NEWS MEDIA

Long before the names of Lee Harvey Oswald and Jack Ruby exploded into national consciousness, but with rising frequency since then, the conflict between the rights of a free press and the right of a defendant to a fair trial have preoccupied lawyers, reporters and the public. The ACLU and its affiliates have been closely involved in the debate throughout the country, urging a course that seems to offer the best solution of the constitutional conflict: law enforcement officials and the courts should withhold statements that may endanger the right of defendants, and judges should take care to preserve the decorum of thir chambers. *(See last year's Annual Report, p. 80).*

The U.S. Supreme Court took the same position when, in an 8-1 decision that may mark a turning point in the effort to reconcile the constitutional issues, it threw out the 1954 murder conviction of Dr. Samuel H. Sheppard after one of the most sensational trials in decades. It was so sensational, said the Court, that "bedlam" and a "carnival atmosphere" prevailed in the courtroom.. The prejudicial publicity before and during the trial was "virulant," said the majority. The opinion by Justice Tom C. Clark made the same complaints against the press and the judge (now dead) that were made by the ACLU and its Ohio affiliate, which supported Sheppard's appeal: jurors became celebrities, witnesses were allowed to make statements out of the courtroom (which were often not repeated on the witness stand), police officials were quoted on Sheppard's guilt before and while the trial was in progress, the press wrote editorials demanding his trial and conviction.

What should have been done, said Justice Clark, was to adopt safeguards issued by the New Jersey Supreme Court in a 1964 decision. These make lawyers subject to discipline for divulging prejudicial information to the press, and ask law enforcement officials to enforce the same limitations on police. Moreover, the jurors should have been locked up after the publicity got out of hand. Thus, the Court placed the responsibility for preventing "trial by newspaper" on public officials, not the press. The ACLU brief noted that Sheppard's case was a classic example of the weighing of freedom of the press against the right to a fair trial, but emphasized that a free press "without justice is an empty view." And in presenting its argument to the Court for a reversal of Sheppard's conviction the brief carefully steered clear of suggesting a muzzle on the press. Rather, said the Union, a reversal "would impress the news media, voluntarily and without judicial compulsion, to recognize their responsibilities toward the courts which protect their freedoms. Further, it would serve as a warning to those who have a stake in preserving convictions obtained in trial courts, that cynical use of freedom of the press as a weapon to obtain a conviction will not be tolerated.... This Court will have the opportunity to correct at last an egregious denial of criminal due process and, at the same time, provide working solutions for some of the difficult and delicate problems of free press and fair trial which currently beset the administration of criminal justice." Following the high court decision, the state of Ohio tried Sheppard a second time, but under strict restraints on press, prosecutors and defense attorneys. The trial was brief and decorous, and Sheppard was acquitted.

The even more sensational case of Jack Ruby also continued to make legal history when the Texas Court of Criminal Appeals unanimously reversed his murder conviction on two grounds. First, the presiding judge at the trial erred in admitting testimony that Ruby had confessed premeditation (since there was no evidence that statements attributed to Ruby were made voluntarily). And second, Ruby should never have been tried in Dallas County, where 10 of his 12 jurors had watched Ruby shoot Lee Harvey Oswald on television, where the trial judge, at the time of the trial, was preparing a book on the case, and where the community was so inflamed by prejudicial publicity that a fair trial would have been impossible in any event. The Texas Civil Liberties Union played a major role in pressing the appeal, petitioning for a writ of habeus corpus on the grounds that the trial judge was partial and had a pecuniary interest in the case. The Texas court denied the petition and the defense appealed to the U.S. Supreme Court. This appeal was mooted, however, because though the Court of Criminal Appeals set a new trial for Ruby, to be held in Wichita, Kan., Ruby died of cancer at the end of 1966.

As an outgrowth of the Oswald slaying, a committee of the American Bar Association set to work preparing a series of recommendations on the subject of fair trial and free press. When the report was released it set off a storm that almost eclipsed the U.S. Supreme Court's ruling in the Sheppard case and advocated restrictions that made the high court's guidelines seem mild by comparison. The ABA committee called for restraining law enforcement officials and defense and prosecuting attorneys, but it was its recommendations for curbing the press that drew the most criticism on the ground that the restrictions were unconstitutional and/or undesirable. The principal restraints suggested by the committee against the press were the use of contempt citations for publishing anything that goes beyond the public record if the information might have a prejudicial effect, and the possible exclusion of the press from pre-trial hearings and portions of the trial not conducted in the presence of the jury.

The ACLU, which has been studying the extremely sensitive issues in the controversy for many years, issued a major policy statement which departed in one major respect from the ABA committee report. The main thrust of the Union's argument emphasized the need to avoid jeopardizing First Amendment press freedom while guaranteeing the right to a fair trial under the Sixth Amendment. To achieve the latter goal the ACLU urged a series of measures aimed at law enforcement officials, members of the bar and courts to curtail the harmful effects of massive newspaper publicity on the outcome of criminal trials. The measures included administrative directives, judicial admonishment, censure by bar associations and expanded grounds for challenging the impartiality of jurors. Opposing any sanctions which "directly touch media of communication," the Union asserted that "the advantages of this approach are that it avoids a direct collision between the two rights deeply imbedded in our Constitution and that it narrows the application of sanctions to those persons most intimately concerned with the administration of justice." The ACLU would limit the publication of pre-trial information to the name, address, and

similar background information about the defendant (but excluding any reference to previous arrests or convictions), the substance of the charge, the identity of the investigating agency, and the time and place of arrest.

