



# Civic and Political Status

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## CIVIL LIBERTIES

THE PERIOD BETWEEN July 1955 and September 1956 saw a marked improvement in the state of civil liberties in the United States. A number of court decisions led to major substantive gains, and there were also significant improvements in administrative procedures. There were only slight changes in the legislative situation, except to the extent that existing laws were invalidated or reinterpreted by the courts. But this in itself represented a gain, since few recent years had failed to add significantly to the number of repressive laws on the statute books. And, while some Congressional committees continued to seek out subversion assiduously, others were engaged in examining the violations of civil liberties and individual rights which had developed under the various security programs.

### *Loyalty-Security Programs*

There was an increasing awareness during the year that the connection between the Federal Employees Loyalty-Security Program and the security of the United States was often a tenuous one. This issue was brought to a head by the decision of the United States Supreme Court, on May 11, 1956, invalidating the dismissal of Kendrick M. Cole under the Eisenhower Loyalty-Security Program.<sup>1</sup> Cole had been a food and drug inspector in the Department of Health, Education, and Welfare. His dismissal was based on his participation in hikes and similar activities of the Nature Friends, an organization on the Attorney General's list. The government conceded that there was no question of Cole's loyalty, and that his position was not a sensitive one. Cole appealed against his dismissal on the ground that he had not received the procedural rights to which, as a veteran, he was entitled under the Veterans Preference Act. The government held that in security cases normal civil service procedures were superseded by those set up in Executive Order 10450, which set up the Eisenhower Loyalty-Security Program, on the basis of authority supposedly derived from Public Law 733 of 1950. The Supreme Court, however, examined the language and legislative history of that act, and determined that the President had no authority to extend its provisions to non-sensitive positions in any department or agency other than the eleven specifically named in it. This reduced the number of positions to which the executive order applied by something like three-fourths; the exact number depended on the government's eventual determination as to which positions were sensitive, and perhaps on the attitude of the courts toward that determination. Approximately half of those dismissed under the Eisenhower Loyalty-

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<sup>1</sup> *Cole v. Young*, 351 U.S. 536.

Security Program had held posts which were tentatively classified as non-sensitive. Attorney-General Herbert Brownell, Jr., issued regulations providing for the reinstatement of persons who had been dismissed from nonsensitive jobs within a limited period. But since the Supreme Court had merely interpreted the law, and had not decided the case on the basis of any constitutional issue, it was within the power of Congress to restore the status quo by new legislation. A number of proposals to this end were immediately advanced by Senators Joseph R. McCarthy (Rep., Wis.), William Jenner (Rep., Ind.), James Eastland (Dem., Miss.), Representative Francis Walter (Dem., Pa.), and others. It was some time before the administration took a position. Eventually, however, Chairman Philip Young of the Civil Service Commission sent a fervent plea for new legislation. Attorney General Brownell contented himself with a short note to the effect that if Congress thought new legislation necessary, he would prefer the Walter Bill, which simply restored to the administration the power which it had previously thought it possessed. He also advised that any legislation adopted be limited to one year, in view of the expected report of the special committee on internal security set up under the Humphrey-Stennis resolution. This commission (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 133) began functioning under the chairmanship of Lloyd Wright, a Los Angeles attorney and former president of the American Bar Association, in the autumn of 1955.

But there was widespread opposition to all these bills. Thus, *The New York Times* and other leading papers hailed the Supreme Court decision. And Representative Edward H. Rees (Rep., Kan.), ranking Republican member of the House Post Office and Civil Service Committee, introduced a very different sort of bill in June 1956. He proposed to separate the loyalty and security programs, requiring that in all except urgent cases Federal employees be investigated *before* appointment, and giving many new protections to persons facing loyalty charges. His bill would have established a loyalty Review Board with the power to subpoena witnesses and reveal the sources of derogatory information to the accused "if the interest of justice so requires." It would also have given those dismissed on loyalty grounds an automatic right of appeal to the Federal courts, which would have been empowered to set aside decisions they regarded as arbitrary or capricious. The Rees bill would also have guaranteed a hearing to applicants for government employment who were rejected on loyalty grounds.

None of the proposals was adopted by Congress. Partly this may have been due to the relatively short time—only a month and a half—between the decision in the Cole case and the adjournment of Congress. But the state of public opinion also seems to have been partly responsible. The liberalizations proposed by Representative Rees still seemed politically risky. But there was no general demand for a reestablishment of the security program for non-sensitive positions.

#### BONSAL REPORT

Perhaps the decisive factor was the publication, on July 8, 1956, of a report on the loyalty-security program, prepared by a special committee of the New York City Bar Association with the aid of a grant from the Fund for the

Republic. This committee, under the chairmanship of Dudley B. Bonsal of the New York bar, had prepared its report before the decision in the Cole case; one of its chief recommendations was the limitation of the loyalty-security program to sensitive posts. As the Supreme Court had pointed out in its decision, however, employees in nonsensitive positions could still be dismissed on security grounds under normal civil service procedures. And except for veterans, these procedures—under which most “security” dismissals had been made even prior to the Cole decision—provided less protection to the employee than did even the existing loyalty-security program. But they did leave more discretion to the various agencies, and it was certainly true that the existence of a special loyalty-security program had resulted in a pressure to discover and remove “risks.”

The Bonsal report also recommended the abolition of the Port Security Program, administered by the Coast Guard and affecting longshoremen in restricted areas and all seamen, as well as the abolition of the International Organization Employees Loyalty Program, under which the United States investigated the loyalty of any of its citizens who were employed by international organizations. It said that the Port Security Program

opens the way for the introduction of personnel security measures throughout American life. For it imposes security scrutiny on persons and in areas without special justification. There are other industrial activities which are even more sensitive than those covered by the program. . . . The danger of possible sabotage exists at literally tens of thousands of places and from almost the whole population. . . . This logic would thus lead to peacetime personnel clearance for almost all citizens. The danger to liberty from such a course should cause us to set ourselves resolutely against it.

Even before the report was written, the United States Court of Appeals for the Ninth Circuit had held in *Parker v. Lester*<sup>2</sup> that the existing Port Security Program violated due process. This decision appeared to bar the use of “confidential information” as the basis for denying clearance to persons in private employment. On March 24, 1956, the government made known its decision not to appeal the case, but to establish a new set of regulations under the program. It seemed doubtful, however, that any new regulations would be able to reconcile the insistence of the courts on due process with the determination of the government not to reveal its sources of information. On July 12, 1956, Federal District Judge Edward P. Murphy in San Francisco ordered the government to restore clearance to those who had been denied it under the old regulations, pending their hearings under the new ones. This decision was upheld by the Ninth Circuit Court of Appeals on October 1.

The Bonsal report declared that the International Organization Employees Program was “actually harmful to the interests of the United States and its citizens,” since:

The period required in clearing American citizens for employment encourages international organizations to employ citizens of other nations instead of Americans, especially for short term work. So the program may well lead to the employment of foreign Communists in place of American citizens. The program may give needless offense to other nations. It appears

<sup>2</sup> 227 F. 2d 708.

to be an assertion by this nation of a special control over international organizations in which all member nations have an equal interest.

The program did, in fact, seem to have made it very difficult for American citizens to obtain employment with the major international organizations; at the time of writing (October 1956), there had nevertheless been no move to scrap it, perhaps because of the approaching elections.

#### ATOMIC ENERGY COMMISSION

Far-reaching changes were introduced during 1955-56 in the security programs of the Atomic Energy Commission (AEC) and the armed forces. (Neither of these programs, of course, was affected in any way by the decision in the Cole case.) Perhaps the J. Robert Oppenheimer case (*see* AMERICAN JEWISH YEAR BOOK, 1955 [Vol. 56], p. 186) was responsible for some of the provisions of the AEC's new regulations, promulgated on May 10, 1956. These provided that the decision in each case was to be "a comprehensive, common sense judgment," "give due recognition to the favorable as well as the unfavorable information . . . and . . . take into account the value of the individual's services to the atomic energy program and the operational consequences of dismissal." This appeared to give much more leeway for clearance than the requirement of Executive Order 10450 that the employee's retention be "clearly consistent with the interests of the national security." The new regulations also provided that ordinarily, in considering a person's associations, weight should not be given to "chance or casual meetings nor contacts limited to normal business nor official relations." In contrast to the customary procedure of other agencies, the new AEC regulations provided that employees should be permitted to confront adverse witnesses wherever possible, and that when security considerations prevented such confrontation, the witnesses should be questioned in private by the hearing board. The AEC was also the only government agency which gave hearings to applicants for employment whom it rejected on security grounds.

#### ARMED FORCES

Under the impact of the report prepared by Rowland Watts of the Workers Defense League (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 136), and of the hearings conducted by the Senate Subcommittee on Constitutional Rights, headed by Senator Thomas C. Hennings, Jr. (Dem., Mo.), the armed services made a series of revisions in their security program. This had been responsible for some of the most celebrated cases of "guilt by kinship" (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 135). Its basic fault, however, was that under it the armed forces penalized draftees, by discharges other than honorable and in other ways, for associations which had taken place before their induction and which had nothing to do with the quality of their service. To some extent, this policy was an aftermath of the hysteria which had developed in connection with the case of Irving Peress (*see* AMERICAN JEWISH YEAR BOOK, 1955 [Vol. 56], p. 184). Under the new regulations, all draftees were to be investigated before induction; those accepted were to receive discharges based entirely on the quality of their service. They could still, however, be given punitive discharges on the basis of information unconnected

with their military service, if new information turned up after their induction. And the armed forces retained jurisdiction over them during the entire period when, after their active service had ceased, they nominally remained members of the "reserve." This appeared to give the military authorities an instrument for controlling the political and personal activities and associations of a substantial section of the civilian population.

A number of individual cases of injustice under the various security programs were brought to public attention during 1955-56 by the Hennings Subcommittee, the Senate Civil Service Committee under Senator Olin Johnston (Dem., S.C.), and the activity of former Senator Harry P. Cain (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 131). In most cases, though not in all, publicity was quickly followed by the rectification of the particular instances of injustice. Senator Cain's activities also resulted in his retirement as a member of the Subversive Activities Control Board.

### *Congressional Committees*

During 1955-56, the hearings of the Hennings Committee and the Johnston Committee contributed substantially to the development of sentiment for the reform of the various security programs. On the whole, they probably received more publicity than did the activities of the Senate Internal Security Subcommittee, under Senator James Eastland (Dem., Miss.), and the House Un-American Activities Committee, under Representative Francis Walter (Dem., Pa.). The latter committees were not, however, inactive. Senator Eastland received wide publicity when, in January 1956, he conducted an investigation into Communist penetration of the press. Since most of those called as witnesses were or had at some time been employed by *The New York Times*, the hearings were widely interpreted as a form of retaliation for that paper's open criticism of Senator Eastland. The committee did, however, call some employees and former employees of the *New York Daily Worker* and the *New York Morning Freiheit*, and was able to elude some evidence that those two papers were under some degree of Communist influence. Under the chairmanship of Senator John L. McClellan (Dem., Ark.) the Senate Committee on Government Operations, which had ranged so widely when Senator McCarthy had been its chairman, concentrated on the field of government operations. In July 1956 Representative Walter conducted a series of hearings on the activities of the Fund for the Republic in general, and a report which it had sponsored on blacklisting in radio and television in particular. John Cogley, the author of the report and a former editor of the liberal Catholic magazine *Commonweal*, was called before the committee, as were a number of persons who disapproved of the report, several individuals who had previously invoked the protection of the Fifth Amendment and did so again, and Arnold Forster of the Anti-Defamation League. The committee also tried to subpoena the records of the Plymouth Meeting of the Society of Friends, which had received an award from the Fund for the Republic because it had employed Mrs. Mary Knowles, a librarian who had lost another job for invoking the Fifth Amendment. The Plymouth Meeting refused to submit its records, on the ground that the committee's demand violated the First Amendment's guarantee of freedom of religion. The officers of the

Fund for the Republic received no opportunity to testify, although several of them requested it. In June 1956, Representative Walter called the playwright Arthur Miller before the committee to testify on his political views and associations. Miller answered all questions concerning himself, but refused to name others whom he might at some time have known as Communists. As a result, he was cited for contempt of Congress.

#### JUDICIAL ACTION

During 1955-56 the courts considered a number of contempt cases arising from congressional investigations of Communism and crime. Some of these involved the right to invoke the Fifth Amendment; in general, the courts upheld witnesses who had claimed the privilege against self-incrimination, no matter what the precise form of words they had used and the specific questions involved. Other cases were decided on technical grounds, such as insufficiencies in the wording of the indictments. In some cases, however, the courts came to grips with the question of the limits of the power of congressional committees. Thus on January 5, 1956, Judge Bailey Aldrich acquitted Leon Kamin of contempt for his refusal to answer questions put by Senator McCarthy, on the ground that McCarthy's committee had exceeded its authority.<sup>3</sup> The decision was based on the limitations of the committee's jurisdiction under the resolution creating it, rather than on constitutional grounds. In the case of John T. Watkins, an admitted former Communist who had refused to answer questions which the House Un-American Activities Committee asked him about other persons, the government obtained a conviction in the District Court. This conviction was reversed by a three-judge panel of the Court of Appeals for the District of Columbia on the ground that the committee had exceeded its powers by asking questions in order to expose individuals, rather than in pursuit of a legitimate legislative purpose. This decision was reversed in May 1956 by the full nine-judge bench of the same court,<sup>4</sup> and at the time of writing (October 1956) was on appeal to the Supreme Court.

On April 2, 1956, the Supreme Court ruled in the case of *Pennsylvania v. Nelson*<sup>5</sup> that Congress had, in passing the Smith Act, preempted the field of sedition legislation. Hence, under the doctrine of supremacy of Federal power, all state legislation in the field was now superseded, since such legislation's existence would create the possibility of conflict in a field which was of primary Federal concern. This decision was in line with previous rulings on other matters; e.g., the Supreme Court had held that state laws outlawing the union shop could not apply in cases where Federal law specifically permitted it. (Congress could, of course, specifically authorize the states to continue their own legislation in a field, even where its provisions created a conflict with those of the relevant Federal law; it had done this in regard to the union shop in the Taft-Hartley Act.) But since over a period of several decades most of the states had acquired sedition, criminal anarchy, and criminal syndicalism acts, the effect of the decision was revolutionary. While the Supreme Court based its ruling on general principles in regard to the Fed-

<sup>3</sup> *U.S. v. Kamin*, 136 F. Supp. 791.

<sup>4</sup> *Watkins v. U.S.*, 233 F. 2d. 681.

<sup>5</sup> 350 U.S. 497.

eral-state relationship and the interpretation of Federal legislation, the language of the decision made it clear that the judges felt that the efficient prevention of subversion required that authority in the field be confined to the Federal government. But since this was a matter of public policy rather than law, the final decision on it remained in the hands of Congress; a number of members of both houses promptly proposed measures either specifically authorizing the states to maintain their sedition laws, or providing in general that Congressional action in a field should not be considered as debarring the states from passing their own laws in that field unless Congress specifically so stated. These measures had the general support of the administration, as well as of most, though not all, of the state attorneys-general. (A few, such as Attorney-General Grover Richman, Jr., of New Jersey, expressed their agreement with the reasoning of the Supreme Court.) Nevertheless, Congress took no action, and on the basis of the Nelson decision state courts in Kentucky, Massachusetts, and Michigan quashed a number of convictions and indictments under the sedition laws of those states.

In April 1956, the Supreme Court also upheld the new Federal Immunity Law, under which a person claiming the protection of the Fifth Amendment could be granted immunity from prosecution and compelled to testify.<sup>6</sup> Affirming the contempt conviction of William Ludwig Ullmann, who had refused to answer questions before a grand jury in regard to Communist activities and espionage, the court held that the constitutional guarantee extended only to danger of criminal prosecution, not to any incidental damage to reputation or economic and social interests. Congress, the court said, had complete authority to grant immunity from prosecution, whether Federal or state. Once such immunity had been granted, there was no longer a legal basis for any refusal to testify. Ullmann then went before the grand jury in order to purge himself of contempt, and denied any participation in either Communist activities or espionage. It seemed likely that the decision in the Ullmann case would lead to the recall of a number of witnesses who had invoked the Fifth Amendment before Congressional committees; it remained to be seen what attitude the government and the courts would take to the desire of the committees to confer immunity on these witnesses in order to secure their testimony.

A number of Supreme Court decisions not arising from questions relating to Communism or subversion also had significance for civil liberties. On November 7, 1955, the Court ruled in the case of Robert W. Toth that a person, once discharged from the armed forces, could not be tried by a military court, despite a provision of the Uniform Code of Military Justice authorizing such trials for offenses committed while in service.<sup>7</sup> Congress, the court held, could authorize the civil courts to try former servicemen for such offenses, but it could not constitutionally subject them to military jurisdiction. But on June 11, 1956, a 5-3 majority of the court held, in the cases of Clarice B. Covert<sup>8</sup> and Dorothy Krueger Smith,<sup>9</sup> that civilian dependents of servicemen and civilians employed by the armed forces overseas could be tried by

<sup>6</sup> *Ullmann v. U.S.*, 350 U.S. 422.

<sup>7</sup> *U.S. ex rel. Toth v. Quarles*, 350 U.S. 11.

<sup>8</sup> *Reed v. Covert*, 351 U.S. 487.

<sup>9</sup> *Kinsella v. Krueger*, 351 U.S. 470.

military courts under the Uniform Code of Military Justice. At the time of writing (October 1956), the Court was considering a request to reconsider this decision; while the vagueness of the United States Constitution on the subject of military courts had repeatedly in the past given rise to controversy on the extent of their jurisdiction, the specific constitutional guarantees of procedural rights were certainly at variance with the procedure of military courts.

On January 16, 1956, the Supreme Court ruled in the case of *Danton George Rea*<sup>10</sup> that evidence illegally obtained by a Federal narcotics agent, and therefore barred from use in Federal court, could not be used in a state court, even though the state in question held (as was the case in most states) that illegally obtained evidence was admissible. And on the same day, the Supreme Court held that the Immigration and Naturalization Service could not subpoena as "witnesses" persons whose citizenship it was attempting to get revoked.<sup>11</sup> On April 23, in the case of *Danton Griffith and James Crenshaw*, the court held that due process required the provision of free transcripts of trial records to destitute prisoners wishing to appeal.

