLU's Berkeley-Albany Chapter has indicated in a public statement that any persons who feel that they were vicims of police brutality, and there are many such persons, have a right to sue for damages in either state or federal courts and should give serious consideration to the pursuit of such remedies. Because such damage actions involve disputed facts, the ACLU itself cannot handle them except in extraordinary circumstances. However, the Police Complaint Center of the Berkeley Chapter is taking statements from all persons who believe themselves victims of improper police conduct and such persons are urged to contact the Center at 548-0921 from 8-10 p.m. Monday through Thursday.

Presidio Admits Rough Handling Of Prisoner

Col. Robert E. McMahon, Commanding Officer of the Presidio of San Francisco, admitted on May 16 that one of the Stockade guards "did roughly handle" Private Christopher King but rejected claims of brutal treatment.

King was allegedly beaten in the boiler room of the Presidio Stockade when he would not allow his hair to be cut. "One of the guards," said Col. McMahon, "in reacting to Private King's behavior did roughly handle the prisoner rather than summon the aid of additional custodial personnel to assist him. Appropriate action has been taken to preclude future incidents of this nature."

Following earlier ACLU action on alleged mistreatment of Stockade prisoners the behavior of guards reportedly improved. Just recently, however, the ACLU has again received complaints of brutal treatment of prisoners by Stockade guards.

A detailed report of the King case appears in the June 1968 issue of the NEWS.

Muslims Win Right to Wear Beards in Navy

Muslims serving in Vietnam with U.S. Naval Mobile Construction Battalion Forty will be permitted to wear their beards. The decision was sent to ACLUNC by Commander W. F. Daniel, Commanding Officer on June 25.

The Muslim members of the unit had been court martialed, reduced in rate, fined two-thirds of their pay and restricted for over 60 days. At the time the ACLU intervened in their behalf they were faced with another court martial.

Under Islamic law, Muslims are enjoined to "Oppose the polytheists, clip the mustaches and keep the beards." The Muslims insisted on the right to practice their religion.

Navy regulations provide that "The face shall be kept clean shaven, except when a mustache and/or beard is worn. The mustache and beard shall be kept short and neatly trimmed and no eccentricity in the manner of wearing these shall be permitted."

Recorded Telephone Messages

State High Cou Supports Right Of Anonymity

On July 19 the Supreme Court of California unanimously ruled in the case of Huntley v. Public Utilities Commission that the right of free speech was abridged by a Commission requirement that persons using recorded telephone messages disclose their names and addresses in the message. The opinion of the California Supreme Court was a strong affirmation and recapitulation of free speech principles which will strengthen the protections accorded to civil liberties by the judiciary throughout the state. The fact that all seven justices joined in the opinion written by Justice Peters is another indication of the importance of the decision since, in most previous free speech issues coming before the California Supreme Court, there is a divided opinion.

Criticism of Messages

The case arose in 1966 when there were numerous complaints to various telephone companies concerning the strong right-wing political message which could be obtained by dialing the numbers in various cities advertised under the listing "Let Freedom Ring." These messages were considered harmful by a number of thoughtful groups such as the Anti-Defamation League. In response to these criticisms the Bell Telephone System announced that it would require that persons sponsoring recorded telephone message services include their names and addresses in the message, and regulations to this effect were approved by the regulating commissions in 46 states. Only in California was the regulation challenged.

Content of Speech

The challenger was a Berkeley resident named Fred A. Huntley who ran a recorded message service which he called "Let Freedom Ring" but which he claimed was independent from other similar programs. The ACLUNC agreed to furnish counsel for Huntley and itself became a co-petitioner in the case, objecting to the identification requirement. The ACLUNC was represented by volunteer attorney H. Reed Bement and staff counsel Marshall W. Krause. Several days of hearings were held on the issues and several briefs were filed. It was pointed out that the telephone company retained the name and address of the subscriber which are available to anyone inquiring for a legitimate purpose. The only evidence adduced in the hearings was that a number of persons did not like the content of Mr. Huntley's messages, but there was no evidence that the stating of Huntley's name and address would do anything else except subject him to harassment from his political opponents.

P.U.C. Issues Regulation

Nevertheless the Public Utilities Commission accepted the regulation proposed by the Pacific Telephone & Telegraph Company (a subsidiary of the Bell System) and the ACLU and Huntley filed a petition for a review of this decision with the California Supreme Court.

The Road to Truth

Justice Peters' decision starts out with a strong defense of free speech theory based on the principle that only through unrestricted clash of views may the truth be exposed and accepted. He points out that "Freedom of speech encompasses more than simply the right to be protected from censorship of content. It extends to communication in its most fundamental sense. The First Amendment embraces both the right to disseminate information and necessarily the right to receive it. Improper restraints on communication may vary in form and degree, but all have the effect of restricting the dis-

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Alcoholism Case Taken to Court of Appeals

In June of this year the United States Supreme Court surprised prognosticators by declining, by a vote of 5-to-4, to declare unconstitutional the application of public drunkenness laws to persons who are chronic alcoholics and connot resist drinking. It was thought that the case of **Powell v. Texas** would end the inhumane practice of jailing persons whose only crime is being sick with the disease of alcoholism, but the majority of the Supreme Court, led by Justice *Thurgood Marshall*, refused to accept the argument that Powell's punishment was "cruel and unusual" within the prohibition of the Eighth Amendment.