Though most newspapers continued to follow past practices, a few voluntarily adopted guidelines of their own to help insure a fair trial. The jointly owned *Toledo Blade* and *Toledo Star,* which had been commended by the Ohio Bar Association for their coverage of the Sheppard case, pledged that until a case comes to trial they will print only the name, age and address of the accused, along with a description of how the arrest was made and the accusation. No prior criminal record or alleged confession will be printed until the case is over or until it comes up in court. And no statement by police or lawyers will be published, either.

JUVENILES

The basic debate over juvenile courts is whether the proceedings are essentially civil in nature and require only that the child receive fair treatment, or whether they are akin to criminal actions and thus demand full observance of basic constitutional protections such as counsel, speedy trial, and the right to receive bail. The ACLU is firmly of the latter opinion and its petition for review by the high court, testing the constitutionality of the Arizona Juvenile Code, clearly explained why. The appeal was filed on behalf of Paul and Marjorie Gault, whose 15-year-old son, Gerald, was committed as a delinquent for the offense of "lewd phone calls." The Union attacked the code's curtailment of the Gaults' right to notice of the charges against their son, their right to counsel, to confront and cross-examine witnesses, their privilege against self-incrimination, their right to a transcript of the proceedings and their right to appeal. The Union also noted the juvenile court judge's statement that the charge against Gerald was grounded not only on the "lewd language" charge but also on his "habitual involvement in immoral matters," based on a report which the Gaults never saw, making it impossible for them to deny the charges or defend against them. "It is indeed anachronistic," the ACLU observed, "that procedural safeguards are not required in a setting which, for all practical purposes, is accusatory and in which the accused, because of his youth, is ordinarily in no position to protect his basic interests." Yet, "the problems of juvenile courts affect thousands of individuals yearly in a way which can adversely determine their future lives. To leave these interests in the hands of parents and a judge is to indulge wishful thinking [especially since] one-fifth of the judiciary are not even lawyers and more than half devote less than one-fourth of their time to juvenile and family matters."

As the controversy over juvenile court procedures spread, the U.S. Supreme Court also agreed to review the appeal of a Washington State youth who was tried as an adult in a criminal court. And in a third major case in the field of juvenile rights, the Florida CLU argued before the state Supreme Court that indigent juveniles are entitled to counsel, just as the U.S. Supreme Court ruled in *Gideon,* which also began in Florida.

The Washington State case accepted for review by the Court also illustrated the ACLU's plea for safeguards. The youth, Robert A. Miller, was arrested for car theft and although he was only 16 and supposedly subject to juvenile court he was booked and fingerprinted in the adult jail. A few days later, without telling Miller, police met with the juvenile judge who agreed to waive jurisdiction. Only after serving eight years of a 10-year sentence in the penitentiary did Miller learn from fellow prisoners that the constitutionality of such procedures was open to doubt. He filed for a petition of habeus corpus, arguing that under the due process clause of the Fourteenth Amendment he should have been notified of the juvenile court hearing and been represented there by a lawyer. In light of a state Supreme Court ruling bringing juvenile proceedings in line with the safeguards laid down in the *Kent* decision *(see below),* the case was remanded to Washington, and Miller was released. In the Florida case, the ACLU affiliate defended Thomas Parker, who was sent to a juvenile institution for five years even though he had no lawyer, the court appointed none, and did not inform him that he had a right to ask for one. The juvenile court said Parker didn't need one since the proceedings were not criminal and the juvenile is "rehabilitated," not imprisoned. There is not much difference, argued the ACLU, when the "rehabilitation" takes five years. The state Supreme Court dismissed the case, as moot, but an appeal will be taken to the U.S. Supreme Court. The trio of appeals to the high court followed the tribunal's ruling in the case of Morris A. Kent, who was convicted at 16 on charges of robbery and rape and has been serving a maximum 90-year sentence for the past five years. In an appeal brought by the National Capital Area CLU, the high court held that the Washington, D.C., Juvenile Court cannot transfer youths to adult courts for criminal trials without certain procedural safeguards: a hearing, the right to counsel, and access to confidential psychiatric and social work reports compiled for the judge.

In happy contrast to lengthy appeals to the U.S. Supreme Court, the ACLU of Georgia won a case in which a 12-year-old boy was sent to an adult prison without ever stepping into a courtroom. The boy, Kirby McCoy, was sentenced to five years in prison on a burglary charge as an adult offender but when responsible officials heard of the affiliate's pending suit they hastily arranged for the transfer. The victory might be the first of several in Georgia, since several other youths between the ages of 13 and 14 are in the same prison that Kirby McCoy was able to leave.

In other actions on the state level, the Greater Philadelphia Branch of the ACLU won the release of a 26-year-old man of normal intelligence who had been indefinitely committed as a "defective delinquent" at the age of 15 by a juvenile court; the Lawyers Constitutional Defense Committee of the ACLU won the provisional release of a 13-year-old boy in Mississippi who had been judged delinquent without being told the specifics of the charge or being able to consult a lawyer; and the Arizona CLU mounted a court test of a "crime control" program in Tucson in which police are stationed in public schools. The program is partially subsidized by the Department of Justice as an experiment in detecting and controlling juvenile delinquency, but without