In a widely misinterpreted decision, the Supreme Court on April 9, 1956, ordered the reinstatement of Professor Harry Slochower of Brooklyn College, who had been dismissed under a section of the New York City charter providing for the automatic discharge of any city employee invoking the privilege against self-incrimination.<sup>12</sup> The decision did not, however, hold that invocation of the privilege was an inadequate ground for dismissal; rather, the court ruled that *automatic* dismissal, without notice of charges or hearing, violated the requirement of due process.

In June 1956, the Supreme Court ruled in the case of *Doris Walker* (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 141) that the California Supreme Court had merely been interpreting a local contract when it held that no contract provision could prevent an employer from dismissing a Communist, and that there was no constitutional question involved.<sup>13</sup> The court also held on June 11, 1956, in the case of *Cecil Reginald Jay*, that the government could use confidential information to deny suspension of deportation to a deportable alien who, on the public record, was eligible for it.<sup>14</sup> The majority opinion, written by Justice Stanley F. Reed, held that the use of confidential information was justified, because suspension of deportation was purely a matter of grace, within the unfettered discretion of the attorney general. Chief Justice Earl Warren and Justices Hugo L. Black, William O. Douglas, and Felix Frankfurter dissented. Justice Black wrote: "The core of our constitutional system is that individual liberty must never be taken away by shortcuts. . . . Prosecution of any sort on anonymous information is still too dangerous, just as it was when Trajan rejected it nearly 2,000 years ago."

In the case of the Communist Party, the organization ordered to register under the McCarran Internal Security Act, the Supreme Court on April 30, 1956, ordered the Subversive Activities Control Board (SACB) to reconsider its decision in the light of the fact that some of the government witnesses be-

<sup>10</sup> *Rea v. U.S.*, 350 U.S. 214.

<sup>11</sup> *U.S. v. Minker*, 350 U.S. 179.

<sup>12</sup> *Slochower v. Bd. of Higher Education*, 350 U.S. 551.

<sup>13</sup> *Black v. Cutter Lab.*, 351 U.S. 292.

<sup>14</sup> *Jay v. Boyd*, 351 U.S. 345.



fore it had since been shown to be perjurers.<sup>15</sup> This left the constitutional issues involved to be decided when the case again reached the court on a basis of the board's new determination, reached on the existing record with the evidence of the perjured witnesses excised. (It was possible, however, that the courts would eventually require the SACB to reopen hearings on the case in the light of new evidence on its post-Stalin line which the Communist Party wished to introduce, but which the SACB refused to accept.) Meanwhile the SACB continued to hear the cases of various organizations accused by the government of being Communist fronts, and to order their registration under the Act; it was reasonably certain that the courts would refrain from deciding the cases of any of these organizations before a final Supreme Court ruling on the case of the Communist Party. Meanwhile, various of these groups (e.g., the Civil Rights Congress) were going out of existence; in some cases their functions were being taken over by new groups, while in others the Communists sought to accomplish their purposes by infiltrating existing non-Communist organizations. Six years after its enactment, the McCarran Act had not forced the registration under its provisions of a single group; during this period, according to Attorney General Brownell, the influence of the American Communist movement reached its lowest point in a quarter of a century. During the year the government also filed charges with the SACB that two labor unions were "Communist-infiltrated" under the provisions of the Communist Control Act of 1954; it seemed likely that the SACB and courts would get around to considering these cases when all those previously initiated under the McCarran Act had been disposed of.

#### LOWER JUDICIAL ACTION

No passport cases reached the Supreme Court, but lower Federal Courts continued the process of eroding the State Department's prerogative in this field, which they had begun with the Bauer case (*see AMERICAN JEWISH YEAR BOOK*, 1953 [Vol. 54], p. 31) and had extended in the Nathan and Schachtman cases (*see AMERICAN JEWISH YEAR BOOK*, 1956 [Vol. 57], p. 138, 139). The courts repeatedly indicated that they did not regard the State Department's hearing procedures or its standards of proof as meeting the standards of due process. Instead of attempting to conform to the views of the courts on these questions, however, the department appeared to prefer to grant or withhold passports at its discretion until it was sued. Almost all those who sued received passports. (Paul Robeson, who refused to answer State Department questions on Communist affiliation, was an exception; on June 7, 1956, the Court of Appeals upheld the State Department's action in denying him a passport.<sup>16</sup> Thus, although he had failed to sign a non-Communist affidavit for the State Department, Leonard B. Boudin received a passport after the courts had ordered a full departmental hearing for him—and indicated that they would probably require the department to produce the secret informants, some of whom it admitted were unknown even to it, on whose testimony it had refused the passport.<sup>17</sup> In the Boudin case, however, the department explained that its action was taken because of the fact that Boudin had

<sup>15</sup> *Communist Party of U.S. v. Subversive Activities Bd.*, 351 U.S. 115.

<sup>16</sup> *Robeson v. Dulles*, 235 F. 2d. 810.

<sup>17</sup> *Boudin v. Dulles*, 235 F. 2d. 532.

recently told a Congressional committee that he was not a member of the Communist Party.

In the case of Arthur J. Kraus, the Court of Appeals ruled on July 5, 1956, that the State Department had acted arbitrarily and capriciously in demanding proof that he had enough money to finance his trip.<sup>18</sup> Since the Circuit Court did not enter a final order in the case, but remanded it to the District Court for trial on its merits, Kraus still did not have his passport at the time of writing (October 1956).

The State Department continued to exercise absolute and unchallenged power over the issuance of visas, since a person refused admission to the United States had no way of gaining access to the American courts. One particularly striking case which came to public attention in July 1956 was that of Chris Jecchinis, a Greek national who was denied a student visa. Jecchinis, who had a long record of anti-Communist and anti-Fascist activity in Greece, had come to the United States as a student in 1951, studying for two years at Roosevelt University in Chicago. Then he returned to Greece, where he served first as an investigator of visa applicants for the Security Division of the State Department, and later as a consultant to the office of the United Nations High Commissioner for Refugees. But when he applied for a visa to continue his studies here in 1955, he was rejected on undisclosed security grounds. At the time of writing (October 1956), Jecchinis had still not received his visa, despite affidavits submitted on his behalf by a long list of distinguished Americans and Englishmen who had personal knowledge of his democratic convictions and activities.

#### KUTCHER CASE

The case of James Kutcher was one which covered a period of several years (see AMERICAN JEWISH YEAR BOOK, 1950 [Vol. 51], p. 81) and in its various ramifications involved action by courts and administrative agencies on the local, state, and Federal levels. Kutcher, a legless veteran and a member of the Trotskyite Socialist Workers Party (SWP), an organization which was on the attorney general's list, had originally been dismissed from a clerical job in the Veterans Administration (VA) under the Truman Loyalty Program in August 1948. In October 1952, the Court of Appeals of the District of Columbia had ruled that SWP membership was not in itself adequate grounds for dismissal, and ordered the VA to reconsider Kutcher's case.<sup>19</sup> On February 7, 1955, the VA reaffirmed his dismissal. Meanwhile, Congress had in July 1952 passed the Independent Offices Bill, barring Federally aided public housing to all members of organizations on the attorney general's list, and in December of the same year the Newark, N. J., Housing Authority had initiated action to evict Kutcher and his aged parents from their apartment in the Seth Boyden Housing Project. Finally, on December 12, 1955, the Veterans Administration had sought to deprive Kutcher of his disability pension on the ground that he had "rendered assistance to the enemy" during the Korean War by his membership in the Socialist Workers Party. The universal outcry which this final injustice aroused, however, brought a turning-point in his

<sup>18</sup> *Kraus v. Dulles*, 235 F. 2d. 840.

<sup>19</sup> *Kutcher v. Gray*, 199 F. 2d. 783.

fortunes. The VA's Committee on Waivers and Forfeitures agreed to the unprecedented course of giving Kutcher an open hearing, and on January 6, 1956, ruled that there was a reasonable doubt of his guilt, and that he was therefore entitled to retain his pension. Meanwhile, on December 19, 1955, the New Jersey Supreme Court upheld an injunction against eviction which the Kutchers had won in the lower courts.<sup>20</sup> At first the Newark Housing Authority announced that it would appeal to the Federal courts, but later accepted the decision—perhaps because it realized that an appeal would be very unpopular, or perhaps because it had discovered that the Gwinn Amendment requiring tenants in Federally aided public housing to swear that they did not belong to any subversive group had quietly lapsed in 1954. And finally, on April 20, 1956, the Court of Appeals of the District of Columbia ruled that Kutcher's second dismissal, like his first, had been invalid.<sup>21</sup> This decision was on procedural grounds, and the government could either have appealed it to the Supreme Court or, as it had previously done, have initiated new proceedings against Kutcher. But in view of the public support which Kutcher had won, and of the altered climate of opinion, neither course would have been politic. On April 22 Veterans Administrator Harvey Higley ordered Kutcher reinstated with full seniority and back pay.

The precedent for attempting to deny Kutcher his pension had been a ruling in the cases of Robert Thompson and Saul Wellman, two Communist leaders convicted under the Smith Act, both of whom had been deprived of their disability pensions. In their cases, the VA held that conviction under the Smith Act constituted proof of assistance to the enemy—even though there was no such charge in the indictments, and in any case all the activities for which Thompson had been convicted had taken place before the outbreak of the Korean War, at a time when no Communist state was legally an enemy of the United States. Even after the Court of Appeals decision on the Kutcher case, the VA not only refused to pay Thompson and Wellman their pensions, but demanded that they repay all the money they had previously received. At the time of writing (October 1956), their cases were before the courts.

Equally remarkable was the attempt by the Social Security Administration to cancel the old age pensions of a number of Communist leaders (and the survivors' benefits of the widow and children of a one-time Communist organizer who had later become an active anti-Communist) on the ground that since the Communist Party was under Soviet control, they were excluded from Social Security as "employees of a foreign government." In this case, however, court action was unnecessary; Social Security referee Peter J. Hoenen ruled on June 22, 1956, that "the law is clear that service for the Communist Party . . . would form the basis for Social Security benefits." The government accepted his ruling. One further attack on the right of Communists to Social Security benefits was made through a law, signed by the President on August 1, 1956, permitting the trial judge to include deprivation of Social Security rights among the penalties imposed on persons convicted of sedition.

<sup>20</sup> *Kutcher v. Housing Authority of the City of Newark*, 119 A. 2d. 1.

<sup>21</sup> *Kutcher v. Higley*, 235 F. 2d. 505.

## RIGHT TO COUNSEL

Two incidents during 1955-56 raised the question of the right to counsel for persons suspected of subversion. The first, in March 1956, involved an attack by Assistant Attorney General William F. Tompkins on non-Communist lawyers who took Smith Act cases, and in particular on the Cleveland Bar Association for taking up a collection to pay the legal expenses of defendants in a Smith Act prosecution in that city. After the Cleveland Bar Association threatened to bring charges against Tompkins before the grievance committee of the American Bar Association, Tompkins declared that he had been "misquoted," and the Cleveland bar accepted that explanation. The second case occurred on July 30, 1956, when the judiciary committee of the New Jersey State Senate voted against the confirmation of John O. Bigelow as a member of the Board of Governors of Rutgers University because he was—at the request of the Essex County Bar Association—acting as attorney for a teacher who had been dismissed for pleading the Fifth Amendment when asked about possible Communist connections. Governor Robert Meyner refused to withdraw the appointment, the leader of the Republican majority in the State Senate supported Bigelow, bar associations and newspapers in many parts of the country rose in wrath, and on August 9, 1956 the anti-Bigelow majority of the judiciary committee gave in and reported Bigelow's nomination without recommendation to the full Senate. Bigelow was confirmed in the Senate by a bipartisan majority of thirteen to four, with two abstentions.

*The South*

While in the country as a whole the civil liberties situation was strikingly better in the fall of 1956 than in the summer of 1955, large parts of the South formed an exception. There, the issue of integration, and to a lesser extent that of trade unionism, formed the basis during 1955-56 of a widespread and systematic attack on civil liberties. This attack took the form of methods ranging from licensing laws and ordinances, directed at the National Association for the Advancement of Colored People (NAACP) and at trade unions, to the official encouragement of mob violence. This attack was spearheaded by the White Citizens Councils (*see* p. 96, 110-111, 143-144, 148), but was not limited to them. At the time of writing (October 1956), attempts were in progress in the courts of Alabama, Louisiana, and Texas to prevent the NAACP from functioning in those states. Several score Negro teachers were dismissed in various Southern states for membership in the NAACP or for advocacy of desegregation; a similar fate befell a few white teachers and public employees who opposed, or did not actively support the cause of segregation. In Mississippi, a vigorous attempt was being made to take away the vote of even those few Negroes whom that state had previously permitted to go to the polls. Efforts to deprive Negroes of the franchise were also under way in Georgia, Alabama, and Louisiana. (In the latter two states, however, Governors James Folsom and Earl Long did what they could to prevent the disfranchisement of Negro voters.) The use of economic boycotts, directed both against Negroes who supported integration and at whites who sympa-

thized with them, was widespread, especially in Mississippi and South Carolina. And in a number of localities there were instances of violence, either (as in some parts of Texas, Tennessee, and Kentucky) to prevent integration where it had been decided on by school boards or ordered by the courts, or directed against labor organizers or Negro leaders. The governors of Tennessee and Kentucky and some local authorities acted firmly to suppress the violence, but the rioters received encouragement from other local authorities and the state government of Texas.

### *Political Campaign*

The Communist issue played a relatively small part in the political campaign, at least on the surface. Vice President Richard Nixon, who had raised this issue against Democratic candidates in 1950, 1952, and 1954, declared his conviction during 1955-56 that the Democratic leaders were loyal and patriotic Americans. Senator McCarthy was almost completely absent from the campaign. Even the controversy aroused by ex-President Harry Truman's statement in September 1956 that he did not believe Alger Hiss and Harry Dexter White had ever been spies or Communists was moderate; Truman was not a candidate, and Adlai Stevenson reiterated his previously expressed belief that there was no reason to doubt the soundness of the verdict in the Hiss case.

On the local level, however, the Communist issue did sometimes intrude. Two instances occurred in New York, and in both cases they appeared to help the individuals attacked and hurt their attackers. Julien Sourwine, former counsel of the Senate Internal Security Subcommittee and a protege of the late Senator Patrick McCarran of Nevada, charged in the course of his campaign for the Democratic Senatorial nomination for Nevada in the summer of 1956 that New York Attorney General Jacob K. Javits had consulted with various Communists before launching his political career. (Sourwine did not attempt to demonstrate any connection between Javits's record in Congress or his record as New York attorney general and the Communist line.) At his own request, Javits testified before the Senate Internal Security Subcommittee that he had known some of the persons mentioned, but that all his contacts had been innocent and casual. Senators Jenner and Eastland professed a belief that some things about the case would bear further looking into, but Javits received the Republican nomination for Senator from New York, with the support of such Republican leaders as Thomas E. Dewey and Leonard Hall. In Nevada, on the other hand, Sourwine ran a bad last in a four-man primary contest. In the New York Senatorial campaign the issue played no part, since Democratic candidate Robert Wagner declared he knew Javits to be a good American.

The Communist issue was raised in one New York district, however, where the campaign newspaper of Representative Frederick Coudert quoted various citizens as charging that the Communists were supporting his Democratic opponent, Anthony Akers. It was soon revealed that the citizens quoted had never made the statements in question, and that the pictures which had appeared next to their names had been those of professional models. Coudert was forced to repudiate the campaign newspaper, but maintained that the

charges were true. The only proof he was able to offer, however, consisted of two *Daily Worker* news stories which both Democratic and Republican newspapers agreed gave no indication whatsoever of Communist support for Akers. (*The New York Times* added that even if the Communists were to support Akers, it would be irrelevant, since he was obviously neither Communist nor pro-Communist.)

MAURICE J. GOLDBLOOM

## CIVIL RIGHTS

CIVIL RIGHTS refer to those rights and privileges which are guaranteed by law to each individual, regardless of his membership in any ethnic group: the right to work, to education, to housing, to the use of public accommodations, of health and welfare services and facilities, and the right to live in peace and dignity without discrimination, segregation, or distinction based on race, religion, color, ancestry, national origin, or place of birth. They are the rights which government has the duty to defend and expand.

The major civil rights events of the period covered by this review flowed directly from the two historic decisions of the United States Supreme Court: that compulsory racial segregation in the public schools violates the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and that such segregation should be terminated "with all deliberate speed."<sup>1</sup> Although this article covers the period from July 1, 1955 to June 1, 1956, the section on education is extended to September 30, 1956, in order to include a report on the status of desegregation as of the commencement of the school term in the fall of 1956.

## EDUCATION

With the opening of public schools in September 1956, Negro children in many border states sought admission to formerly all-white schools. In some cases they were backed by court orders, and in others they were merely presented by their parents as children entitled to admission as of right. In many small towns and cities there was trouble. Angry citizens, sometimes provoked by prior meetings of White Citizens Councils (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 183), gathered around some school buildings when it was learned that Negro children would apply for admission. In some cases, violence erupted and necessitated strong police and even National Guard intervention. In other cases, white parents kept their children out of school for their own safety or as a protest against the admission of Negroes. This tactic had mixed success. And in still other communities Negro children were accepted into the formerly white schools without incident or observable tension.

In the eight states of the so-called Deep South, tradition continued to defy

<sup>1</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

desegregation, and there were no cases reported in which a Negro child succeeded in winning admission to a white school.

According to the September 1956 issue of the *Southern School News*, the official publication of the Southern Educational Reporting Service, there were 723 school districts and units desegregated in the southern and border states—186 more than in September 1955—as school doors reopened. A summary of the major developments in each of the seventeen states and in the District of Columbia follows.