Four Dissenters

Justices Douglas, Brennan, Fortas and Stewart dissented from this decision and they wrote an opinion indicating that they would reverse the conviction on the ground that Powell was being punished for exhibiting the symptoms of his illness. At least four votes is an improvement over the votes this same issue got when the case of Thomas Budd reached the United States Supreme Court in 1967. That case, handled by the ACLUNC, received only the votes of Justices Douglas and Fortas.

Federal Court Action

ACLU attorneys did not allow the **Budd** case to die but instead filed a writ of habeas corpus in the Federal District court which was held under submission until the decision in the **Powell** case. Then Judge Oliver Carter denied the writ of habeas corpus but now has granted a stay of execution of Budd's sentence in Oakland Municipal Court while ACLU's attorneys, led by volunteer George F. Duke, appealed the case to the Ninth Circuit Court of Appeal.

Since one of the majority justices on the United States Supreme Court (Chief Justice Warren) has since resigned, and since another of the five justices indicated that he might rule the jailing of chronic alcoholics unconstitutional under certain limited circumstances, it is certainly possible that the Supreme Court will change its mind on the issue and it is hoped that the **Budd** case will provide the vehicle for the change to be accomplished.

Meanwhile, in most areas of the country, the dreary process of repetitive jailing of drunks goes on under the mistaken assumption that these victims of disease are committing a moral sin against society by being unable to control the symptoms of their illness.

Letters to the Editor

Some Members Oppose National ACLU Gun Policy

Second Amendment

Editor: I observed in the July, 1968 issue of ACLU News that "The American Civil Liberties Union last month urged the adoption of strong federal gun-control legislation."

The article states:

"The Second Amendment to U. S. Constitution states: 'A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.'

"At a press conference held at the national headquarters . . . the ACLU said it agrees with the Supreme Court's long-standing view that the individual's right to keep and bear arms applies only to the preservation or efficiency of 'a well-regulated militia.' Except for lawful police and military purposes, the possession of weapons by individuals is not constitutionally protected."

As a member of ACLU and ACLUNC, I strongly object to this position for the following three reasons:

First—It is my understanding that the ACLU holds itself ready to act only in specific cases involving individual deprivations of constitutional liberty.

Second—I further understand it is your function to protect the constitutional liberties of citizens and not connive to thwart them, and

Third—I do not agree with your legal conclusions concerning the Second Amendment. It cannot relate to "military purposes," as you state, for Congress is given power to declare war, provide for the defense, raise an army and provide for a navy in Article I, Section 8. Nor does the Second Amendment say anything about a "lawful police purpose." as you have tried to impute. It was not intended (or necessary), in this bill of individual protective rights, to provide for police departments.

The Second Amendment does not impose on the people the duty of having a well regulated militia—it says only that a well regulated militia is necessary to the security of a free State; but by assuring to ALL the people (in whom, after all, the powers of government are vested), the right to keep and bear arms, it constitutionally insures that whenever a well regulated militia becomes necessary to the (external or internal) security of their State, the people shall have the legal and practical power to effectuate it. The uninfringeable right of the people to keep and bear arms is the crux of the whole section—the sine qua non of the security of the State—and it is a constant, absolute, individual right, whether a militia exists at any particular moment or not.

If the Section does not mean this, there is no reason for it; if the intent was to have it mean something else, it would have said something else — and I charge you and the responsible officials of the American Civil Liberties Union with having an educated knowledge of that fact.
—John L. Steely, Sacramento.

Dismayed

Editor: I am dismayed by your position on strong Federal gun control laws for the following reasons:

1. Guns are not the only weapons contributing to disruption of communicative endeavors.

2. The rights of legal gun owners will be restricted through repetitious registration and gimmicky fees.

3. Such laws are not enforceable without dangerously jeopardizing civil liberties.

4. Such laws will result in further expansion of government policing.

I neither own nor wish to own a gun, nor do I have Bircher inclinations. Laws will not dissolve the stockpiles, however, although they can stigmatize honest, trustworthy citizens as criminals.—Mrs. Rachel Ralston, Menlo Park.

Short-Sighted ACLU

Editor: I appreciated the announcement, in the July issue of the ACLU News, that the national ACLU is backing "strong federal gun-control legislation as necessary to foster 'The free and fearless debate on which our free society rests'." . . .

Disarming the law-abiding in the face of the rising crime wave is not going to promote the "free and fearless debate" anymore than prohibition promoted a nation of abstainers.

With reference to the Second Amendment, may I remind you that the writers of the Constitution had in mind neither a trained military body nor a corps of policemen, when they said a well-regulated militia is necessary to the security of a free state. What they meant was that, unless men were armed, it was no longer possible for them to determine the kind of government they wanted. Government by consent of the governed becomes a purely academic concept if the governed are no longer able to enforce their will—and without weapons, how can they?