## Alabama

There was no desegregation in the public schools or colleges of Alabama, although Negroes and whites, in varying ratios, did attend a few private schools and colleges—Spring Hill College, a Jesuit school in Mobile; Talladega College and grade school, a Congregational institution in the Blue Ridge foothills; and Tuskegee Institute, founded in 1881 by Booker T. Washington for the education of Negroes.

A school placement bill, which, while not mentioning race, granted local boards of education virtually unlimited powers to assign pupils to any particular school on the basis of social, intellectual, or psychological suitability became law in August 1955 without the signature of Governor James E. Folsom.

## LUCY CASE

On August 26, 1955 Federal district Judge Hobart Grooms ruled that the officials of the University of Alabama at Tuscaloosa could not refuse admission to Autherine Lucy and Polly Ann Myers because of their race or color.<sup>2</sup> Following a series of legal maneuvers, the United States Supreme Court on October 10, 1955, ordered the university to admit the two Negro women.<sup>3</sup> The complainants returned to Judge Grooms' Court on October 21, and asked that the dean of admissions, William F. Adams, be cited for contempt for refusing to carry out the court's mandate. Upon the plea that the registration period had passed, the judge refused to find the dean in contempt. On February 1, 1956, Autherine Lucy and Polly Ann Myers Hudson presented themselves for registration. Mrs. Hudson was turned away on the ground that "her conduct and marital record" had been such that "she does not meet the standards of the university." Autherine Lucy was hurried through registration, but was refused a room in the dormitory and the privileges of the cafeteria. She attended classes on February 3, 1956, without incident, although university police acted as her escort when she crossed the campus from one building to another. There was a student demonstration and a burning cross that evening, but observers described it as a characteristic student rally or display, less boisterous than others of the past. On February 4, Miss Lucy attended classes without police guard or escort and again without incident. That evening, however, high school students, Tuscaloosa townspeople, workers and members of several pro-segregation organizations from Birmingham moved in to distribute racist and inflammatory pamphlets, and

<sup>2</sup> *Lucy et al. v. Adams*, 134 F. Supp. 235.

<sup>3</sup> *Lucy et al. v. Adams*, 350 U.S. 1.

to encourage the university students to resist the admission of the Negro girl. The group swelled to mob proportions and demonstrations at the home of university President Oliver C. Carmichael followed. On February 5, Carmichael announced that disciplinary action would be taken against students responsible for the demonstrations. On February 6, a crowd of non-university people gathered in front of the building in which Miss Lucy had her first class, and the dean of women escorted her out through the rear of the building to avoid the crowd gathered in front. They were seen, however, and rocks and eggs were thrown at them and epithets hurled. Miss Lucy was taken in the dean's car to her next class in another university building; again rocks and eggs were hurled at her. The mob grew to about a thousand as university students were attracted by the demonstrations. Miss Lucy was finally spirited off the campus in the car of a highway patrolman and safely escorted back to Birmingham. The mob continued to roam the campus and to throw gravel, rocks and firecrackers until that evening, when the university board of trustees met and decided to exclude Miss Lucy "until further notice."

Carmichael justified the board's action as essential to forestall physical injury and perhaps death to the Negro student. He convened a compulsory joint student assembly and faculty meeting on February 16 at which he stated that the issue was no longer "segregation versus integration, but law and order versus anarchy." Not all faculty members or students, however, agreed with the decision of the board to suspend Autherine Lucy for her own safety. Miss Lucy's attorney appealed to Judge Grooms to compel the university authorities to allow her to resume her studies. In his petition, the attorney alleged that the university had engaged in a "cunning stratagem" to effect his client's exclusion from the university, and that the authorities had "intentionally" permitted the demonstrations to create an atmosphere of mob rule. These allegations were called "untrue, unwarranted and outrageous" by Carmichael. Although Judge Grooms ordered Miss Lucy's reinstatement, she was permanently expelled on February 29 for having made charges that reflected discredit upon the university. No appeal was taken from the expulsion order.

On March 12, 1956, the board also expelled Leonard R. Wilson, who had been a leader in the school demonstrations in February and who had repeatedly denounced the university officials and challenged them to expel him. At the same time, four other students were suspended and a group of about twenty disciplined for having participated in the demonstrations. So ended the first attempt to breach the segregation barrier at the University of Alabama.

#### LEGISLATIVE AND JUDICIAL ACTION

On February 1, 1956, the House by an eighty-six to four vote and the Senate by an overwhelming voice vote, passed an interposition resolution declaring the Supreme Court's desegregation rulings "null, void and of no effect." On February 7, 1956, the legislature approved a proposed constitutional amendment providing for "freedom of choice," under which parents could elect whether to send their children to all-Negro, all-white, or mixed schools.

Montgomery Circuit Judge Walter B. Jones on June 1, 1956, enjoined all Alabama chapters of the National Association for the Advancement of Col-



ored People (NAACP) from further activities within the state. State Attorney General John Patterson had requested the order, charging the NAACP with "organizing, supporting and financing an illegal boycott by Negro residents of Montgomery . . . to compel the Montgomery City Lines . . . to integrate seating arrangements" on city buses. A second charge was that the NAACP employed and paid Autherine Lucy to break down the segregation barriers at the University of Alabama.

On August 28, 1956 the voters approved, by a three to two margin, the constitutional changes required to empower the legislature to abolish any public school threatened with desegregation and to establish "freedom of choice."

## Arkansas

September 1956 arrived with three school districts—the same number as in 1955—desegregated. They were Hoxie, where about a dozen Negroes were attending classes with some 900 white pupils; Fayetteville, which in 1954 integrated nine high school students in a school where about 500 students were white; and Charleston, which also in 1954 admitted some eleven Negroes to formerly all-white schools.

An unusual case was filed in the Federal district court at Little Rock where the Hoxie school district sought to enjoin pro-segregationists from interfering with the operation of the schools in the district. On October 14, 1955, Federal Judge Thomas C. Trimble issued a temporary restraining order which was made permanent by United States District Judge Albert L. Reeves on January 9, 1956.<sup>4</sup> An appeal was taken by the defendants to the United States Court of Appeals (8th Cir.), and the United States Department of Justice filed a brief *amicus curiae* on August 24, 1956. The brief argued that the principal issue was whether "state officials can be protected in federal courts from purposeful and formidable obstruction to the performance of the duty imposed on them by the Federal Constitution."

In a second case in Arkansas, Federal district Judge John E. Miller ruled on January 18, 1956, in an NAACP-sponsored suit against the Van Buren school board, that Arkansas' segregation laws were null and void, and that there was "no question of law" involved in the appeal to the court to order admission of Negro children to white schools. The only question, Judge Miller said, was whether the school board really needed more time to integrate Negro and white students according to the Supreme Court ruling.<sup>5</sup>

Suit was filed on February 8, 1956 on behalf of thirty-three Negro children in Little Rock asking an immediate end to all racial segregation in the district, which had about 13,000 white pupils and 4,400 Negro pupils. On August 28, 1956, Federal district Judge John E. Miller ruled in favor of the Little Rock School Board's plan for gradual desegregation, to begin at the high school level in 1957. The court found that the school board had acted in "utmost good faith" in adopting its plan.<sup>6</sup>

At the university level, Arkansas was a pioneer among the southern states. A Negro had been enrolled, without a court mandate, in the law school of

<sup>4</sup> *Hoxie School District v. Brewer, et al.*, 137 F. Supp. 364.

<sup>5</sup> *Banks v. Izzard*, — F. Supp. —.

<sup>6</sup> *Aaron v. Cooper*, — F. Supp. —.

the University of Arkansas in 1948, six years before the Supreme Court ordered desegregation of the public schools.

## *Delaware*

According to figures submitted by the director of research of the state department of public instruction, the 1956-57 school year commenced with at least 4,100 Negro children out of a total of about 11,000 in the state attending public schools in districts that had varying patterns of desegregation. All of Wilmington's twenty schools, from kindergarten through senior high school, were operating on a "freedom of admission" basis. In September 1954 the Wilmington board of education permitted desegregation in the elementary schools. The next year, the junior high schools permitted students to enter regardless of race. The process was completed in September 1956 when the senior high schools followed suit. Transfers from one school to another within the city were being granted, "but only after close study of the reasons given." Ward I. Miller, superintendent of schools, reported to *Southern School News* that there were "exceptionally few" requests for transfers.

The picture was somewhat different in the southern part of the state. Acting on behalf of a group of Negro children, the NAACP petitioned the state board of education on February 10, 1956, to order desegregation in eight school districts in southern Delaware, where no steps had been taken to comply with the Supreme Court's mandate. The state board, which officially favored a program gradually leading to integration, refused on March 15, 1956, to order immediate desegregation in the eight districts. In May 1956 a suit was filed in the federal district court against the eight non-complying school districts. The Milton school board in Sussex County, and the Christiana school board in upper New Castle County, two of the eight school districts involved, replied that they were willing to undertake some form of desegregation program immediately, while the remaining six districts were unwilling to do so. The court ordered all eight school districts to draw up and submit plans for compliance with the Supreme Court's desegregation decision.<sup>7</sup> An elementary school at Christiana admitted Negroes for the first time in September 1956. The public schools of Dover, the state capital, were also following the lead of Wilmington rather than that of the southern county in which it was located, and admitting Negro students.

## *District of Columbia*

As the public schools of the district opened in September, which was the beginning of the third year of desegregation, a special subcommittee of the House District Affairs Committee, under the chairmanship of Congressman James C. Davis (Dem., Ga.) was conducting public hearings on "juvenile delinquency and lowered school standards." Since the membership of the subcommittee was principally southern, and its chief counsel was William E.

<sup>7</sup> *Jackson v. Buchanan*, — F. Supp. — (1956).

Gerber of Memphis, the NAACP charged that the sole purpose of the probe was to discredit the desegregation program of Washington's schools.

Although school officials refrained from publicizing any figures breaking the school population down by race, the 1956-57 enrollment was expected to continue the trend first observed in 1950 of a falling white school population and a growing Negro enrollment. *Southern School News* estimated a total school population of 110,000 for the District of Columbia, with a ratio of 65 per cent Negro and 35 per cent white. All but twenty-two of the public schools in the district reported that they had racially mixed classes. The school authorities were plagued by administrative problems flowing from overcrowded classes, shortage of teachers, widely varying achievement rates among the pupils, and the spotlight of an unsympathetic congressional investigation.

### Florida

With the exception of schools located on two Air Force bases at Eglin and Tyndall, complete racial segregation existed in September 1956 at all publicly supported schools, colleges, and universities in Florida. While the schools located on Air Force bases at Tampa and Cocoa were also available to all children of the military personnel, no Negro children were reported as registered.

The Supreme Court of Florida reconsidered an earlier decision involving the 1949 application of Virgil D. Hawkins, a Negro teacher of the social sciences, for admission to the law school of the University of Florida. On May 24, 1954, one week after the historic school desegregation decision, the United States Supreme Court had remanded the *Hawkins case* to the Supreme Court of Florida "for consideration in the light of the *Segregation Cases* decided May 17, 1954." (See AMERICAN JEWISH YEAR BOOK, 1955 [Vol. 56], p. 201). On October 19, 1955, the Supreme Court of Florida, by a five to two vote, voided all state statutes and constitutional provisions which prohibited the mingling of the races in schools supported by tax-raised funds. The Florida court extended the United States Supreme Court's "implementation" decision in the *Segregation Cases* to institutions of higher learning, and ruled that the university authorities should be allowed time for adjustment and planned integration of the races. It therefore appointed Circuit Judge John A. H. Murphree to take testimony regarding a plan and program for the admission of Negroes without "danger of serious conflicts, incidents and disturbances."<sup>8</sup> Hawkins appealed again to the United States Supreme Court, and on March 12, 1956, that tribunal held that its order for the desegregation of public elementary and secondary schools "with all deliberate speed" was not applicable to graduate schools. "There is no reason for delay. He [Hawkins] is entitled to prompt admission under the rules and regulations applicable to other qualified candidates."<sup>9</sup>

The reaction of the Florida Board of Control was immediate. It tightened admission requirements for the three state universities under its jurisdiction. All future applicants would be required to undergo rigid record

<sup>8</sup> *Florida ex rel. Hawkins v. Board of Control*, 83 S.E. 2d 20 (1955).

<sup>9</sup> *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413 (1956).

examination, and graduates of out-of-state colleges would be admitted only with the express approval of the board of control. Future admissions to the state universities from among high school graduates would be limited to those in the upper 60 per cent of their class.

At a special session of the state legislature called in July 1956 to deal with the desegregation issue, four statutes and one resolution were passed. One law permitted county school boards to assign pupils to schools on the basis of intellectual ability, scholastic achievement, and sociological and psychological factors. The second statute permitted the dismissal of teachers notwithstanding tenure status. The third enactment vested extraordinary powers in the governor for a five-year period, "to cope with emergencies threatening the peace and tranquility of the state." The fourth law established a seven-member committee of the legislature to investigate the NAACP. The resolution condemned the United States Supreme Court "for usurping the sovereign rights of the states," and asked the Congress to amend the Federal Constitution to clarify the exclusive role of the states in controlling public education. Governor LeRoy Collins signed the legislation into law on July 26, 1956.

### *Georgia*

White and Negro school children of Georgia returned to their classrooms in September 1956 with racial segregation in effect at all levels from kindergarten to graduate school. The state legislature, at its regular session which ended on February 17, 1956, adopted five bills sponsored by Governor Marvin Griffin to safeguard or strengthen segregation. One law permitted the governor to close schools ineligible for state funds because of mixed racial classes, and allowed the governor to make state grants to individuals to be used at private, nonsectarian schools. Other enactments authorized local school boards to lease or sublease school property for private educational purposes. Another statute brought teachers in private, nonsectarian schools under the Georgia Teacher Retirement Act. The final law provided for fire safety inspection and certification of private schools. A resolution attempting to nullify the Supreme Court decision on desegregation passed the state legislature on February 13, 1956.

Three Negro applicants who sought admission to Georgia State College of Business Administration in Atlanta in June 1956 were rejected by registration officials. Regulations newly adopted on May 9, 1956, provided that all applicants for admission to the college must submit the signatures of two sponsoring alumni and of the county clerk or ordinary of the applicant's home county.

A controversy developed during the first week of December 1955 over whether Georgia Tech should oppose the University of Pittsburgh football team in the Sugar Bowl on January 2, 1956, in light of the fact that the latter team had a Negro player. Governor Griffin wired Robert O. Arnold, chairman of the board of regents of the State of Georgia, on December 2, 1955, asking that the board ban any state school from playing a team that used Negroes. He also asked for a prohibition against playing before unsegregated audiences, which was permitted at the Sugar Bowl game. That

night Georgia Tech students demonstrated in large numbers before the state capitol and executive mansion, in protest against the governor's action. The Georgia Tech Board of Regents met on December 5 and voted to permit the game to be played as scheduled, but barred the school's participating in any future mixed-race contests within the state. Games played outside the state were to be played according to the rules of the host. The board also apologized to the governor and to the people of Georgia for the students' behavior on December 2 and 3. Five students were expelled as a result of the series of demonstrations.

### *Kentucky*

Robert Martin, State Superintendent of Public Instruction, reiterated Kentucky's official position on August 28, 1956, when he said that "the Supreme Court ruling is the law of the land." The 1956-57 school year began with desegregation in effect in some schools in all but 15 of the state's 120 counties. On September 10, 1956, compulsory racial segregation ended in all of Louisville's public schools, at all levels from kindergarten through senior high school. Omer Carmichael, superintendent of Louisville schools, announced that fifty-four of the seventy-four public schools had racially mixed student bodies, while the remaining schools were either all-white or all-Negro because they were located in completely segregated neighborhoods. A total of over 50,000 children, including 12,500 Negroes, were in peaceful attendance in the public schools on the opening day.

Not so peaceful were the attempts to desegregate the schools in the towns of Clay, Sturgis, and Henderson. At Clay a crowd of over one hundred farmers and coal miners turned two Negro children away from the elementary school on September 10, 1956, when they attempted to register. They were subsequently ushered to the school by the state militia, but white children boycotted classes. A week later, Attorney General Jo M. Ferguson published an opinion that the Negro students were not entitled to admission to the white school until the local school board had first adopted a plan and program to desegregate it. The local board thereupon passed a resolution barring Negroes from the Clay school for the time being, and the two colored children were refused admission by the principal.

At Sturgis, a western Kentucky mining community of 2,500 eleven miles from Clay, nine Negro children presented themselves at the white high school on September 5, 1956. An angry mob of townspeople turned them away. That night several units of the Kentucky National Guard arrived in town, and the next morning the guardsmen escorted the Negro children to school. The mob tried to break through the ring of troops but was forced back. White children were kept out of school in protest, but after one week of the boycott attendance was almost back to normal. The opinion of the attorney general, followed by the capitulation of the school board at Clay, established a pattern which was quickly followed at Sturgis, and the Negro children were excluded from the school.

At Henderson a boycott of the Weaverton grade school erupted following the Clay and Henderson capitulations. Here the school authorities held fast, even though more than 75 per cent of the white children stayed away. By the

end of September the mood of the protesting parents had changed completely, and there were good indications that desegregation would win out.

On November 30, 1955 the Federal District Court for Western Kentucky handed down its decision in the first school desegregation suit to be brought in the state. The court held that the Adair County high school should be opened to Negroes at the commencement of the February 1956 semester. The court also ruled that the county's elementary schools should be desegregated eight months later with the opening of the new school year in September.<sup>10</sup> Negro students were admitted to the Adair high school on January 16, 1956, without incident.

On June 7, 1956, Western Kentucky State College at Bowling Green enrolled its first Negro students in compliance with the recommendations of the Kentucky Council of Public Higher Education. A majority of the state's private, church-related institutions of higher education had admitted Negro students for some time. As of September 1956, twenty-eight of the state's forty seminaries, junior colleges, and senior colleges were opened to students of all races.

## *Louisiana*

"Solid segregation" most aptly described the condition that prevailed with the opening of the public schools in Louisiana in September 1956. The only desegregation that had taken place in state-supported institutions resulted from court mandates opening four normally white colleges: Louisiana State University, Southwestern Louisiana Institute, McNeese State College, and Southeastern Louisiana College.

In December 1955 state district Judge Coleman Lindsey dismissed an NAACP challenge to the constitutionality of a 1955 statute appropriating \$100,000 to defeat legal attacks on racial segregation in the state's public schools. The judge held that the state attorney general was doing no more than his sworn duty when he expended funds to defend state laws which had not yet been declared unconstitutional by any competent court.<sup>11</sup>

In *Bush v. Orleans Parish School Board*, a special three-judge Federal district court held that the United States Supreme Court's desegregation decisions had invalidated all Louisiana statutes and constitutional provisions requiring or permitting racial segregation in the public schools. The case was then referred back to Federal district Judge J. Skelly Wright, who enjoined the Orleans Parish school board from requiring or permitting racial segregation in any school under its supervision. Judge Wright ordered the board to make necessary arrangements for the nondiscriminatory admission of students "with all deliberate speed as required by the decision of the Supreme Court."<sup>12</sup> In the course of his opinion Judge Wright said that the plan devised by the legislature "for maintaining segregation in the public schools of Louisiana is invalid" (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol 57], p. 147).

<sup>10</sup> *Willis v. Walker*, — F. Supp. —.

<sup>11</sup> *Adams v. LeBlanc*, 19th Judicial District Court, Baton Rouge, La.

<sup>12</sup> *Bush v. Orleans Parish School Board*, 138 F. Supp. 336, 337, both decided on February 15, 1956.

As a reaction to the court defeats, Louisiana Attorney General Fred LeBlanc sought dissolution of the NAACP, because the organization had failed to comply with a rarely enforced law requiring practically all organizations to file membership lists annually with the attorney general's office. On March 29, 1956, state district Judge Coleman Lindsey issued a temporary injunction against the NAACP, and made it permanent on April 24, 1956.<sup>13</sup>

Toward the end of May 1956 Louisiana became the sixth southern state to adopt an interposition resolution. On May 7, the United States Supreme Court refused to review a Federal district court decision ordering Louisiana State University to open its doors to Negro undergraduates.<sup>14</sup>

A 1956 statute (Act 579) prohibited interracial athletic contests and unsegregated seating arrangements for spectators. The Sugar Bowl midwinter sports carnival then received word from Notre Dame, Dayton, and St. Louis Universities that they could not accept invitations to participate in the basketball tournament. The University of Pittsburgh, which had brought a star Negro fullback and an unsegregated rooting section to New Orleans on January 1, 1956, to participate in the Sugar Bowl football game, announced that it would accept no more invitations to the Sugar Bowl so long as Act 579 stood on the statute books. The United States military academies indicated that they took the same position.

## *Maryland*

Almost 85 per cent of Maryland's Negro children found their school buildings open in September 1956 on a nonsegregated basis. Nineteen counties and the city of Baltimore were following a policy of desegregation in accordance with the United States Supreme Court's decisions. Only four counties did not have some sort of program under way, and one of these had no known Negro school children. The other three lay along Maryland's eastern shore, which was the site of the only significant resistance to desegregation in the state. The number of Negro pupils actually entering white schools was expected to be small, however, since most counties adopted a "voluntary desegregation" policy under which Negroes were free to apply for admission to formerly white schools. Minor, nonviolent demonstrations were reported in September 1956 at four schools of the 200 admitting Negroes.

On November 23, 1955, and December 15, 1955, two sets of parents were haled into Baltimore County Juvenile Court for violating Maryland's compulsory education law by keeping their children out of racially mixed schools. Both families removed their children from the state before the charges were finally adjudicated.

On June 20, 1956, Federal district Judge Roszel C. Thomsen held a hearing in Baltimore in a suit brought by the NAACP on behalf of a group of sixty-six Negro students against the St. Mary's county board of education. The plea asked that the board be compelled to present a plan to desegregate the county's public schools in accordance with the Supreme Court's desegregation decisions.<sup>15</sup> A second suit was filed in the Federal district court by the

<sup>13</sup> *LeBlanc v. Lewis*, 19th Judicial District Court, Baton Rouge, La.

<sup>14</sup> *Board of Supervisors of Louisiana State University v. Tureaud*, 351 U.S. 924.

<sup>15</sup> *Robinson v. Board of Education*, 143 F. Supp. 481.

NAACP on August 28, 1956, against the board of education of Harford County on the charge that the school authorities had discriminated against Negro children; only fifteen out of fifty-nine applicants for transfer to formerly white schools had been accepted.

### *Mississippi*

Mississippi's 500,000 public school children, almost equally divided between white and Negro, returned to their strictly segregated schools in September 1956. The program adopted by the legislature in 1953 to equalize Negro and white educational opportunities and facilities within the segregation framework was beginning to show some results. The physical facilities of the Negro educational system were improved, and the salaries paid to Negro teachers raised. Aside from the filing of petitions in five cities (Vicksburg, Natchez, Jackson, Yazoo City, and Clarksdale) no efforts had been made to break down the segregation barriers.

Introduced and passed by the legislature on February 29, 1956, Mississippi's interposition resolution pledged the state

to take all appropriate measures honorably and constitutionally available to us, to avoid this illegal encroachment upon our rights, and we do hereby urge our sister states to take prompt and deliberate actions to check further encroachment by the federal government through judicial legislation, upon the reserved powers of all the states.

Also enacted during February 1956 was a law repealing the state's compulsory school attendance statutes, so that the way would be cleared if it should become necessary to abandon the public school system. A second law passed in February prohibited "fomenting or agitating" litigation or the "solicitation, receipt or donation of funds for the purpose of filing or prosecuting a lawsuit." The act was obviously aimed at the NAACP. A third law required all supervisory personnel, instructors, and teachers in all state-supported institutions to file sworn statements listing the names and addresses of all associations and organizations of which they were or had been members or contributors during the past five years. In March the legislature set up a State Sovereignty Commission "to do and perform any and all acts and things deemed necessary and proper to protect the sovereignty of the state of Mississippi . . . from encroachment thereon by the federal government . . ."

### *Missouri*

The third year of desegregation commenced in September 1956 with 88 per cent of Missouri's Negro children enrolled in school systems that were wholly or partially integrated, and compulsory racial segregation virtually abolished at the secondary school level. The 33,000 Negro pupils in St. Louis and the 12,000 children in Kansas City were attending public schools that did not use race as a factor in determining admissions. The only area of the state in which compulsory segregation persisted was the Bootheel, or delta section, in the southeastern tip of the state.



In most of Missouri's large school systems, teachers were integrated along with their pupils. Complaints that the Kansas City board of education had discriminated against Negro teachers were aired at a public hearing on November 10, 1955; an injunction action by the NAACP was pending in the Federal district court in St. Louis on behalf of eight Negro teachers of Moberly who claimed that they had been dismissed from their teaching posts solely on the grounds of race.<sup>16</sup>

Alert and prompt action on the part of school authorities and local police averted a pupil demonstration in March 1956 at a Kansas City high school where racial tensions developed as a result of a fracas between a Negro and a white student.

### *North Carolina*

There was not a single instance of desegregation in the public schools of North Carolina in September 1956. The only new crack in the walls of segregation appeared at the college level; several Negro undergraduates were admitted to the University of North Carolina following a decision by a three-judge Federal district court on September 10, 1955, that "the Negro as a class may not be excluded because of their race and color."<sup>17</sup> The three Negro petitioners were admitted to the university branch at Chapel Hill pending an appeal to the United States Supreme Court. The university had been admitting Negro graduate students since 1951.

In a significant case, the United States Court of Appeals on December 1, 1955, remanded a lawsuit to the federal district court with instructions to "give consideration not merely to the decision of the Supreme Court [in the *School Segregation Cases*] but also to subsequent legislation of the State of North Carolina providing an administrative remedy for persons who feel aggrieved with respect to their enrollment in the public schools of the state. . . . It is well settled that the courts of the United States will not grant injunctive relief until administrative remedies have been exhausted."<sup>18</sup>

The importance of the case lay in the court's acceptance of the administrative appeal procedure established by the pupil assignment law; this law had been adopted in 1955 to frustrate the desegregation mandate of the Supreme Court (see *AMERICAN JEWISH YEAR BOOK*, 1956 [Vol. 57], p. 148). States committed to resist desegregation were thus given the possibility of devising administrative appeal procedures whose effect would be to delay an ultimate decision on the merits of an application for admission to a public school until the Negro child was graduated from the segregated school.

On March 5, 1956, Superior County Judge George B. Patton, in interpreting the 1955 pupil assignment law, ruled out law suits brought on behalf of a petitioner "and others similarly situated" to test the validity of board refusals to admit children to local public schools. This decision was affirmed on May 23, 1956, by the North Carolina Supreme Court, and another dilatory tactic was upheld.<sup>19</sup> Also on March 5, 1956, the United States Supreme Court handed down its decision in the University of North Carolina case.

<sup>16</sup> *Brooks, et al. v. Moberly Board of Education*.

<sup>17</sup> *Frasier v. Board of Trustees of N.C.U.*, 134 F. Supp. 589.

<sup>18</sup> *Carson v. Board of Education of McDowell County*, 227 F. 2d 789.

<sup>19</sup> *Joyner v. McDowell Board of Education*, 92 S.E. 2d 795.

(See p. 107, *above*.) In a *per curiam* order, the court affirmed the three-judge Federal court's decision that the university must admit the Negro applicants if they were otherwise qualified. The Supreme Court thus extended its May 17, 1954, ban on racial segregation to tax-supported colleges and universities.<sup>20</sup> Following the decision, Negro undergraduates were admitted to several other branches of the University of North Carolina.

In June 1956, the Supreme Court of North Carolina invalidated the state's constitutional requirement for the maintenance of racially segregated schools; the suit under consideration challenged the right of county commissioners to issue school bonds. The legal theory of the petitioner was that the bonds had been approved by the voters for racially segregated schools which had, in the interim, been outlawed by the United State Supreme Court.<sup>21</sup>

By a four to one vote, the people of North Carolina on September 8, 1956, approved two amendments to their state constitution. These provided for the state to pay tuition grants to students who attended nonsectarian private schools because their parents objected to their attending mixed public schools, and enabled a majority of the residents in any school district to suspend the operation of a public school "to escape an intolerable situation."

## Oklahoma

Schools in at least 173 districts in Oklahoma had actual desegregation as they commenced the 1956-57 school year: 3,177 Negro pupils in those districts were attending schools with almost 89,000 white students. Some 26 school districts had segregated schools either through official policy or preference of the pupils. In those districts 1,811 Negroes and 11,521 whites were enrolled. Altogether, some 60 of the state's 77 counties had either officially or actually desegregated their public schools.

In September 1955 the NAACP commenced an action in the Federal district court at Muskogee charging a Negro superintendent of schools at Red Bird with refusing to issue transfers to fourteen Negro pupils to enable them to attend high schools that had been formerly white. On September 30, Federal district Judge William R. Wallace issued a temporary restraining order barring the school districts involved in the litigation from using state aid funds. A three-judge Federal court was convened to hear the case on its merits. On December 15, 1955, the court dismissed the suit "because of the defendant school district's good faith strides toward complete integration."<sup>22</sup>

In February 1956 the state department of education adopted new rules for computing state aid for transportation expenses. These rules were expected to discourage transporting pupils out of their home districts to segregated schools, since the cost of such transportation was shifted completely to the local district.

The Oklahoma Congress of Colored Parents and Teachers voted itself disbanded on July 1, 1956; after this date its members would be eligible to belong to the previously all-white Oklahoma Congress of Parents and Teachers. Steps were also under way to disband the Oklahoma Association of Negro

<sup>20</sup> *Board of Trustees of N.C.U. v. Frasier*, 350 U.S. 979.

<sup>21</sup> *Constantian v. Anson Board of Education*, — N.C. —.

<sup>22</sup> *Borough v. Jenkins*, U.S.D.C., Eastern District of Oklahoma.

Teachers, since the Oklahoma Education Association had eliminated its bar against Negro members. One unfortunate concomitant of the rapid and successful desegregation of Oklahoma's public schools was the discharge of almost 200 well-qualified Negro teachers, since the faculties were not integrated when the students were. Many of these discharged teachers were finding jobs in other southern states where desegregation was not proceeding so swiftly and efficiently.

### *South Carolina*

At the commencement of the 1956-57 school year rigid racial segregation prevailed from the elementary to the collegiate level in the educational system of South Carolina. The state crystallized its official policy against desegregation in February 1956 by adopting a formal declaration of protest against the Supreme Court's school desegregation decisions. The resolution did not use the terms "interposition" or "nullification," but it was a strongly worded condemnation of the United States Supreme Court for "encroachment . . . into the reserve powers of the states."

The 1956 session of the South Carolina General Assembly adopted a number of laws intended to strengthen the barriers of racial segregation. H-1896 provided that state appropriations could not be used to support any school, college, or park in which persons were ordered admitted by any court in disregard of the state's segregation statutes. Such state institutions were to be closed "while the pupil presents himself for admittance, or until the court order is revoked." At the same time the Negro school was to be closed, making it impossible for any Negro child to attend school. H-1998 made it illegal for the state or any of its political subdivisions to employ any member of the NAACP. H-1915 empowered school authorities to call in law enforcement officers whenever there was reason to believe that the enrollment "of certain pupils in a certain school may threaten to result in riot, civil commotion, or may in any way disturb the peace of the citizens of the community." The law officers were authorized to remove such pupils to other schools where their presence was not likely to cause a breach of the peace. H-1908 and H-1909 authorized local school boards to designate one or more of their members to act as hearing officers to deal administratively with segregation problems. H-2021 extended the life of the [Senator L. Marion] Gressette Committee established in 1951 to study school segregation problems and make recommendations. The committee was expressly empowered to "coordinate its activities with those of other states having similar committees and similar problems." H-1900 was a joint resolution establishing a nine-member committee to investigate the activities of the NAACP among the faculty and students at the South Carolina State College for Negroes. H-2006 was a joint resolution commending the principles of the Citizens Councils in South Carolina. H-2100 was a concurrent resolution calling upon the United States Attorney General to place the NAACP on his list of subversive organizations.

A one-week student demonstration occurred April 9-13, 1956, at South Carolina State College as a protest against both the legislative investigation of the NAACP and the college's use of the products of local merchants who were members of the Citizens Council. On April 25 the board of trustees,

all of whom were white, met to study the student demonstration. They immediately expelled the president of the student organization and labeled "unwise" a resolution approving the NAACP which had been signed by 176 members of the faculty. Fifteen additional students were asked not to return to college the following fall.

On April 25, 1956, the United States Court of Appeals refused to grant an injunction to compel a South Carolina public school to admit Negro children. The ground for the refusal of the injunction was that "the administrative remedies prescribed by the recent [1956] South Carolina statute have not been exhausted."<sup>23</sup> Here was another court decision that required a petitioner to follow faithfully the administrative appeal procedures established by a resisting state before he could successfully ask for court relief.

On September 10, 1956, a suit was filed in the Federal district court in Charleston on behalf of twenty-four Negro teachers challenging the constitutionality of the 1956 statute prohibiting the employment of NAACP members by the state or any of its political subdivisions. A hearing was set for October 22, 1956 before a three-judge Federal court.<sup>24</sup>

## *Tennessee*

Public schools opened in Tennessee on August 27, 1956, with the races strictly segregated, with a single exception—Clinton High School. On January 4, 1956 Federal district Judge Robert L. Taylor, as a last step in a lawsuit commenced on April 26, 1952, had issued an order that Clinton High School should desegregate at "the beginning of the fall term of the year 1956."<sup>25</sup> When the school opened 794 white children and 12 Negroes walked in. The community had been discussing the expected desegregation since the court order was handed down in January and appeared resigned to it. The school board passed a resolution expressing its intention "to comply with any and all court mandates, both federal and state," and agreed to support the actions of school principals in carrying out that policy. There were no signs of tension in the community until Frederick J. Kasper, who identified himself as the executive director of the Seaboard White Citizens Council of Washington, D. C., arrived in Clinton and began to stir up trouble. He held a meeting of about fifty persons on Saturday evening, August 25, and urged picketing the school and keeping white children home until the Negro pupils were withdrawn. There was a minor demonstration in front of the school when it opened. Kasper held a second meeting on August 28 and drew about 500 people. The next morning, Wednesday, about one hundred people demonstrated in front of the high school and some violence broke out. School attendance fell off. Kasper held another meeting that evening which was attended by about 1,500 people. During his speech he was served by a United States marshal with a copy of an injunction restraining all persons from interfering with orderly integration at the school. Kasper continued to carry

<sup>23</sup> *Hood v. Board of Trustees of Sumter County*, 232 F. 2d 626.

<sup>24</sup> *Bryan v. Austin*.

<sup>25</sup> *McSwain v. County Board of Education*, U.S.D.C., Eastern Dist., Tenn.

on his prosegregation activities, and there was more violence at the school on Thursday morning. On August 31, Kasper was held in contempt of court by Federal district Judge Robert L. Taylor. That same evening Asa Carter, president of the North Alabama White Citizens Council, delivered a prosegregation speech before 1,000 people at the county courthouse. Carter immediately left Clinton, but the crowd stayed and began blocking traffic on a major north-south thoroughfare, looking for cars with Negroes. Such automobiles were stopped, their windows smashed and some were overturned. The regular six-member police force was helpless to restore order. The next day, September 1, the mayor and board of aldermen asked Governor Frank Clement for help. The governor announced later that day that he was ordering 100 state highway patrolmen to Clinton immediately, to be relieved by units of the National Guard as soon as possible. Over 600 fully equipped guardsmen arrived in Clinton on Sunday, September 2 and took up stations around the school, courthouse, and other public places. Outdoor meetings were prohibited by Adjutant General Joe W. Henry, the commanding officer. When school reopened after the Labor day weekend, 9 of the 12 Negro students returned to classes, but only 257 of the white children were present. The next day, all 12 of the Negroes were back at school and the total attendance rose to 324. The guardsmen were withdrawn on September 11, and the school attendance was back to normal by September 15.

In September 1955 the federally supported public schools at Oak Ridge integrated some 85 Negro students with 2,526 white pupils in junior and senior high schools. Attempts to organize a protest and to keep the white children home from school were unsuccessful when very few people appeared at a scheduled mass meeting.