By a "well-regulated militia" the founding fathers meant a citizenry able to respond to the call for defense of home, country, and principle, not just with their bodies but with weapons, ammunition, and the skill to use them. The natural weapon for this purpose is the gun.

Take the long view. Are you prepared to say, and guarantee, that this country will never have to call its civilians to arms in a last ditch fight for self-preservation?

That is what the British thought in the 1930's, so they enacted a set of onerous gun control laws that made all but the the few most stubborn give up their guns. However, when the Nazi hordes were poised for invasion across the English Channel, the British sent a frantic cry over the Atlantic, to those barbarous Americans, to send their rifles and shotguns, and even handguns, so that the British might fight off the enemy and preserve the way of life of the English speaking peoples.

Did the British learn anything from this deadly lesson? No. Their gun laws are as restrictive today as ever!

Why was it that the Resistance Movement in France was so slow getting underway? I can still re-

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BRANCH URGES POLICE GUN CURBS

In a public statement released last month the Board of Directors of ACLUNC warned that police use of deadly force in the absence of an immediate threat to another life violates the 14th Amendment to the Constitution by taking life without due process of law. The Board's statement, the complete text of which appears below, noted that giving a police officer the right to take a life merely because he believes that a fleeing person has committed a felony gives that police officer the right to judge and punish. This conflicts with the presumption of innocence as to every person accused of a crime and can result in the loss of a life for such relatively minor offenses as joyriding in a stolen vehicle and breaking and entering.

The ACLUNC statement was specifically issued to support the position of Oakland Chief of Police Charles Gain that Oakland police officers should not use deadly force to apprehend suspected auto thieves and burglars. A similar order issued by the Chief of Police in Richmond, California, was countermanded by a 3-to-2 vote of the Richmond City Council after a tumultuous meeting dominated by those who equate law and order with unrestricted force in the hands of police officials. There have been a number of recent incidents in northern California of young persons killed by police gunfire because they were suspected of a crime even though they were posing no danger to another person. These incidents, states the ACLU, have resulted in justified public indignation over killings without due process of law. Such excessive use of force by police, states the Commission on Civil Disorders, has been the spark lighting most of the racial disorders around the United States.

The complete text of the ACLUNC statement follows:

The Fourteenth Amendment to the Constitution of the United States forbids the taking of life, liberty or property "without due process of law." This clause requires a fair and measured procedure in all cases where the government acts to interfere with the right to life, liberty or property. The right to life requires the most rigid protection as, once life is taken, no remedy is available.

Police use of deadly force threatens to take lives without due process of law and can be justified only to prevent an immediate threat to another life. The duties of the police department include the apprehension of suspected criminals and do not include the judgment or punishing of these suspects. Every person accused of a crime is presumed to be innocent unless proven guilty at a judicial trial.

In these circumstances, the ACLUNC warns that the taking of life by police officials in the absence of an immediate threat to another life is a violation of constitutional rights. We urge all governmental agencies and police officials to respond to justified public indignation over killings without due process of law by strictly forbidding use of deadly force where there is no immediate threat to another life.

Poverty Suit Loses in Court of Appeal

California's Court of Appeal, unimpressed by ACLUNC's lawsuit seeking a writ of mandamus to allow a person too poor to pay the filing fee to go ahead with a civil suit, has refused to act in the case of **Leonard Glaser v. The Superior Court in and for the City and County of San Francisco.** Glaser's case, described in last month's NEWS, has now been presented to the Supreme Court of the State of California in a petition for hearing, filed by Glaser's attorneys. Staff counsel Marshall W. Krause and volunteer attorney Charles S. Marson.

No Opinion

The petition for hearing points out that the Court of Appeal denied Glaser's application for a writ without any opinion, thus leaving the state of the law concerning whether a poor person can sue in a civil action unclear in California. The petition for hearing points out that California courts have said that in an appropriate case a poor person could sue without payment of fees but have never specifically described the appropriate case and the proper procedures. The petition for hearing states: "The remoteness of law and justice from the poor is one of the major legal crises of our time. The poor litigant, as well as the rich one, is entitled to know the procedures he must follow in order to have access to the courts. This court can establish some of those procedures by hearing and deciding this case." It is expected that the California Supreme Court will act on the petition for hearing sometime in August.

Equal Protection

The petition for hearing points out that Glaser was unable to even file his case and thus get a decision on the merits of his cause of action. Any litigant who can pay the filing fee can at least obtain a hearing on the sufficiency of his cause of action and any litigant who can pay the filing fee can at least obtain a record to proceed with an appeal. Glaser was denied the right to file his complaint and therefore cannot even appeal or obtain any decision on his case. This seems a clear violation of the equal protection of the laws and it is hoped that the California Supreme Court will correct this injustice in order to make the remedies of law more available to the poor.