A suit was filed on September 23, 1955, in the Federal district court against the school board of Nashville on behalf of twenty-one Negro children who were refused admission to four white public schools.<sup>26</sup>

On November 22, 1955, Federal district Judge Marion S. Boyd held Tennessee's school segregation laws unconstitutional and approved a five-year plan adopted by the state board of education for the gradual elimination of segregation at the state's colleges. The court ordered the admission of the Negro plaintiffs in accordance with that plan.<sup>27</sup> The plaintiffs appealed.

On January 3, 1956, the state board's plan went into effect when the first two Negroes were accepted at the graduate school of Austin Peay State College at Clarksville. A suit was commenced in Nashville Chancery Court by sixteen members of the Tennessee Federation for Constitutional Government, a prosegregation organization, to enjoin the expenditure of state funds at Austin Peay because of the acceptance of the Negro applicants. On May 7, 1956, Chancellor William J. Wade dismissed the action, and held that Tennessee's laws and constitutional provisions requiring racial segregation were invalid.<sup>28</sup>

In September 1956 two Negro students were accepted at Vanderbilt University Law School.

<sup>26</sup> *Kelly v. Board of Education of Nashville.*

<sup>27</sup> *Booker v. Board of Education of Tennessee*, U.S.D.C., Tenn., — F. Supp. —.

<sup>28</sup> *Davidson v. Cope*, Chancery Ct., Part II, Davidson County, Tenn.

*Texas*

Desegregation moved ahead, slowly but surely, with an estimated 100 districts in areas of south and west Texas integrated as schools opened in September 1956. A *Dallas News* survey indicated that about 500,000 white and 25,000 Negro students were attending desegregated schools. In addition, at least eighteen colleges were accepting applicants without regard to race. In east Texas, however, the picture was different. In areas where 90 per cent of the state's Negroes lived, desegregation had not started in the public schools.

There were two reported instances of violence in September 1956. In compliance with an order by Federal district Judge Joe Ewing Estes,<sup>29</sup> the Mansfield school board prepared to admit Negroes to the town's only high school. When it was rumored that three Negro children planned to enroll, crowds congregated around the school building threatening violence if the Negroes were admitted. Texas Rangers were sent to the scene to preserve order by arresting anybody, white or Negro, "whose actions are such as to represent a threat to the peace." Governor Allan Shivers urged the Mansfield school authorities to transfer out of the district any students "whose attendance or attempts to attend Mansfield High School would be reasonably calculated to incite violence." With the failure of the state authorities to back up the Federal district court order, the Negro applicants were prevented by the public show of violence from registering and attending the Mansfield High School. By September 10, 1956 the community had returned to normal.

A similar situation developed at Texarkana Junior College, which likewise was under a Federal district court order to admit qualified Negro applicants.<sup>30</sup> On September 10, 1956, while Texas Rangers and local police stood by "to prevent violence," a mob of white men and youths gathered on the campus of the college and prevented two Negro girls and one Negro boy from enrolling in the state-supported junior college.

On September 16, 1955, Federal district Judge William H. Atwell ruled on an application to compel the school board of Dallas County to admit Negroes to its public schools. The court interpreted the United States Supreme Court's implementation decision of May 31, 1955 (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 143) as requiring desegregation to be accomplished on the basis of a plan of action approved by the school officials and the lower courts. Since the defendant school board had not devised such a plan, and since the evidence established to the satisfaction of the court that equal educational opportunities were available for Negroes and whites in Dallas, Judge Atwell dismissed the application for an injunction "without prejudice to refile it at some later date."<sup>31</sup> The Dallas school board announced a detailed plan for desegregation starting after the 1955-56 school year. In May 1956 the United States Court of Appeals at New Orleans reversed Judge Atwell and ordered the case to be heard on its merits.

On October 12, 1955, the Supreme Court of Texas held that the state's statutory and constitutional requirements for segregated schools were void,

<sup>29</sup> *Jackson v. Rawdon*, original decision Nov. 21, 1955, 135 F. Supp. 936; reversed and remanded 235 F. 2d 93 (1956).

<sup>30</sup> *Whitemore v. Stilwell*, original decision U.S.D.C., Eastern District of Texas; reversed and remanded 227 F. 2d 187.

<sup>31</sup> *Bell v. Rippey*, U.S.D.C., Northern Dist., Texas; — F. Supp. —.

because they conflicted with the equal protection clause of the Fourteenth Amendment to the Federal Constitution, as interpreted by the United States Supreme Court in the *School Segregation Cases*.<sup>32</sup> The Texas Supreme Court held "utterly without merit" the argument that the Texas constitutional and statutory provisions were not before the court in the *School Segregation Cases*, and hence should be held valid and enforceable until condemned by the United States Supreme Court.

Federal district Judge Joe W. Sheehy, on December 19, 1955, ordered the president and board of regents of North Texas State College to admit Negro applicants on the same basis as whites, and without any distinction or discrimination.<sup>33</sup>

At Wichita Falls, Federal district Judge Joseph B. Dooley in April 1956 dismissed an application for an order directing the immediate admission of eighteen Negro children to a white school, since the president of the Wichita Falls school board had disclosed that the board planned complete desegregation in either September 1956 or February 1957.<sup>34</sup>

Toward the end of September 1956 Attorney General John B. Shepperd brought a petition before Texas district Judge Otis T. Dunagan of Tyler asking for a permanent injunction against the NAACP to prevent it from conducting its business in the state. The grounds for this petition were that the NAACP was a New York corporation operating without a permit in Texas; that it was a profitmaking organization; and that it was a corporation illegally practicing law and soliciting litigation. After a two-day hearing, Judge Dunagan granted a temporary restraining order and recessed the case to enable Thurgood Marshall, the NAACP attorney, to prepare for a Federal court suit scheduled for trial beginning October 1, 1956.

## Virginia

With the state legislature in special session for the purpose of considering Governor Thomas B. Stanley's proposals to frustrate the United States Supreme Court's desegregation decision, Virginia's public elementary and secondary schools reopened in September 1956 on a strictly segregated basis. Several Negro students were in attendance at the University of Virginia, Virginia Polytechnic Institute, and the College of William and Mary.

On November 7, 1955, the Supreme Court of Appeals of Virginia handed down a decision which, while not specifically addressed to the racial segregation issue, was expected to have a significant bearing upon it. The court held that a state statute providing for the payment of tuition and other expenses of qualified children of veterans to enable such children to attend certain private schools, was void. This statute, in the court's opinion, conflicted with a provision of the state constitution prohibiting the use of public funds for "any school or institution of learning not owned or exclusively controlled by the state or some political subdivision thereof."<sup>35</sup>

Following the decision of the court, the Virginia Commission on Public Education (known as the Gray Commission) recommended that the governor

<sup>32</sup> *McKinney v. Blankenship*, 282 S.W. 2d 691.

<sup>33</sup> *Atkins v. Matthews*, U.S.D.C., Eastern Dist., Texas; — F. Supp. —.

<sup>34</sup> *Avery v. Randel*, — F. Supp. —.

<sup>35</sup> *Almond v. Day* (No. 4491).

call a special session of the legislature to set in motion an amendment to the state constitution. This amendment would permit public funds to be used either to pay the tuition of children attending private schools because local public schools were closed to avoid racial integration, or to pay the tuition of children whose parents refused to send them to public schools in a locality that elected to operate its schools on a desegregated basis. The Virginia General Assembly met on November 30, 1955, and passed the proposal by a vote of ninety-three to five in the House of Delegates and thirty-eight to one in the Senate. The governor signed the bill on December 31, and set January 9, 1956, as the date for the referendum. An attempt by a Norfolk attorney to enjoin the referendum on the theory that it was a device to circumvent the United States Supreme Court's desegregation decision was defeated when circuit Judge Harold F. Snead ruled that the courts could not question the motives of the legislature in calling for a referendum.

Virginians approved the proposal to amend the state constitution by a vote of more than two to one. Only the tenth district, located in the northern portion of the state and adjacent to Washington, voted against the constitutional amendment to permit the use of public funds to pay tuition for students attending private, nonsectarian schools or colleges.

On February 1, 1956, the general assembly voted overwhelmingly in favor of a resolution "interposing the sovereignty of Virginia against encroachment upon the reserved powers of the state."

In April 1956 the NAACP filed two petitions in Federal district courts asking for orders directing the public school authorities to begin desegregating their public schools. One petition was filed in Prince Edward County, one of the districts involved in the original Supreme Court *School Segregation Cases*. This petition reviewed events in the county, and claimed that school authorities were not making any effort to carry out the earlier directives of the district court (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 144). The second case, brought on behalf of some eighty Negro pupils and their parents, asked that the city of Newport News be directed to begin desegregating its public schools.

Three other Federal district court petitions were filed in May 1956. One was addressed to the city of Charlottesville;<sup>36</sup> one to the city of Norfolk;<sup>37</sup> and the third to the county of Arlington.<sup>38</sup> The last suit was unique in that there were several white parents of children among the petitioners. In the Charlottesville suit, Federal district Judge John Paul, taking note of the various steps taken by the state to frustrate the Supreme Court decision, ruled on July 12, 1956, that the petitioners were entitled to a decree that the city should begin to make plans to desegregate the schools during the term beginning September 1956.

On June 18, 1956, the Virginia Supreme Court of Appeals reversed circuit Judge Leon M. Bazile. Judge Bazile had ruled that a school bond issue approved by the voters when racial segregation was required by state law could not be sold, now that such segregated schools were unconstitutional under the United States Supreme Court's decision. The court of appeals decision

<sup>36</sup> *Allen v. School Board of Charlottesville*.

<sup>37</sup> *Beckett v. School Board of Norfolk*.

<sup>38</sup> *Thompson v. School Board of Arlington County*, 144 F. Supp. 239.



released for sale school bonds of Chesterfield County, as well as of Hanover County, which was directly involved in the litigation.<sup>39</sup>

In August 1956 Federal District Judge Albert V. Bryan ruled in the Arlington County suit mentioned above that the elementary schools should begin desegregating on January 31, 1957, and the junior and senior high schools in September 1957.

During a special session of the general assembly, which ended on September 22, 1956, some twenty-odd bills were passed to make desegregation of the state's schools more difficult. They were all signed by the governor on September 29. The principal new statutes cut off state funds from desegregated schools (HB 1); made such funds available to localities for use as tuition grants for children attending nonsectarian private schools (HB 2); changed compulsory attendance laws so that no child would be forced to attend a school in which the races were mixed (HB 5); made permissive the mandatory requirement for transportation (HB 6); created a three-member state pupil assignment board and provided for appeals to the governor and state courts (HB 68); and provided for the state to take over any school that was desegregated, empowering the governor to reorganize and reopen such schools on a segregated basis (SB 56).

The special session also enacted a series of statutes aimed at the NAACP. HB 60 provided for the registration of groups engaging in activities on behalf of one race, where such activities might create racial conflict. Such organizations were required to provide the state corporation commission with a list of the names and addresses of their members, the sources of income, including the names and addresses of contributors and donors, and a list of expenditures. The information would become a public record, and refusal to comply with the registration requirement was made a crime punishable by a fine levied on the organization. However, if the fine were not paid by the organization, the officers and managers would become liable. A second law (HB 59) provided for the registration of groups that financed lawsuits in which they were not parties or financially interested.

### *West Virginia*

With the opening of school in September 1956 twenty county school systems in West Virginia were totally desegregated. Eleven counties had no Negro populations. Twenty-one counties were partially desegregated, while only three counties had not taken any steps to comply with the desegregation decision. It was estimated that 75 per cent of the state's 25,000 Negro school children were in integrated public school situations. At the college level, all state-supported institutions had been ordered desegregated immediately following the May 17, 1954, decision of the Supreme Court.

At Matoaka, Mercer County, in the southern tip of the state, pro-segregation demonstrations and wholesale absenteeism occurred in September 1956, when several Negro children registered for admission to the elementary and secondary schools. State troopers and local police quelled the disturbances, and by the second week of September the back of the student "strike" had

<sup>39</sup> *Shelton v. School Board of Hanover County.*

been broken, with school attendance gradually approaching normal. At the same time, Princeton High School, ten miles from Matoaka, integrated 25 Negro pupils into a student body of 750 without incident or demonstration.

On September 3, 1955, the NAACP commenced an action in the Federal district court at Charleston on behalf of six Negro children against the Greenbrier County board of education; the NAACP charged that the petitioners were deprived of their constitutional rights by the continued segregated school system of the county. At the conclusion of a three-day hearing in October, Federal district Judge Ben Moore induced the litigants to accept a plan to desegregate the schools as of the beginning of the next semester (February 1956). The court refused to grant the requested injunction, but retained the case on the docket "until the recommendations of the court . . . shall have been fully complied with."<sup>40</sup>

Another suit was filed on October 28, 1955, against the Raleigh County school board.<sup>41</sup> The defendants in that action asked the court to approve a plan identical with that accepted in the Greenbrier suit. The school boards of Mercer and Summer counties quickly followed the same pattern when the NAACP threatened lawsuits. Several other petitions were filed by the NAACP to prod school boards in Cabell,<sup>42</sup> McDowell,<sup>43</sup> and Logan<sup>44</sup> counties into speedier action on the desegregation front. Two of these cases were also settled in pre-trial conferences, with the school boards' agreeing to desegregate beginning in September 1956; only the Cabell County case remained unsettled on the Federal district court docket at the close of the reporting period.

## Northern States

### MASSACHUSETTS

In May 1956 Governor Christian A. Herter signed into law a bill that gave the Massachusetts state commission against discrimination jurisdiction over the enforcement of the fair educational practice act which had previously been administered by the state department of education. Thus, jurisdiction over discrimination in employment, education, public housing, and public accommodations was vested in one state agency.

### NEW YORK CITY

On April 23, 1956, *The New York Times* published a series of four articles on integration problems and the status of the Negro in the North. *The Times* estimated that about 70 per cent of New York City's public schools were racially segregated as a result of segregated housing and the requirement that children generally attend the school nearest their residence. In the high schools the situation was somewhat better, because pupils often attended schools at some distance from their homes. While *de facto* segregation existed in many of New York City's public schools, because Negroes did not have

<sup>40</sup> *Dunn v. Board of Education of Greenbrier County*, U.S.D.C., Southern Dist., W. Va., Jan. 3, 1956.

<sup>41</sup> *Taylor v. Board of Education of Raleigh County*.

<sup>42</sup> *Pierce v. Board of Education of Cabell County*.

<sup>43</sup> *Martin v. Board of Education of McDowell County*.

<sup>44</sup> *Shedd v. Board of Education of Logan County*.

freedom of choice in the housing market, the report pointed out that the Negro of New York lived in a community that had set its sights against racial discrimination and segregation.

A commission on integration, appointed by the New York City Board of Education in June 1955 to study a charge that children in predominantly Negro or Puerto Rican schools were receiving an inferior education, submitted its report and recommendations to the board on May 16, 1956.

The following proposals were made to improve conditions in so-called "underprivileged" schools: 1. raise the academic achievement level of children attending all-Negro or Puerto Rican schools in underprivileged areas; 2. group children in classes according to intellectual levels in all schools in the city; 3. prevent any school from having a disproportionate number of temporary or substitute teachers; 4. establish minimum content of knowledge for all normal children in each grade and limit permissible variations in curriculum and syllabus; 5. increase the number of regular and experienced teachers in "difficult" schools; and 6. develop improved parent-school relations in the "difficult" schools through special conferences, printed communications, and other efforts to bring the parents and teachers into closer contact.

These proposals were offered to minimize the differences among the various schools, and to indicate steps that might be taken toward correcting the educational deprivations sustained by Negro and Puerto Rican children in New York City.

#### PHILADELPHIA

On January 6, 1956, the Orphans' Court of Philadelphia County sustained a decision by a hearing judge dismissing a petition by a Negro boy for admission to Girard College. Stephen Girard, a Philadelphia merchant, who died on December 26, 1851, had left a trust to establish and finance a school for "poor white male orphans." Under this trust, Girard College was established.

The opinion of the court, written by Judge Mark E. Lefever, stated that there were two issues. One involved the right of a testator to dispose of his property by establishing an educational institution limited to white children. The second questioned whether the city of Philadelphia, as a political subdivision of the state, was violating the equal protection clause of the Fourteenth Amendment when it, as trustee, complied with the discriminatory racial requirement of the will with respect to admissions to the school.

Judge Lefever sustained the racial limitation of the Girard trust, and held that no "state action" was involved by the city's participation as trustee. Such participation, the court said, should be regarded as private conduct, which was not governed by the Fourteenth Amendment. Notice of appeal was filed by the city of Philadelphia on January 31, 1956.

#### *Federal Action*

##### WHITE HOUSE CONFERENCE

The White House Conference on Education concluded its deliberations with a report published on December 1, 1955, which recommended that the

Federal government increase its financial participation in public education. Of those favoring such increase, the overwhelming majority approved an increase in Federal funds for school construction purposes. Only one table in ten of the conference round table discussion groups recommended that Federal aid should be made available only to those districts complying with the Supreme Court decision prohibiting racially segregated school systems.

#### POWELL AMENDMENT

On June 20, 1956, the House of Representatives rules committee cleared the Kelley school aid bill for action by the House. The measure would have provided \$1,600,000,000 in grants to states over a four-year period for new school facilities. On July 3, by a vote of 164 to 116, the House amended the Kelley bill to provide that funds were to be withheld from school districts until the districts took steps toward racial integration. Such funds would be held in escrow for five years, to be made available to the school district at the end of that period if the districts were in compliance with the Supreme Court's desegregation decision. This amendment was introduced by Adam Clayton Powell, Jr. (Dem., N.Y.). Two days later the House by a 224 to 194 vote defeated the school construction bill with the Powell amendment, ending all hope for school aid in the Eighty-fourth Congress. One hundred nineteen Democrats and 75 Republicans voted for the bill, while 105 Democrats and 119 Republicans voted against the bill. Ninety-four Republicans who had voted in favor of the Powell amendment, voted against the bill as amended. Southern Democrats were opposed to the school construction bill, with or without the Powell amendment; they feared that limitations would be placed on the expenditure of Federal funds by subsequent appropriation riders, even if the Powell amendment were defeated.

#### SOUTHERN MANIFESTO

On March 12, 1956, nineteen United States Senators and eighty-two members of the House of Representatives introduced a "manifesto" in both branches of the Congress denouncing the Supreme Court's desegregation decision as an encroachment "on rights reserved to the states and to the people." The document, which had no legal effect and required no action by Congress, commended "the motives of those states which have declared the intention to resist forced integration by any lawful means." All the signers were from the southern and border states.

#### HOUSING

*The New York Times* series on integration problems and the status of the Negro in the North listed housing as the primary factor in determining the pattern of racial segregation. The use of public facilities, education, and even employment opportunities to a large extent were dependent upon residence. While desegregation in public housing, and to a lesser extent in publicly assisted housing, had progressed in many northern communities, Negroes continued to be strictly limited in their ability to purchase or rent private housing. "Thus any study of segregation in the North must return to housing as

the central question. Financial, educational and professional qualifications are still not sufficient to enable the Negro to build, buy or rent a home where he pleases.”<sup>45</sup> The survey described the current picture in five representative cities: Boston, Mass., Buffalo, N. Y., Chicago, Ill., Detroit, Mich., and Hartford, Conn. In these five cities, as in New York City and elsewhere in the North, the maps of racial distribution told the same story—Negroes and other nonwhite groups were living in specified areas of the city that were ringed by suburbs where very few, if any, nonwhites were able to acquire housing.

In Buffalo, for example, most of the 47,000 Negroes lived either in the Ellicott slum district or in the Cold Spring section. In the Chicago area 509,000 of the 551,315 nonwhites lived within the central city, principally in the South Side Black Belt and in a few small “islands” of nonwhite residences in the neighboring sections. While Negroes had been accepted in all public housing projects of Detroit, the northwest and extreme eastern sections of the city were virtually closed to them. In Hartford Negroes lived almost exclusively in the North End.

## *State Action*

### CALIFORNIA

As the reporting period came to an end (July 1956), NAACP attorneys in Sacramento were pressing a suit in the county superior court challenging the right of the local real estate board and individual builders to restrict the sale or rental of housing covered by Federal mortgage insurance. The defendants were charged with an illegal conspiracy in restraint of trade in their agreement not to sell or lease to Negroes; with violating the spirit and intent of Federal Housing Authority (FHA) regulations barring recorded racial restrictive covenants; and with acting as instrumentalities of government and therefore subject to the Fourteenth Amendment's limitations upon discriminatory “state” conduct.

### CONNECTICUT

On December 15, 1955, the Connecticut Commission on Civil Rights, the state agency charged with enforcing the laws against discrimination in employment, housing, and places of public accommodation, advised the New Haven real estate board that a real estate agency was covered under the definition of a place of public accommodation as “an establishment which caters or offers its services or facilities or goods to the general public”; consequently, it was a violation of the Connecticut public accommodation statute for a real estate agency to refuse to accept any person as a client because of his race, creed, or color. Copies of the ruling were sent to all licensed real estate brokers in the state.

On June 18, 1956, following the first public hearing by a state commission involving the enforcement of a law against discrimination in publicly assisted housing, a hearing panel of the Connecticut Commission on Civil Rights ruled that McKinley Park Homes had violated the state's public accommodations act by refusing to rent an apartment to a Negro because of

<sup>45</sup> *The New York Times*, April 25, 1956.

his race and color. The development involved received tax abatement from the city of Hartford. The respondents challenged the constitutionality of the Connecticut statute, and planned an appeal to the courts.

#### GEORGIA

On October 21, 1955, Federal district Judge Frank M. Scarlett, sitting in Savannah, dismissed a lawsuit brought by eighteen Negroes against the local housing authority on the charge that they were excluded, solely because of their race, from the Fred Wessels Public Housing project in that city. The judge ruled that the "separate but equal" doctrine was still the law of the land.<sup>46</sup>

#### ILLINOIS

An interesting case arose in Chicago as a result of an unruly demonstration against the integration of eight Negro families into the Fernwood Park Public Housing project. Several Negroes who were passing the area on August 14, 1947, were attacked and injured by the mob. They brought an action against the city under the provisions of a statute that made the city responsible to individuals for injuries suffered as a result of mob violence. The trial court dismissed the suit, and on appeal the case was reversed on October 4, 1955, and remanded for trial. The appellate court said:

It is with this historical and legislative background that we consider the issue in this case. Involved is a social problem inherent in our system of society and far-reaching in importance. Our people are of varied religious, ethnic, economic and cultural background. We have assumed world leadership in the establishment of a system of government wherein the incidents of birth and life have not been permitted to determine the rights of citizens before the law. No group or segment of a community has the right to dictate by force or by other unlawful means who shall or shall not live within the community. The unlawful assembly of people gathered together in the instant case apparently believed that the duly constituted authorities in admitting colored tenants into the housing project were harming the community. Allowing these tenants to remain in the project, they believed, would be detrimental to the value of the community property and ultimately affect the way of life of the community. They therefore undertook to prevent the entrance of Negroes into their community. In so doing they were not acting to promote their individual interests but what they wrongfully assumed to be a collective or community interest. They thus supplanted the legally constituted officers of the community, and it was in the pursuit of this unlawful arrogation of authority that the plaintiff was injured.<sup>47</sup>

The appellate court concluded that the legislature, by enacting the mob violence statute, had intended to impose a penalty upon the community in the form of added taxes if its members participated in a mob that caused personal injury or property damages.

Tensions in the Trumbull Park area of Chicago (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 155) had calmed down by the end of the re-

<sup>46</sup> *Heyward v. Housing Authority of Savannah*, 135 F. Supp. 217.

<sup>47</sup> *Slaton v. City of Chicago*, Appellate Court for 1st Dist. of Illinois.

porting period; Police Commissioner Timothy O'Connor announced on June 7, 1956, that he was cutting down the police detail assigned to keep the peace at the project and hoped to "eliminate it entirely, if possible." The maximum number of officers and men assigned to the project by the police force had been 1,000; it was now reduced to 74.

#### MICHIGAN

On April 18, 1956, Governor G. Mennen Williams signed an amendment to the Michigan civil rights law which strengthened it in several respects.

First, the definition of places of public accommodation was extended to include motels and public housing. Second, the minimum fine which could be imposed on violators was increased from \$25 to \$100. Third, an additional sanction for violation of the law was provided. The court when imposing a penalty on a violator was authorized to suspend or revoke the state or municipal license by virtue of which the violator was operating.

On October 5, 1955, the United States Court of Appeals affirmed a decision rendered in 1954 by Federal district Judge Arthur F. Lederle prohibiting the Detroit Housing Authority from following a policy of racial segregation in its public housing projects.

The Housing Commission appealed on two grounds: first that it should be given sufficient time within which to achieve orderly and peaceful integration; and second that the Federal district court erred in requiring immediate integration of the public housing units.

According to the interpretation of the court of appeals, the Supreme Court's injunction in the public school cases that schools were to be integrated with "all deliberate speed" governed cases involving discrimination in public housing, as well. The court therefore assigned primary responsibility for implementing the decision of Judge Lederle to the Detroit Housing Commission. The court further directed the Federal district court which had originally heard the case to provide the judicial supervision necessary to determine whether the defendants were in good faith implementing "the governing constitutional principles."<sup>48</sup>

#### MINNESOTA

The Minneapolis City Council passed an ordinance on November 14, 1955, banning discrimination on account of race, religion, or origin on any public property, building, or grounds. It was declared unlawful for any person, under a lease agreement or other arrangement, to discriminate with respect to the use of any city property on the grounds of race or religion. Violation was punishable, upon conviction, by fine or imprisonment.

#### MISSOURI

On December 27, 1955, Federal District Judge George H. Moore ordered the city of St. Louis and the St. Louis housing authority to end their policy of racial segregation in the public housing projects under their jurisdiction.

<sup>48</sup> *Detroit Housing Commission v. Lewis*, 226 F. 2d 180.

The court said:

The resolution, policy, custom, usage, conduct and practice of defendants in refusing to lease to plaintiffs . . . and other eligible Negro applicants similarly situated, certain units of public housing under their administration, control and management in accordance with a policy of racial segregation is a violation of the Constitution and laws of the United States.<sup>49</sup>

Within a month, Charles L. Farris, director of the St. Louis housing authority, made it clear that every employee was responsible for carrying out integration. He pointed out that "the authority will not allow employees to voice contrary personal opinions in their dealings with tenants or the public." Employees and tenants were told they could resign or move out if they objected. Farris said any attempt by tenants to obstruct integration could lead to eviction.

#### NEW YORK

On April 13, 1956, Governor Averell Harriman signed into law a bill introduced by Republican Senator George R. Metcalf and Democratic Assemblyman Bertram L. Baker extending the jurisdiction of the state commission against discrimination to include complaints charging discrimination in housing covered by government insured mortgages.

Racial and religious discrimination in such housing had been made illegal by a state law adopted in 1955 which provided for enforcement through the state courts (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 154).

### EMPLOYMENT

#### *National Action*

Sixty-five of the country's leading business and industrial executives met in Washington on October 25, 1955, with eight cabinet members and ranking government officials under the sponsorship of the President's Committee on Government Contracts, in a conference to discuss equal job opportunity in the performance of government-contracted work. That conference was the climax of a series of meetings with government procurement officers, labor leaders, and officials of state and local fair employment practice commissions.

On March 17, 1956, the President's committee issued a manual for compliance officers. The manual contained instructions on the handling of complaints of employment discrimination involving government contracts, and the pertinent regulations of the agencies responsible for the bulk of the work contracts let on behalf of the Federal government.

Another activity of the President's committee during the reporting period was the completion and release of a motion picture film intended "to motivate the person who does the selecting of personnel" to take into account the situation of the worker who was a member of a minority racial or religious group.

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<sup>49</sup> *Davis v. St. Louis Housing Authority.*



## Surveys

Both the United States Census Bureau and *The New York Times* survey on integration problems and the current status of the Negro in the North found that Negroes were holding better jobs than they did at the end of World War II. The March 7, 1956, census report described the steady improvement in the economic status of the American Negro as one of "the most important social and economic developments of the past several decades." The report noted that nonwhites continued to "lag behind in many respects—in education, income and type and adequacy of employment," but "the historical differentials between the two [races] have been narrowing."

*The New York Times* on April 26, 1956, reported that "fifteen years of national prosperity have brought the Negro in the North more economic progress than in any period since the Emancipation Proclamation." Instances were cited of Negro employment in engineering and technical posts, in the lower ranks of industrial management, and in the highest positions of executive responsibility in Federal, state and municipal agencies. "But these advances" the survey warned, "are too fresh and too limited to justify the certainty that discrimination in employment has been beaten." State and municipal fair employment practice laws, and the nondiscrimination requirement of government contracts, were credited with partial responsibility for the reduction of discrimination in job openings for Negroes. Industrial management had learned, the survey found, "that a man's competence or his ability to get along with his fellows was not dependent on the color of his skin." The unification of the labor movement was also credited with playing a significant role in the general improvement in employment opportunities of nonwhites. However, the

most heartening aspect of the job situation has been the success that dozens of giant manufacturing, mercantile and white-collar enterprises in the North have had in erasing color barriers. They know that integration can work because they have seen it work. This has represented a much more dependable foundation for further progress than Government mandates or other forms of external pressure.

## JEWISH EMPLOYMENT APPLICANTS

The experience of 2,319 applicants for employment registering at Jewish vocational service agencies in fifteen cities in the United States and Canada during March 1956 was subjected to analysis by a joint committee of the Jewish Occupational Council and the National Community Relations Advisory Council. The results of the survey, released August 22, 1956, revealed that in cities not subject to state or local fair employment practice (FEP) legislation, 45 per cent of those who had also registered with private employment agencies had been questioned about their religion; only 4.4 per cent had been asked such questions in cities covered by nondiscrimination measures. Similar but less striking differences were found where applicants had applied directly to employers. In cities without FEP laws 17 per cent of the applicants reported that they had been asked about their religion as contrasted with about 8.5 per cent in FEP cities. Questionnaires were completed by appli-

cants at Jewish vocational agencies in Baltimore, Md., Boston, Mass., Chicago, Ill., Cincinnati and Cleveland, Ohio, Denver, Col., Los Angeles, Cal., Louisville, Ky., Minneapolis, Minn., New York, N. Y., Philadelphia and Pittsburgh, Pa., St. Louis, Mo., and Montreal, Quebec.

### *Legislative Action*

Campaigns to enact or strengthen fair employment practice laws were conducted unsuccessfully in two states. In Delaware a bill to establish a five-member state commission with power to combat discrimination by employers, employment agencies, and labor unions passed the House of Representatives on December 12, 1955, but failed to win approval of the Senate. In New York State the legislature again refused to enact a bill that would have given the state commission against discrimination power to initiate complaints on its own motion without waiting for the "person claiming to be aggrieved" to file such a complaint.

Three additional cities joined those with municipal ordinances prohibiting discrimination in employment on the grounds of race, color, religion or national origin. On April 17, 1956, Baltimore, Md., adopted a FEP ordinance, and thus became the first city south of the Mason-Dixon line to pass such a measure. The ordinance set up a nine-member equal opportunity commission with power to receive, investigate, and seek to adjust complaints involving unfair employment practices by employers, employment agencies, or labor unions. The commission was also authorized to hold public hearings and, in cases where discrimination was found to exist, to issue orders directing the respondent to cease and desist from the unlawful practice. The ordinance, however, contained no provision for enforcement of the commission's orders.

Also in April 1956 the city council of Des Moines, Iowa, enacted a FEP ordinance covering the city and its departments and divisions, employers of three or more workers, employment agencies, and labor unions. A five-member FEP commission was appointed by the city council to enforce the ordinance, which vested the customary powers and duties in the commission, including the responsibility to certify intransigent respondents to the city solicitor for appropriate enforcement action.

On June 29, 1956, the board of aldermen of St. Louis, Mo., unanimously passed a fair employment practice ordinance limited to contractors, subcontractors or employers on city public works. The ordinance established a seven-member fair employment practice commission with power to initiate and investigate complaints of discrimination in employment on projects paid for in whole or in part from municipal funds. In the event efforts at conciliation failed, the commission was authorized to refer the matter to the city attorney for prosecution.

### *Rulings by State Attorneys General*

On November 2, 1955, Attorney General Edmund G. Brown of California ruled that cities had the power to enact FEP ordinances. The opinion was requested by Assemblyman Wallace D. Henderson in connection with a contemplated municipal ordinance for Fresno.

On October 20, 1955, Attorney General Miles Lord of Minnesota ruled that the enactment of a state fair employment practice law in 1955 (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 159) did not preempt the field of regulation of discrimination in employment so as to void municipal ordinances which prohibited the same conduct.

### *Court Action*

#### GEORGIA

Negro employees of the Central of Georgia Railway Company, who were members of the Brotherhood of Railroad Trainmen, brought an action in the Federal district court against the railway company and the union. The employees charged that a contract between the railroad company and the union discriminated against the plaintiffs on the basis of race in that it prohibited the employment of Negroes in certain positions in the service of the railway. The action was for an injunction to prevent the enforcement of the contract and for damages. In affirming the lower court's decision granting the injunction and assessing damages against the union only, the United States court of appeals on January 31, 1956, said:

The Brotherhood had, to be sure, the profound obligation fully and earnestly to bargain to prevent, and, where necessary, remove, discriminations. This is found under the unique position of the Brotherhood under the Railway Labor Act to bargain for all. But no such duty rests upon the railway. . . . So while the Railroad knew all the while that the Brotherhood was not fulfilling its duties, it was not up to it either to demand a change or prick the conscience of its adversary.

The railroad was therefore held not to be liable for the payment of damages.<sup>50</sup>

#### NEW YORK STATE

A Negro who had sought employment as a flight steward with Pan American World Airways filed a complaint with the New York State Commission Against Discrimination charging that he was denied employment because of his race or color. The commission caused an investigation to be made, and on the basis of the findings determined that there was no "probable cause" to credit the charge of discrimination on the basis of race or color. The complaint therefore was dismissed. The complainant petitioned the New York Supreme Court to review and reverse the finding of the state commission. This the court refused to do on June 27, 1956, because "the court may not interfere with [the findings of the commission] when based on substantial evidence."<sup>51</sup>

#### TEXAS

Two Negro members of Local No. 254 of the Oil Workers International Union brought an action in the Federal district court for the Eastern District of Texas for an injunction to prevent the enforcement of a collective bar-

<sup>50</sup> *Central of Georgia Railway Co. v. Jones*, 229 F. 2d 648.

<sup>51</sup> *In re Jeanpierre*, Supreme Court, New York County, Part I.

gaining agreement between Local No. 23 of the Oil Workers and the Gulf Oil Corporation. Local No. 23 was the white union, and Local No. 254 was the jim crow union. The two unions were certified under the National Labor Relations Act, and the white union had negotiated the contract for itself and for the members of the Negro local. The contract established two lines of seniority based on race; the plaintiffs claimed that this was discriminatory against them in that their promotion opportunities were severely limited. The United States Court of Appeals held on June 21, 1955, that the Federal district court did not have jurisdiction over the subject matter of the litigation.<sup>52</sup> Upon appeal to the United States Supreme Court, the court of appeals was reversed on November 14, 1955, and the matter remanded to the district court "for further proceedings." In its opinion the Supreme Court cited several cases in which it had held that the railroad brotherhoods could not use their power as bargaining representatives under Federal regulatory statutes to effect racial discrimination against Negroes.<sup>53</sup>

### *Administrative Agency Action*

#### ERIE RAILROAD CASE

On June 15, 1956, the New Jersey commissioner of education, the officer responsible for ruling on complaints of employment bias under the state's law against discrimination, found that the Erie Railroad had discriminated against its Negro employees by refusing to promote them from waiter-in-charge to steward when the former positions were abolished in 1950. A cease and desist order was entered against the railroad, directing it to end its practice of

discriminating against any and all employees because of their race or color in initial employment, or in upgrading within any area of competence, or in consideration for new positions which may be created, or in positions which are reestablished after having been abolished.