Mt. Diablo Chapter Seeks Members' Aid

Chapter Chairman Richard Patsey last month urged all members in the Mt. Diablo Chapter area to participate in the extensive new projects launched at a workshop session of the Chapter's membership held on July 20.

Speakers' Service

Forty members attending that meeting planned an area-wide speakers' service to arrange speaking engagements on civil liberties topics for a number of qualified speakers with service clubs, church groups, schools, societies and organizations. This campaign is designed to broaden public understanding of the ACLU and its work and to enable non-members to recognize infringements and realize the importance of defending civil liberties.

Various Committees

A committee was also formed to study ghetto problems in the Chapter area, including police-community relations, welfare rights and discriminatory discipline in schools, and to plan appropriate remedial action where civil liberties are threatened. Civil liberties problems in the public schools and the rights of juveniles in general was the topic assigned another committee. A legal panel is being organized to investigate and take action as indicated on complaints of violation of rights.

Who to Contact

Chairman Patsey requests that any interested member able to work with any of the above committees contact Marilyn Pennebaker, Chapter Secretary, at 335 El Toyonal, Orinda, telephone 254-8681, or himself at 3168 Cafeto Drive, Walnut Creek, telephone 932-1921.

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Campus Draft Opposition

Important New Issues Raised in Univ. of Cal. Case

Important new issues were brought into the case of Sellers v. The Regents of the University of California on July 19 when the plaintiffs' complaint was amended in Federal District Court. The suit was originally started by student and faculty members of the Campus Draft Opposition at the University of California who were protesting the denial of the Berkeley campus' Greek Theatre for a commencement ceremony at the end of the spring semester. After a temporary restraining order against the University was denied on the ground that irreparable injury had not been proven, the same ceremony was held on the Sproul Hall steps of the campus.

Aiding and Abetting

Now the complaint has been amended to add these two issues: First, the plaintiffs point out that they plan to continue the operations of the Campus Draft Opposition on the campus which include the collecting of pledges from those persons who support young people in their own decisions not to respond to military service and from young people themselves who state that if called they will not serve. The plaintiffs then state that the provisions of the Military Selective Service Act of 1967 which punishes as a crime "any person who knowingly counsels, aids or abets another to refuse or evade registration or service in the armed forces . . . or who conspires to commit [such offense]" have been used by the University to charge them with illegal conduct and to deny them their right of free speech. Therefore the plaintiffs urge that a three-judge federal court be convened to hold such section unconstitutional.

Overbroad Law

The significance of this challenge is that this is the same section under which Dr. Spock and three others were convicted after a Federal District Court trial in Boston and the same section which is used to inhibit persons opposing the draft throughout the United States. The ACLUNC believes this law to be unconstitutional because it is too vague and overbroad to stand as a valid regulation in the freedom of expression and assembly area and because it deprives persons of their freedom of speech.

Resolution Challenged

The second significant aspect of the latest amendment to the **Sellers** complaint is that a challenge is made to the legality of the Regents' resolution in October of 1967 forbidding the use of University premises for "unlawful activity." It is alleged that this resolution, which has also been used to deny the Campus Draft Opposition free speech rights, is a prior restraint on freedom of speech in that it allows an administrator to deny use of campus facilities merely because he believes that the activity will be "unlawful." The ACLU, which is representing the plaintiffs, in the **Sellers** suit through staff counsel Marshall W. Krause, has always believed that prior restraints on free speech are unconstitutional and and that speech activities may be punished only when they are shown to have been unlawful in a court of law.

Critical Issues

These two new allegations may make the **Sellers** case of critical importance to free speech rights in the country as both of the issues it newly raises will have to be ruled upon by the United States Supreme Court.

Must Indigent Defendants Pay for Counsel

San Mateo County seems to be unique in Northern California in requiring persons who have proven themselves to be indigent to pay for the counsel which the court appoints to defend them in criminal cases. Curiously, not all defendants have to pay for their counsel; only those found to be guilty. Thus, as additional punishment, persons who are guilty of crimes and have the temerity to request counsel to help defend them are doubly punished.

Condition of Probation

The method used by the San Mateo County judges is to require payment to the County of a sum of money as a condition of granting probation to the indigent defendant to compensate the County for the money it spent to defend him. If the money is not paid, the defendant's probation may be revoked and he can be sent to jail.

Test Case Sought

The ACLUNC objects to this procedure as an unconsitutional condition of probation but so far has been unsuccessful in obtaining a test case to challenge the practice. Lawyers in San Mateo County are urged to refer such conditions of probation to the ACLU. Last month ACLUNC staff counsel Marshall Krause appeared in San Mateo County to protest the condition of probation as to a particular defendant and promptly had the case pulled out from under him when the judge struck out the objectionable condition of probation.

ACLU Objections

ACLUNC objects to indigent defendants being required to pay for their own counsel on the ground that it discourages criminal defendants from exercising their constitutional right to have counsel appointed to represent their interests. Even though a person is guilty of a particular crime, counsel can still perform valuable, indispensable, functions in raising technical defenses and mitigating punishment. It is feared that a number of indigents, knowing that their punishment will be increased if they request counsel will waive the right to counsel because of the San Mateo County rule. Moreover, there are no standards under which a judge makes a decision as to who shall pay for counsel and the additional punishment provided by the imposition of such costs probably interferes with rehabilitation which is the basic purpose of probation.