The commissioner also directed the attorneys for the parties in interest to agree upon the sum of back wages that the complainants were entitled to receive by reason of the discrimination practiced against them by the railroad.

The Erie Railroad appealed the decision to the Hudson County court in accordance with the provisions of the law against discrimination. [The appeal was still pending in November 1956].

### *Probation Officers in New York City*

Early in 1955 the American Jewish Congress filed a complaint with the New York State Commission Against Discrimination (SCAD) charging Presiding Justice John Warren Hill of the Domestic Relations Court of the City of New York with discriminating on the basis of religion against applicants for the position of probation officer in his court. The specific charge was that Justice Hill directed the appointment of probation officers to the children's

<sup>52</sup> *Syres v. Oil Workers International Union*, 223 F. 2d 739.

<sup>53</sup> *Syres v. Oil Workers International Union*, 350 U.S. 892.

division of his court on the basis of religious quotas. These quotas tried to maintain the same ratios among Catholics, Protestants and Jews among the probation officers as, on the basis of experience, could be expected to appear among the probationers likely to require the services of such officers.

Following the filing of the complaint, Justice Hill asked the New York State Probation Commission whether he was correctly interpreting the section of the law which required that a child, "when practicable," should be assigned to a probation officer of the same religious faith. On April 22, 1955, the commission advised Justice Hill that the appointment of probation officers to the children's court should be made "strictly in accordance with the Civil Service Law, and without regard to the religious faith of the eligibles." The commission refused, however, to express an opinion on whether good probation practice required "so far as may be practicable" that probation officers in the children's court should be *assigned* (as distinguished from *appointed*) on the basis of the religious faith of the probationers. Demands were voiced that the commission reconsider its ruling. In resolutions adopted by the commission on December 12, 1955, its April 22 ruling on the first point was affirmed; the commission expressed its view that sound probation practice was followed when a child placed on probation was, when practicable, placed with a probation officer of the same religious faith.

On July 9, 1956, Commissioner J. Edward Conway of the New York SCAD handed down his ruling on the American Jewish Congress' complaint. He ordered Justice Hill and the New York City civil service commission to desist from questioning applicants for positions as probation officers about their religion. He dismissed that portion of the complaint, however, which charged the presiding justice with discriminating in hiring probation officers; the commissioner ruled that the congress had no standing to challenge the practice, since it was not a "party claiming to be aggrieved" within the meaning of the state law against discrimination. There the matter rested at the end of the reporting period (July 1956).

## PUBLIC ACCOMMODATIONS

### *Transportation*

A number of very significant developments occurred during the reporting period (July 1, 1955, through June 30, 1956) in the area of public transportation. Both the administrative agency and court decisions handed down virtually destroyed the legal sanction for racial segregation in intrastate as well as in interstate transportation.

### ADMINISTRATIVE ACTION

The NAACP and a group of individuals filed a complaint with the Interstate Commerce Commission (ICC) charging fourteen southern railways and the Union News Company with discriminating against Negro passengers traveling in interstate commerce by enforcing racial segregation on trains and in depots and stations. On November 7, 1955, the ICC issued a cease and desist order in which it found that:

The practices of the defendants . . . in assigning or directing Negro interstate passengers to coaches or portions of coaches designated or provided for the exclusive use of such passengers, and in maintaining waiting rooms in their stations designated for the exclusive use of such passengers, subject Negro passengers to undue and unreasonable prejudice and disadvantage.

The railroads were thereupon ordered to end their discriminatory practices on or before January 10, 1956.

On the same date the ICC issued a ruling on a complaint of a Negro member of the Women's Army Corps against the Carolina Coach Company. The complainant charged that while on an interstate trip she was put off a bus by the driver upon reaching Roanoke Rapids, N. C., when she refused to change her seat to the section "reserved for Negroes." The commission found the carrier's rules and regulations requiring racial segregation implied the "inherent inferiority of a traveler solely because of race or color [and] must be regarded as subjecting the traveler to unjust discrimination, and undue and unreasonable disadvantage." The bus company was thereupon ordered to discontinue on or before January 10, 1956, its practice of enforcing racial segregation upon interstate travelers.

Compliance with the ICC decisions was spotty. After the effective date segregation of passengers in waiting rooms was abandoned in railroad stations in Nashville and Knoxville, Tenn., Oklahoma City, Okla., Atlanta, Ga., Birmingham, Ala., and at one station (of three) in Richmond, Va. In some southern cities former "White" signs were replaced by ones reading "Waiting Room" while the "colored" signs became "Waiting Room for Colored Interstate Passengers." Defiance of the ICC order was voiced by public authorities in Louisiana, Mississippi, and South Carolina.

#### CIVIL AERONAUTICS AUTHORITY

The Civil Aeronautics Authority (CAA) announced on May 14, 1956, that no Federal funds would thereafter be available for the construction or improvement of airport facilities in which the races would be segregated. Since about \$63,000,000 had been appropriated from Federal funds for airport construction during the fiscal year beginning July 1, 1956, this step on the part of the CAA could penalize substantially those states that refused to comply with the desegregation mandates of the Federal authorities.

#### ILLINOIS COMMERCE COMMISSION

In an order dated December 21, 1955, the Illinois Commerce Commission directed all common carriers operating in the state to end all forms of racial segregation and discrimination in connection with the transportation of passengers.

#### *Court Action*

A very important case reached the United States Supreme Court during the reporting period. A Negro woman sued the Columbia, S. C., bus company for \$25,000 damages under the Federal civil rights law, because the driver had forced her to change her seat in accordance with the state's segregation statute. She claimed that the bus company, acting "under color of

law," had violated her right to the equal protection of the laws under the Fourteenth Amendment.

The Federal district court had dismissed the suit on the ground that the South Carolina statute requiring racial segregation in buses was constitutional under the "separate but equal" doctrine of *Plessy v. Ferguson*. On appeal, the United States Court of Appeals, in an unanimous decision handed down on July 14, 1955, reversed the lower court, and held that the "separate but equal" doctrine had been repudiated by the recent Supreme Court decisions in the *School Segregation Cases*.

The appellate court ruled that the principle underlying the Supreme Court's decision in the *School Segregation Cases* applied equally to cases involving intrastate transportation.<sup>54</sup> On April 23, 1956, the United States Supreme Court, in a *per curiam* opinion, dismissed the petition of the bus company on the technical ground that the appeal was premature because the judgment of the lower court was not a "final order."<sup>55</sup> The reaction to that decision was most significant. *The New York Times* headlined the dismissal "High Court Voids Last Color Lines in Public Transit,"<sup>56</sup> and a number of southern bus companies immediately ordered an end to segregated seating. The Montgomery (Ala.) City Lines posted a notice on the company bulletin board ordering its employees not to enforce segregated seating, and citing the decision of the United States Supreme Court that "segregated seating was unconstitutional." The Little Rock (Ark.) Transit lines followed suit; desegregation took place without incident and with the tacit approval of the city council. In Nashville the traction company discreetly directed its bus drivers to "forget racial segregation." Negroes were not molested in Atlanta and Birmingham for disregarding the segregated seating requirement, because the local authorities did not "want a Montgomery here." (See p. 130-31, below.)

The city of Montgomery brought an action in the state circuit court to enjoin the bus company from violating the city ordinances and state statutes which required racial segregation on local buses. On May 9, 1956, the Circuit Court of Montgomery County issued an injunction holding that the *Flemming case* was no legal authority for abandoning segregation on the Montgomery city bus lines.<sup>57</sup>

In a second United States Court of Appeals action involving racial discrimination in transportation, the right of Negro passengers to sue an air carrier for money damages resulting from a violation of the nondiscrimination provisions of the Civil Aeronautics Act was upheld on January 26, 1956. In this case Judge Jerome Frank held that when Congress made it a criminal offense for air carriers to discriminate, it did so for the benefit of passengers who used the facilities of the air carriers. Therefore, violation of the criminal statute created "an actionable civil right for the vindication of which a civil action may be maintained by any person who has been harmed by the violation." This, "although the Act does not expressly create any civil liability."<sup>58</sup>

<sup>54</sup> *Flemming v. South Carolina Electric and Gas Co.*, 224 F. 2d 752.

<sup>55</sup> 351 U.S. 901.

<sup>56</sup> *The New York Times*, April 24, 1956.

<sup>57</sup> *City of Montgomery v. Montgomery City Lines, Inc.*, No. 30358.

<sup>58</sup> *Fitzgerald v. Pan American World Airways*, 229 F. 2d 499.

## MONTGOMERY BUS BOYCOTT

Mrs. Rosa Parks, a Negro seamstress of Montgomery, Ala., was arrested on November 30, 1955, for refusing to vacate a seat in what was considered the "neutral" section of a bus operated by the Montgomery City Lines. According to segregation rules enforced by the bus drivers, white passengers entered through the front door of the vehicle and took vacant seats from the front toward the center of the bus. Negro passengers paid their fares to the driver, and then were required to get out of the bus, walk around to the back of the vehicle, enter through the rear door, and take vacant seats from the rear toward the front. There was a "neutral" section in which Negroes could sit only when no whites were standing in the front. Mrs. Parks, having taken a seat in the neutral section, refused to get up when a white man entered the bus and found no more seats in the front section. She was arrested upon the complaint of the bus driver.

Boycott leaflets flooded the city on December 1, and a Montgomery Improvement Association, led by Rev. Martin Luther King, Jr., pastor of a local Baptist Church, was set up. By December 5 a general Negro boycott was in effect against all bus lines in the city of Montgomery. Negroes walked to work or shared car pools. Soon car sharing was organized, with thirty-two dispatch stations and forty pick-up points using the station wagons of the several Negro churches and private automobiles as means of transporting Montgomery's 42,000 Negroes to and from their daily work. For some months the buses continued to run virtually empty in the predominantly Negro sections of the city. Finally, in June 1956, many bus drivers were dismissed and franchise runs abandoned because they were losing money. During this entire period the Negro residents acted with dignity and decorum. In many instances where they worked as domestics, they advised their white employers that they were unable to get to work unless the employers furnished the means of transportation.

What had originally started out as a protest against discourteous and unfair treatment of Negro passengers soon became an organized demand for three basic reforms in local transportation. The Montgomery Improvement Association listed the demands as: (1) elimination of the discourtesies and discriminations practiced by bus drivers toward the Negro passengers; (2) employment of Negro bus drivers on predominantly Negro runs; and (3) abandonment of segregated seating.

On February 23, 1956, some ninety-odd leaders of the local Negro community, including Rev. King and twenty-three other Protestant ministers, were arrested and charged with organizing and directing an illegal boycott. Rev. King was the only defendant brought to trial, and he was convicted on March 22, 1956, and sentenced to pay a \$500 fine. Notice of appeal was filed, and the trials of the other defendants were postponed pending the outcome of King's appeal.

On June 5, 1956, a three-judge Federal district court ruled by a two to one division that racial segregation on the Montgomery city bus lines was a violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.<sup>59</sup> The Alabama Public Service Com-

<sup>59</sup> *Browder v. Gayle*, U.S.D.C., Middle Dist., Alabama, No. 1147.



mission announced that an appeal would be taken to the United States Supreme Court. The boycott, however, went on, and was still in full force at the end of the reporting period (July 1956).

### *Places of Public Resort, Amusement or Service*

#### LEGISLATIVE ACTION

The only public accommodations law enacted during the reporting period was a bill in Michigan, signed into law by Gov. G. Mennen Williams on April 18, 1956 (*see* p. 121, above).

#### RULINGS BY STATE ATTORNEYS GENERAL

On June 4, 1956, Attorney General Thomas M. Kavanagh of Michigan ruled restrictive in design and intent language in an advertising calendar of the Tabor Farms vacation resort which stated that "for 63 years we have served a gentile clientele." He interpreted the statement as an "indirect" means of advertising discrimination in violation of the state's civil rights law. State agencies were advised not to permit the use of their facilities or services by the discriminatory advertiser.

On August 31, 1955, Attorney General Robert T. Stafford of Vermont advised the state development commission that it could delete the names of places practicing racial or religious discrimination from listings of resorts and hotels in official publications. The attorney general said:

To our mind the practice of discrimination, on a basis of race or color, by places of public accommodation, violates the fundamental concepts of our government—state and national. Under the circumstances we do not believe the public purse should be utilized to gratuitously advertise any public accommodations indulging in such activity.

#### COURT ACTION

On September 29, 1955, Municipal Court Judge John J. Malloy of the District of Columbia ruled that an 1869 ordinance of the city of Washington barred discrimination by places of public accommodation in the District of Columbia, and that the term "places of public accommodation" in the ordinance included bowling alleys and a wide variety of other amusement places open to the general public. On April 3, 1956, the municipal court of appeals affirmed the decision of Judge Malloy.<sup>60</sup>

In *Holmes v. City of Atlanta* the Federal district court for the northern district of Georgia had held in 1954 that the "separate but equal" doctrine as applied to public golf courses in the city of Atlanta had not been overturned by the Supreme Court decision in the *School Segregation Cases* (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 167). This decision was affirmed on June 17, 1955 by the United States Court of Appeals.<sup>61</sup> On November 7, 1955, the United States Supreme Court reversed the decision of the court of appeals and, in effect, held that the city of Atlanta could not deny the use of its municipal golf course to any of its citizens on the basis of their race or

<sup>60</sup> *Central Amusement Co. v. District of Columbia*, 121 A. 2d 865.

<sup>61</sup> *Holmes v. City of Atlanta*, 223 F. 2d 93.

color.<sup>62</sup> The case was decided on the same day as *Mayor and City of Baltimore v. Dawson*, which prevented Maryland from invoking its police power to impose racial segregation at public beaches and in public bathhouses<sup>63</sup> (see AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 168). The action of the Supreme Court in these two cases was generally interpreted by the courts as destroying the "separate but equal" doctrine which had sanctioned racial segregation at public recreational facilities.<sup>64</sup> Thus, the principle of the *School Segregation Cases* was extended to public parks, beaches, bathhouses, and golf courses.

Six Negroes of Beaumont, Tex., brought an action in the Federal district court to enjoin the mayor and other city officials from refusing Negroes the equal and unrestricted use of the city's public parks.

The city admitted the right of the plaintiffs to use the public parks, but asked the court to permit the authorities to make "reasonable regulations" to enable the plaintiffs to use the parks "only upon a segregated basis."

This the court refused to do. Rather, on September 7, 1955, the court found that the basic principle of "separate but equal" had been destroyed by the May 17, 1954, decision of the United States Supreme Court in the *School Segregation Cases*.<sup>65</sup>

One of the most significant cases decided during the reporting period in the field of public recreational facilities was the case of *Tate v. Department of Conservation of Virginia*.<sup>66</sup> On July 7, 1955, Federal district Judge Walter B. Hoffman held that neither Virginia, nor any person or group to whom the state might lease its parks, could constitutionally operate those parks on a racially segregated basis. The opinion held:

The judgment of this Court is not rendered without the full realization of the impact of this decision on the State Park System in Virginia. The future course rests in the hands of the elected and appointed representatives of the Commonwealth. This opinion follows the law as set forth in all decided cases touching on the subject matter, and it is rather significant that no legal authority has been cited by the defendants to justify any other conclusion. The contention that a normal lessor-lessee relationship should be permitted in leases of public property must give way to the constitutional rights of the citizens as a whole.

On April 9, 1956, the United States Court of Appeals affirmed the district court opinion with the comment:

We think that the decree appealed from is correct for reasons adequately stated in the opinion of the district judge and that little need be added thereto. It is perfectly clear under recent decisions that citizens have the right to the use of the public parks of the state without discrimination on the ground of race. And we think it equally clear that this right may not

<sup>62</sup> *Holmes v. City of Atlanta*, 350 U.S. 879.

<sup>63</sup> 350 U.S. 877.

<sup>64</sup> *Hayes v. Crutcher*, 137 F. Supp. 853, involving public golf courses in Nashville, Tenn.; *Alsop v. City of St. Petersburg*, March 22, 1956, U.S.D.C., So. Dist. Florida, involving municipal swimming pool and beach; *Plummer v. Case*, Dec. 29, 1955, U.S.D.C., So. Dist. Texas, involving public restaurant in courthouse; *Augustus v. City of Pensacola*, May 24, 1956, U.S.D.C., No. Dist., Florida, involving municipal golf course; *Moorman v. Morgan*, 285 S.W. 2d 146, involving Kentucky state parks.

<sup>65</sup> *Fayson v. Beard*, 134 F. Supp. 379.

<sup>66</sup> 133 F. Supp. 53.

be abridged by the leasing of the parks with ownership retained in the state. And it is no ground for abridging the right that the parks cannot be operated profitably on a non-segregated basis.<sup>67</sup>

On October 8, 1956, the United States Supreme Court refused to review the court of appeals decision.<sup>68</sup>

### *State Courts*

There were also a number of state court cases in which proprietors of places of public accommodation were fined for violations of state civil rights laws. In Omaha, Neb., the operators of the Peony Park swimming pool were convicted and fined on September 7, 1955, for excluding Negro contestants who sought to participate in a swimming meet.<sup>69</sup>

A Negro and his white wife commenced an action in the municipal court of the City of New York; they charged a hotel with having discriminated against them on the grounds of race when they were refused accommodations after a confirmed reservation had been made. In its decision on October 18, 1955, the court noted that both plaintiffs claimed discriminatory treatment. The civil rights law was interpreted as providing protection for white persons, as well as Negroes, who were rejected at places of public accommodation because of race or color. The plaintiffs were awarded a \$100 judgment against the defendant.<sup>70</sup>

On September 23, 1955 a Seattle, Wash., tavern keeper was found to have violated the state's public accommodation law by refusing service to a Negro patron. King County Superior Court Judge Henry Clay Agnew awarded the complainant \$200 damages plus costs and disbursements.<sup>71</sup> On January 31, 1956, a jury in the state circuit court in Lansing, Mich., found a local barber guilty of having violated the state's civil rights law in refusing to cut the hair of a five-year-old Negro boy. The judge imposed a \$25 fine and \$5 court costs.