Narrow Failure In Maginnis Abortion Case

The campaign of the ACLU to obtain a favorable ruling in the case of **People v. Patricia Maginnis and Rowena Gurner** failed very narrowly last month when the California Supreme Court declined to accept a petition for a writ of habeas corpus by a vote of 4-to-3. The writ sought to attack the validity of Business & Professions Code Sec. 601 before the two defendants were required to go to trial for an alleged violation of its terms. Section 601 forbids dissemination of information about techniques of abortions. It thus chokes off discussion aiming toward reform of the anti-abortion laws since the public is prevented from knowing such things as the simple surgical techniques for performing an abortion.

The decision of the California Supreme Court denying pretrial relief came over the dissents of Chief Justice Traynor and Justices Peters and Tobriner. Justices Mosk, McComb, Sullivan, and Burke voted to refuse to intervene in the case. No doubt the issue will again be presented to the courts if Miss Maginnis and Miss Gurner are convicted in their Superior court trail.

Oakland Area Council Organizes

Since its recognition by the Branch Board of Directors in June the enthusiastic response of the membership has enabled the Steering Committee representing Oakland members to put in motion an ambitious program for the coming months in Oakland, Piedmont and Alameda.

Public Meeting

At meetings held in June and July, to which interested members were invited, a public meeting held on July 24 was planned with Chief of Police Charles Gain, Legal Aid Staff Counsel Clifford Sweet and **Montclarion** News Editor Peggy Stinnett on a panel moderated by ACLUNC's Executive Director Ernest Besig, discussing the state of civil liberties in Oakland area.

Gary Schwartzman was appointed to organize a speakers' bureau and to arrange engagements for speakers on civil liberties topics as the Council's first educational attempt.

Police Problems

A Police-Community Relations Committee, chaired by Mrs. Barbara Berman, held an organizational meeting early in July at which a coordinating committee was delegated to plan a specific program. A meeting was scheduled for August 5, at the home of Dr. and Mrs. Bernard Berger, 6537 Chabot Road, Oakland, to which all members willing to participate in this Committee's work are invited to attend. Mrs. Berman has announced the general objectives of the Committee to include: studying police practices, policies and procedures as these relate to constitutional protections for the citizen, with special emphasis on riot control policies, recruitment and training methods, and arrest and interrogation practices; recording and investigating citizens' complaints of alleged violations of civil liberties, improving the processing of such complaints through public agencies, and emphasizing to the city government and police department their roles in maintaining the constitutional rights of every citizen.

School Issues

Mrs. Suzanne Rose was appointed to chair a Public School Issues Committee, which will investigate civil liberties problems in the schools, plan remedial action, and prepare to take up individual cases as they arise.

Legal Coordinator Roger Kensil has announced that a legal panel meeting will be called early in August to assign responsibility for screening and investigating possible cases, and to appoint resource attorneys as needed for the standing committees.

Who to Contact

Interested members are urged to call Mrs. Stella Hemphill, Council Secretary, at 452-2881 for further information and details of the new unit's program. Members are also urged to make individual efforts to recruit new members, and Mrs. Hemphill can supply membership application envelopes and ACLU literature to use in contacting prospective members. The Steering Committee has set a goal of 500 members by the end of 1968. Present paid-up membership numbers 377.

Right of Privacy Upheld In State Legislature

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vides such an "inspection warrant," procedure.

Warrant Procedure

In its original form, **SB 1089** would have permitted inspection warrants to be issued in order to conduct searches "required or authorized by state or local law or regulation relating to health, welfare, fire, or safety." That includes virtually all of the powers of the state and could, for example, be used as a device to harass welfare recipients. ACLU's opposition to **SB 1089** was removed after the Assembly Judiciary Committee limited the scope of possible inspections to such things as zoning, health, fire, and safety .regulations Other ACLU amendments that have been incorporated into the bill provide notice to the person whose property is to be inspected, a requirement that the place to be inspected be particularly described, thus removing the possibility of general warrants and roadblocks, and a limitation on those circumstances in which a judge may authorize a forceable entry to situations in which there is an immediate threat to the public health or safety or when reasonable attempts to serve the inspection warrant have been unsuccessful.

Welfare Recipients

Another bill that would invade the privacy of welfare recipients is **SB 102**, authored by Senator John Schmitz (R., Orange). **SB 102** would make the list of welfare recipients available for the scrutiny of anyone. At this writing **SB 102** has been stalled in the Senate. A similar measure passed the Senate last year; it was killed in the Assembly.

Privacy of Pupils

Senator Schmitz, who is not intimidated by foolish consistencies, has authored two bills that promote privacy and are supported by ACLU. **SB 669**, which has been passed by both houses and awaits the Governor's signature, prohibits schools from administering surveys in which questions appear about a pupil's personal beliefs or practices regarding sex, morality and religion without first receiving permission from his parents. Schmitz's **SB 670** greatly limits the persons to whom personal information concerning a pupil may be given. **SB 670** has passed both houses, but in different forms, and is currently in a conference committee of the two houses.

Mistreated Minors

One privacy measure has already been signed by Governor Reagan. **AB 137** (Milias) limits the persons to whom information regarding a mistreated minor may be given by the Bureau of Criminal Identification and Investigation.

Simulated Sex Acts

SB 487 (Walsh), which would have prohibited college productions of plays in which a "simulated sex act" occurs, has been killed.

The bill was inspired by a college production of **The Beard**, a play that ends in an act of simulated oral copulation. As introduced, **SB 487** made a misdemeanant of any student who performed in such a play or any teacher who counseled or aided in any such production. Although **SB 487** dealt with conduct on college campuses it was not assigned to the Senate Education Committee but, because of its criminal sanction, to the Senate Judiciary Committee. The bill was approved, sent to the Senate floor and passed.

Neat Trick Fails

But Walsh (D-Los Angeles) knew his temporary success was illusory and that his bill would not receive a congenial reception in the Assembly Committee on Criminal Procedure, the graveyard of obscenity bills. Accordingly, he devised a neat trick for avoiding Criminal Procedure. He amended the bill to strike the penal provisions inserting, instead, a penalty of automatic dismissal from the college, thus bringing his measure without the purview of Criminal Procedure. Speaker Unruh adopted a counter-strategy: he simply ignored Walsh's amendment and sent the bill to Criminal Procedure anyway, where it was disposed of promptly.

Loyalty Oath

When the joint effort of the Northern and Southern California branches of ACLU resulted, last December, in a State Supreme Court decision holding unconstitutional California's oath of non-disloyalty for public employees, Assemblyman James Hayes (R., Long Beach) issued a press release in which he promised to introduce a bill providing a new oath of non-disloyalty for public employees. True to his word, **Assembly Constitutional Amendment 10** (Hayes), providing a new oath of non-disloyalty for public employees, was introduced on January 18. It was assigned to the Assembly Committee on Elections and Reapportionment where it has languished ever since. In July Hayes dropped his bill conceding that he lacked the votes necessary to get approval for his oath. Defeated but undaunted Hayes has promised to try again next year.

—Paul N. Halvonik

S.F. Employment Questionnaire Changed

At long last the majority of the San Francisco Civil Service Commission has voted to change that body's archaic practice of requiring disclosure of any arrests on all employment applications filed with the City and County of San Francisco. The Commission's new policy, adopted early in July at the insistent urging of many groups including San Francisco's Human Rights Commission and ACLUNC, now asks applicants to list only **convictions** which have occurred during the past two years.

Discrimination

The ACLU, in a letter congratulating the Commission on this move, pointed out that the former practice of holding all arrests against applicants for employment was a rank discrimination against members of minority races as to whom the police show more than ordinary interest in making an arrest, especially of young persons, and also the former practice was a threat to due process of law as it allowed the mere decision of a policeman to make an arrest to be held against a person for the rest of his life even though that person never had a chance to go to court to clear himself.

Arrest Records Preserved

Many persons do not realize that once an arrest record has been created in California even if charges are never pressed and even if the police admit that a clear mistake was made, that record may never be removed and persons filling out employment applications must always disclose arrests where called for by the question. A person convicted of an offense is better off than a person arrested but not charged as the person convicted may get his conviction "expunged" after serving a term of probation. However, many government applications, including those for the State of California, flout this expungement benefit by asking questions such as "List all convictions, whether or not they have been 'expunged.'"

Some Members Oppose National ACLU Gun Policy

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member the contempt we felt for the supine Frenchman. But we were wrong. Frenchmen were brave enough, but their oversolicitous government had seen to it that very few of them had guns, and **every gun in private possession was registered.** When the Nazis came in, they went first to the registries; then to the owner. Presto! Frenchmen were reduced to helplessness until the U.S. could supply them with arms. Dare we hope to be so lucky, in a similar emergency, as to have a helping friend?

While your article was vague on this point, it is fairly clear that you have climbed on the bandwagon and are trumpeting for registration of all firearms. I hope I have made clear what a deadly weapon against us registration can be if the registries fall into the hands of an enemy —whether an invading foreigner or a domestic tyrant seeking power. Let us assume, now, that your energies have succeeded in bringing into being a central registry of all firearms in the nation. The years go by and the crime rate does not fall. Or, perhaps, it falls a little. But the fever has died down and nobody pays much attention.

And then, another public figure is shot! Again the fever to prevent such violence rises to a furious pitch. Something must be done — anything! But — we have already done about all we could, what with registration and licensing! So what's left to do? Why, **Of Course:** Take away everybody's guns. It's easy! We paved the way when we forced their registration. So, now, the stalwart American citizen stands naked and helpless before the world. And that, has been the ultimate **objective of most of the public men with whom you are now making common cause:** The Dodds, The Kennedys, The Tydings, etc.

I am filled with horror and shame that ACLU, the organization I have supported and defended for so many years as the foremost defender of the American Way of Life should now join in its destruction!

So much for the broad aspects. Have you ever stopped to think, how many crimes are **prevented** by police? It happens so seldom that each such event is as newsworthy as "when a man bites a dog." The police go into action **after** the citizen has been victimized by the criminal. The money has been stolen, the service station robbed, the woman raped. There is nothing the police can do for them now. So it has always been; so it will always be. Clearly, if the law abiding citizen is to be defended against the criminal, he will have to do it himself.

Now, what can he do to defend himself? Of course, he can always get down on his knees and pray. I know of no case in which this tactic has proved successful.

Pity the poor housewife, all alone with her children, who faces a burly intruder through the screen door. If your gun control program is successful, there is nothing she can do but hope he will not be too brutal. How different the housewife in Orlando, Florida, who has been police-trained to use her handgun. The intruder can take his choice — force entry and risk being shot, as he will be, or take himself off. Daylight burglaries dropped drastically in Orlando after inauguration of this program. Would you rob this woman of her means of self-defense? Can you suggest any other that would make her the equal of the most powerful man?

Man has come a long way since he first learned that he could be more successful acting in a group than acting alone. He still has a long way to go, and progress is painfully slow. But no one who reads history will deny that man will continue to grow. Give him a chance to outgrow his need for guns. Guns are superb equalizers. They are the only equalizers. They permit a 90 pound woman to strike as heavy a blow as can a 200 pound athlete. A gun is no more and no less than this: a device for striking a blow at a distance. The equality it conveys will do far more to promote "the freedoms associated with civilized society" than the "gun control legislation" you now advocate. (I quote from the aforementioned ACLU News article).

At this point in our history we cannot afford to give up our guns. It is a capitulation to pure sentimentality to think otherwise. We need them to defend our nation against both internal and external enemies — they are among our most essential resources. 175 gun deaths per week, striking as the figure looks, is less than 1 per million. Compare the number of auto deaths.

The vast bulk of Americans are decent, law-abiding, honest citizens, who will handle guns responsibly. The American people can be trusted. You have always trusted them. You have always fought for their rights. Why do you desert them now? Why not concentrate on the criminal, instead of the law-abiding? Why not punish the criminal use of guns so drastically that no criminal would dare be seen with a gun? Strange, how lawmakers shy away from such legislation! Such solicitude for criminals! Why? Why, instead, do they propose laws that favor the criminal, the enemy, and undermine the upright and the nation?

The ACLU should get acquainted with the men of the National Rifle Association. These men know guns as you know and study Civil Liberties. They are as horrified as you at the misuse of guns and have for years led the movement for sound gun legislation. They also know what guns have meant to the growth of America and still must mean to her future. I commend them to you.

We have not come to the parting of the ways. I cannot disown you. One doesn't disown a good friend for one flaw or even two. But I shall be watching more critically in the future. Sentimentalism can be your (our) downfall.—**Harry J. Voth, Fair Oaks.**

Oppose All Legislation

Editor: I was surprised to see in the July issue that the ACLU has urged "adoption of strong federal gun-control legislation."

Almost daily, newspapers tell us of police violence against the people, particularly against Blacks and Chicanos and Indians. Only a few days ago, a Richmond policeman used a gun to stop a 15-year-old Black youngster, and the Black Community—properly —retaliated. In Berkeley, police used tear-gas and clubs against kids defending their legal and constitutional rights, used them so enjoyably and viciously that even the Berkeley Gazette published a story quoting an anonymous policeman's distaste for what he had seen. Belatedly, the Berkeley city council granted what the students had asked in the first place, free speech on Telegraph Avenue, thereby confessing that all the police violence had been quite improper, illegal, unconstitutional and outrageous.

These are facts. They show the NECESSITY of the Second Amendment to the U. S. Constitution: "The right of the People to keep and bear arms shall not be infringed."

Let me put it in personal terms. I am white and blue-eyed, but twice I have been bellowed at by stupid brutes on the Oakland police force, so I have a hazy idea what Black people have been subjected to. I understand quite well why the Black Panthers advocate that Black people carry guns for self-defense against police.

The Second Amendment was adopted by people who had had to fight British government oppression, people who were determined that they were going to hang on to their guns to keep future governments in line, and that their descendants — we— should keep our guns handy for the same purpose.

About 10 or 15 years ago, Indians in North Carolina were attacked by the KKK. The Indians used guns to defend themselves, chased off the Klansmen, so, as far as I know, they haven't been bothered since. The Second Amendment was a necessary and useful instrument for those Indians.

Your story says national ACLU officers accept the view that the Second Amendment doesn't really mean what it says. They argue that the amendment merely protects the right of the militia — not the people — "to keep and bear arms". Such a view defies the plain wording of the amendment: "The right of the people to keep and bear arms shall not be infringed." Such a view ignores history in the U.S.; as far as I know, the militia has always been used AGAINST the people, especially against strikers.

I think the Second Amendment means what it says. I think the ACLU should defend it, and fight for it. I think the ACLU should oppose all legislation interfering with it, on the legal ground that such legislation is unconstitutional, and on the historical ground that the people need their guns these days.

The Second Amendment is just as important a part of civil liberties as the other parts of the Bill of Rights. The ACLU will disgrace itself unless it defends this one, too.—**Lee Coe, Berkeley.**

Disarm Police

Editor . . . I wish to resign from the American Civil Liberties Union. This is due entirely to your stand on Federal Gun Control. Personally I have a number of firearms, all of which have been registered voluntarily with the Chief of Police in my home city of Belvedere at a time when there was no requirement so to do. This was done for my own protection in case of theft. I have no objection to the registration of firearms nationally or at the State level, provided that whatever legislation is passed is not passed in an hysterical atmosphere of highly charged emotion but soberly and carefully. I do, however, humbly call your attention to the fact that among the groups who should be disarmed are the police of the United States of America. I suggest, sir, that you study the English law on the subject before you dismiss this as a crank letter. I have been exercised for a number of years by the Southern sheriffs and deputies who have murdered Negroes, I am exercised by the trigger-happy Northern police who shoot and kill young teen-agers for what is admittedly a felony, namely, stealing a car, but is a felony of such minor nature that the death penalty is not warranted. This is a far more serious situation in the light of suppression of minority races.
—**James Rowland, San Fran.**

State High Court Supports Right of Anonymity

Continued from Page 1—

semination of ideas. The clearest abuse is an outright prohibition of a constitutionally protected form of speech. Regulation short of absolute prohibition is also invalid when expression is made dependent upon state approval by the obtaining of a permit or is conditioned upon obtaining the approval of a board of censors. Nor does the restriction become permissible because it merely limits the manner of expression rather than the initial right to communicate."

Southern Cases

Justice Peters then discusses the cases in which anonymity has been held to be an indispensable part of freedom of speech and association. These include a number of Supreme Court cases in which disclosure of membership in organizations was sought to be compelled by southern states. These attempts were stopped by the courts when it was pointed out that such disclosure would result in harassment by the public of those persons who were members in civil rights groups and that the state could not disclaim responsibility merely because they only compelled the disclosure and did not participate in the harassment.

Protecting Minority Views

Justice Peters continues: "There can be no doubt that disclosure requirements may deter free speech. It must be remembered that the right of freedom of speech is primarily intended to protect minority views. 'The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.' The majority may freely assert its beliefs and is secured freedom of speech by the very fact of its mathematical majority. It is the minority, whether of the left or the right, which must overcome accepted views. To succeed, the minority must persuade others until, as is the nature of a democratic society, it hopefully attains the status of the majority. In doing so, the minority will frequently be subjected to criticism and debate, a necessary adjunct to the ascertainment of truth. But, depending upon the popularity of the minority position and the inviolability of the majority beliefs, the proponents of change may also be subjected to harassment, threats and violence."

Indispensable Prerequisite

In further emphasis of the need to give full and complete protection to the expression of minority views the Supreme Court opinion states: "In this context, as correctly contended by petitioners, anonymity may be an indispensable prerequisite to speech. When the content of speech may lead to harassment or reprisal, fear or apprehension may deter expression in the first instance. History is replete with unpopular ideas which now form the foundations of modern society's mores and laws, but which could only be asserted anonymously when first expressed."

Pamphlets and Handbills

The Court then discusses the right to distribute anonymous pamphlets and handbills which has a long history in our country dating from before the Revolutionary War and including the famous arguments in support of the adoption of the Federal Constitution known as "The Federalist." The Court concludes its discussion of theory by holding: "The First Amendment right to remain anonymous . . . encompasses all forms of expression whether they be writings, or as in the instant case, a recorded message published over the telephone."

No Abridgment Justified

The Court then discusses whether there is the necessary "compelling state interest" in the disclosure regulation which may justify an incidental abridgment of free speech in order to carry out indispensable government functions. The Court points out that the Commission's justification for the regulation of protection against defamation lacks merit because any person who believes himself libeled may obtain the identity of the person responsible for the message from the telephone company's records. To the Commission's argument that there is a public interest in the identification of the authors of "irresponsible" messages, the Court responds that this would not warrant an invasion of free speech. It holds, "Too often the test of 'responsibility' is the degree of popular acceptance of the idea. Popularity is not a criterion for determining the boundaries of speech. Even erroneous statements are entitled to constitutional protection."

Frivolous Argument

The Court quickly disposes of the telephone company's argument that persons hearing anonymous messages might think they were ascribable to the telephone company by stating, "This assertion borders on the frivolous."

Lastly, the Court distinguishes several existing disclosure requirements, namely, those requiring disclosure of the publishers of second class mail matter and the owners of radio broadcasting and television broadcasting stations, by stating that in both of these instances the identification requirement is justified by the limited availability of the particular communication facility.