## CHURCH AND STATE

During 1955-56, as in the past few years, problems involving the relationship between church and state arose most frequently in the area of public education. This was probably associated with the revival of emphasis on religion, and disagreements among the major religious groups concerning the role, if any, that the public schools should play in "preconditioning" the child to a belief in God.

### *Rulings of States Attorneys General and School Counsel*

#### CALIFORNIA

On October 14, 1955, Los Angeles County Counsel Harold W. Kennedy advised the committee on human relations of that city that a public school

<sup>67</sup> *Department of Conservation v. Tate*, 231 F. 2d 615.

<sup>68</sup> 77 S. Ct. 58.

<sup>69</sup> *State of Nebraska v. Peony Park*, Docket No. C.R. 15, p. 121.

<sup>70</sup> *Hobson v. York Studios*, 145 N.Y. Supp. 2d 162.

<sup>71</sup> *Holifield v. Paputchis*, No. 471949.

teacher could not legally engage in Bible instruction to students on public school property during the school day, and that the school day included the lunch period. He also ruled that organized religious groups could not be granted the rent-free use of school property during the school day for religious purposes.

Relying on the decisions of the United States Supreme Court in the *McCullum*<sup>72</sup> and *Zorach*<sup>73</sup> cases, the opinion held that religious instruction should not be given to pupils during the school day on public school property, and that the principle established by the Supreme Court "cannot be avoided by the simple expedient of giving the religious instruction during the lunch hour."

#### COLORADO

In response to a request from the state commissioner of education, Attorney General Duke W. Dunbar of Colorado ruled on June 19, 1956, that the machinery of Colorado's public schools could not be used to help the Gideons International to distribute its version of the Bible. Citing both the state and Federal constitutions, and relying heavily on the New Jersey Supreme Court case of *Tudor v. Board of Education of Rutherford*<sup>74</sup> (see AMERICAN JEWISH YEAR BOOK, 1955 [Vol. 56], p. 217), the opinion concluded that the Gideons' plan of Bible distribution through the public schools violated both state and federal law.

#### INDIANA

On June 1, 1956, in response to an inquiry from Wilbur Young, state superintendent of public instruction, Attorney General Edwin K. Steers of Indiana ruled that the state statutes governing released time and credit for Bible reading were constitutional. He relied heavily upon the *Zorach* decision of the United States Supreme Court, which sustained the New York released time plan, and he held that the Indiana plan was similar.

#### PENNSYLVANIA

On May 31, 1956, Deputy Attorney General Elmer T. Bolla of Pennsylvania advised the state superintendent of public instruction that the distribution of the Gideons' Bibles in the public schools of the commonwealth violated the First Amendment of the Federal Constitution, which was made applicable to the states by the Fourteenth Amendment. The opinion also pointed out that the Gideons' program of Bible distribution contravened that section of the Pennsylvania constitution which provided that "no preference shall ever be given by law to any religious establishment or mode of worship."

#### WASHINGTON

On March 19, 1955, Attorney General Don Eastvold of the state of Washington, ruled that the Bible might legally be placed on the reference shelf in the libraries of the state's public schools.

The ruling stated that an opinion handed down by the state's attorney general in 1930 had used language which might imply that the Bible must be

<sup>72</sup> *McCullum v. Board of Education*, 333 U.S. 203 (1948).

<sup>73</sup> *Zorach v. Clauson*, 343 U.S. 306 (1952).

<sup>74</sup> 14 N.J. 31 (1953), appeal denied 348 U.S. 816 (1954).

excluded completely from the public schools. Attorney General Eastvold rejected this inference. The 1930 opinion cited provisions of the state constitution which barred sectarian control or influence in the public schools and the use of public money for the support of any religious establishment or worship. However, the attorney general pointed out that these provisions had no application to the problem under consideration, since the inclusion on the reference shelf of the public school library of any or all of the various versions of the Bible could not be considered religious worship or an act in support of religious establishment; nor could it operate to exert control or influence upon the public schools.

In an earlier opinion rendered on December 6, 1955, Attorney General Eastvold had ruled that public school officials might not excuse pupils from physical, dental, or x-ray examinations or required courses in health instruction because of the religious beliefs of the student. He cited the provisions of state law which made both health examinations and courses in physiology and hygiene mandatory in the public schools. "We recognize" the opinion said, "that the area of apparent conflict between the required courses of study and religious beliefs is a particularly sensitive one."

## *Court Rulings*

### KENTUCKY

On February 10, 1956, the Court of Appeals of Kentucky, the highest appellate court of the state, upheld the right of nuns in religious garb to teach in the public schools, and to endorse their salary checks over to their religious orders. In addition, the court found no constitutional barrier to the school board's renting space from Catholic churches or parochial schools for use as public school classrooms. The court did find unconstitutional the use of public school funds to defray any part of the cost of transporting children to or from parochial schools<sup>75</sup> (*see* AMERICAN JEWISH YEAR BOOK, 1956 [Vol. 57], p. 175).

In its majority opinion, written by Judge Porter Sims, the court cited both the Federal and state constitutions as guaranteeing religious freedom to the citizens of Kentucky and forbidding the use of tax-raised funds in aid of any church, or sectarian or denominational school. A distinction was drawn, however, between the dress and emblems worn by teaching nuns and the injection of religion into their teachings. "The garb does not teach. It is the woman within who teaches." The court went on to say that the state legislature had not prescribed what dress a woman teaching in the public schools must wear "or whether she may adorn herself with a ring, button, or any other emblem signifying she is a member of a sorority." Since the agreed statement of facts did not claim that the nuns were injecting their religious views into the subject matter that they were teaching to the public school children, the court concluded that it would be a denial of the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution, to prohibit the nuns from teaching in the public schools "because of their religious beliefs."

<sup>75</sup> *Rawlings v. Butler*.

A dissenting opinion was filed by Judge Astor Hogg, who reasoned that the distinctive garb, so peculiar to the Roman Catholic Church, created "a religious atmosphere in the classroom" having a "subtle influence on the tender minds being taught and trained by the nuns." The dissenter felt that the distinctive garb proclaimed the Catholic Church and the representative character of the teachers in the public school classrooms. "Indeed, these good women are the Catholic Church in action in the most fertile field."

Judge Hogg concluded:

By no stretch of the imagination would I deny the Sisters the right to teach in our public schools. Let these Sisters when in the school rooms exchange their religious raiment and insignia for a dress or garment that is without distinctive suggestion and which does not itself proclaim sectarianism in action, and I shall be the first to approve.

A second important case involving church, state, and public schools was decided by the Kentucky Court of Appeals on June 22, 1956.<sup>76</sup> The court ordered the Marion county board of education to put an end to the distribution of books and literature of the Roman Catholic Church in the public schools. Sectarian periodicals were also ordered removed from the school libraries. In addition, the court directed the school board to stop its practice of halting public school bus service on Catholic religious holidays which were not also legal state or national holidays.

The case was instituted in September 1954, after the Marion county school board voted four to one to close Bradfordsville high school and transport its pupils to the Lebanon school eight miles away. Bradfordsville students went on "strike," and their parents extended the demonstration to the grade school. The "strike" lasted through the entire 1954-55 school year.

Some 460 parents were listed as petitioners in the lawsuit, which charged the local school board with putting into operation a calculated and systematic plan of discrimination against the Bradfordsville High School in an effort "to destroy the public school system of Marion County," and with promoting the educational policies of the Roman Catholic Church.

The court summed up its views of the controversy as follows:

It seems to us that the entire County system of schools should be reorganized so as to produce substantial equality of the several sections of the county and to abolish sectarianism in all parts thereof.

## PENNSYLVANIA

The public school buses of Robinson Township, Pa., had been picking up the nonpublic school children who resided along their customary routes and depositing them at the various public schools, where private transportation was provided to the private schools. The number of nonpublic school children provided with free transportation part way to their ultimate destination was between 38 and 60, while the total number of public school children transported was 1,167.

The school board commenced an action for a declaratory judgment, on the basis of an agreed statement of facts, to clarify its legal duties.

<sup>76</sup> *Wooley v. Superintendent of Schools of Marion Co.*

Common Pleas Judge Marshall wrote the opinion for a unanimous three-judge court. On the authority of the state school code as interpreted by the Supreme Court of Pennsylvania, the court held that there was neither judicial "decisions nor statutory laws sanctioning the present practice of the members of the School District of Robinson Township" in permitting the nonpublic school children to ride on the public school buses. Although the decision was not predicated upon the cost factor, the opinion stated that if the use of the school buses were limited to but one nonpublic school child, an extra cost, not authorized by state law, would be involved.

The decision turned solely upon the theory that the school district lacked the legal authority to permit its buses to be used to transport nonpublic school children.<sup>77</sup>

#### TENNESSEE

The reading of the King James version of the Bible in public school classrooms received the approval of the Supreme Court of Tennessee on March 9, 1956.<sup>78</sup> A state statute required teachers "to read, or cause to be read, at the opening of the school every day, a selection from the Bible and the same selection shall not be read more than twice a month." This statute was attacked by the father of four children attending the public schools of Nashville on the ground that it violated both state and Federal constitutional guarantees of freedom of worship.

The court held that

reading of . . . the Bible without comment, the same verse not to be repeated more than once every thirty days, the singing of some inspiring song, and repeating the Lord's Prayer, is not a violation of the constitutional mandate which guarantees to all men "a natural and inalienable right to worship Almighty God according to the dictates of their own conscience"; nor is it reasonable to suppose that it is in support of any place or form of worship, or an effort to "control or interfere with the rights of conscience."

The court added, however, that

it is beyond the scope and authority of school boards and teachers in the public schools to conduct a program of education in the Bible and to undertake to explain the meaning of any chapter or verse in either the Old or the New Testament.

#### *Moral and Spiritual Values in the Public School*

Following the opening of the schools in September 1955, the New York City Board of Education released a document prepared by the city board of superintendents for the purpose of providing guidance for teachers in the development of moral and spiritual values in the public school children. The guide received strong support from the Roman Catholic Archdiocese of New York, but it was criticized by many groups, including the New York Board of Rabbis, the American Jewish Committee, the American Jewish Congress, the

<sup>77</sup> *School District of Robinson Township v. Houghton*, Common Pleas, Allegheny Co., Pa.  
<sup>78</sup> *Carden v. Bland*, 288 S.W. 2d 718.

Anti-Defamation League of B'nai B'rith, the New York Civil Liberties Union, the Teachers Guild, the Teachers Union, and the United Parents Association. At first the Protestant Council of the city of New York was divided in its stand on the guiding statement; but on January 20, 1956, the council released a statement which called for reconsideration and revision of the guide.

The guide stated that it was the responsibility of the public schools to "encourage the belief in God." It described the function of the public schools as to "reinforce the program of the homes and church in strengthening belief in God." The concluding paragraphs of the guide were particularly objectionable to its critics.

The public schools encourage the belief in God, recognizing the simple fact that ours is a religious nation, but they leave and even refer to the home and to the church the interpretation of God and of revelation. At appropriate levels and appropriate contexts the public schools teach the role of religion and encourage factual study about religion but they do not undertake religious instruction.

They teach the moral code and identify God as the ultimate source of natural and moral law. They encourage children to discover and develop their own relationship to God, referring them also to their families, churches and synagogues. In their programs of moral and spiritual education the public schools maintain a climate favorable to religion without making value judgments about any particular religion. Thus the public schools devote their primary efforts to the development of the values and objectives of our democracy, recognizing their spiritual and religious motivations.

#### RABBINICAL OBJECTIONS

On November 10, 1955, the New York Board of Rabbis (NYBR) released its detailed statement of opposition to the proposed guide. The NYBR pointed out that public school teachers, no matter how skilled and devoted to their profession, did not possess the specialized competence or training required to "predispose" children to the faith of their parents. The teachers were selected and trained to teach secular subjects, not to teach religion. The NYBR denied "that a non-Jewish teacher, however deeply devoted he may be to his own faith," could "conscientiously and properly teach Jewish children the fundamentals of their faith or precondition them to a belief in God," as the rabbis understood that term.

Secondly, the NYBR argued that the guide, if adopted, would have the ultimate effect of establishing a religious test for teachers. "And what of the teachers who do not belong to a church or synagogue?"

Third, the NYBR rejected the notion that moral and spiritual values could neither be learned nor taught without a religious sanction. The NYBR statement termed such a conclusion a serious attack upon the "millions of religiously unaffiliated Americans who lead wholesome and moral lives."

Other objections voiced by the NYBR were that implementation of the guide would lead inevitably to competing pressures on teachers and school authorities from rival sectarian groups; that the guide's concept of "natural law" would engender theological and denominational disputes; that there



was an implication that religious groups in the community had failed in their responsibilities; and that the proposals of the guide constituted a clear violation of the constitutional requirement of separation of church and state.

As a result of the widespread criticism of the first draft of the guide to the teaching of moral and spiritual values in New York City's schools, the board of education decided to have the document revised with the help of representatives of the three major religious groups in the community.

A second version was made available at the end of July 1956 to the interested groups. It had taken into serious consideration the objections voiced to the earlier draft. For example, the revised document said:

The teachers in the public schools know that while most pupils and their parents are affiliated with some church or synagogue, some are not; indeed, they also know that there are some children in the public schools whose parents give their allegiance to no religion.

The new guide also contained a clear and unequivocal statement that "Religious education and training are not functions of state-supported schools." The revised document, however, incorporated a quotation from the 1951 statement of the New York Board of Regents that the public school should

fulfill its high function of supplementing the training of the home, ever intensifying in the child that love of God, for parents and for home, which is the mark of true character training and the sure guarantee of a country's welfare.

The board of education held a public hearing on September 17, 1956, on the revised statement, which was called "The Development of Moral and Spiritual Ideals for the Public Schools." Some seventy-four spokesmen for various organizations registered their intention to speak for or against the proposed guide. Many, including the NYBR and the American Jewish Committee, commended the board for the improvements over the earlier draft, and called the board's attention to some inconsistent statements. It was pointed out that the section quoted above contradicted the general tenor of the document. A number of Catholic organizations supported the revision, while the American Jewish Congress questioned the need for any guiding statement on the subject. The Protestant Council said that the document would "prove generally acceptable to the diverse elements of our religious community." The board of education approved and adopted the revised guide at a meeting on October 4, 1956.

### *A Report on Released Time*

A nation-wide survey of released time programs and practices was made by the department of weekday religious education of the National Council of Churches of Christ in the United States of America. The results of the study, published in the January-February 1956 issues of *Religious Education*, established that one-third of all released time classes were still being held in public school buildings, notwithstanding the decision of the United States Supreme Court in the *McCormack* case that such released time programs were unconstitutional. In 86 per cent of the programs children in the same city

were released at different hours during the school day to avoid the employment of the large number of part-time religious teachers who would be required if all the children were released simultaneously.

### CONGRESSIONAL ACTION

The eighty-fourth Congress passed no civil rights legislation, and repealed one existing provision of a statute that protected the right to vote. In the closing days of the first session which adjourned on Aug. 2, 1955, Congress passed a new absentee voting law, and in the process repealed a provision that had allowed servicemen to vote in time of war without paying a poll tax.

The usual large number of bills urging fair employment practices, repeal of the poll tax, anti-lynch action, nonsegregation in interstate transportation, establishment of a commission on civil rights, revision of the civil rights statutes of the Federal code, and other recommendations made originally by the President's Committee on Civil Rights in 1947, were all introduced in both branches of the Congress.

On April 9, 1956, Attorney General Herbert Brownell, Jr., submitted the administration's civil rights proposals. He asked for the creation of a bipartisan civil rights commission, whose members would be appointed by the President with the advice and consent of the Senate, to study the status of civil rights throughout the country. A second suggestion was that the civil rights section of the United States Department of Justice be raised to divisional status and placed under an assistant attorney general. The third point of the program would have strengthened the powers of the justice department to protect the right to vote in primary and general elections for Federal officials. Finally, the administration proposed strengthening the laws prohibiting conspiracies to interfere with certain basic civil rights.

The House Judiciary Committee embodied the proposals in one bill, H.R. 627, which the rules committee at first refused to bring to the floor of the House for debate and vote. As a result of the circulation of a discharge petition, the committee gave the bill a rule on June 27, 1956, thus clearing the way for House consideration. The bill passed the lower chamber and was referred to the Senate during the last week of the session. There it was sent to the judiciary committee, under the chairmanship of Senator James O. Eastland (Dem., Miss.). All efforts on the part of the pro-civil rights Senators failed to dislodge the bill from that committee before the Congress adjourned on July 27, 1956.

### IMMIGRATION

The eighty-fourth Congress also failed to enact any immigration legislation, although reforms were urged by both the Republican administration and the Democratic majority leadership. The only immigration bill to come up for vote in either house was H.R. 6888, which sought to authorize the entry of additional sheep-herders to satisfy the needs of the sheep-raising states. Senator Herbert H. Lehman (Dem., N.Y.) tried to amend the bill to incorporate his proposed general reform of the 1952 Immigration and Nationality Act. Senator Arthur V. Watkins (Rep., Utah) sought to attach the

administration's liberalizing proposals to the bill. On the last day of the Congress the Senate leadership proposed some thirteen amendments which it felt could receive general support in both chambers. Parliamentary maneuvers preserved these provisions, while preventing either Senator Lehman or Senator Watkins from adding their more general revision proposals. Although the Senate passed the bill in its amended form, the Congress adjourned on July 27, 1956, before the amended bill could be considered by the House.

### MISCELLANEOUS

In the first such action taken by any state south of the Mason-Dixon line, the Maryland National Guard was ordered desegregated on November 20, 1955, Governor Theodore R. McKeldin issued the directive in a letter to Adjutant General Milton A. Reckord, who said the necessary implementing instructions would go out the following day.

On November 7, 1955, Governor Averell Harriman ordered the deletion of the word "color" from New York State driver's licenses. The governor said that the requirement was "offensive," and that the decision to remove it was made after consultation with police and public officials. The item was blotted out on the 1956 license forms which had already been printed.

On July 21, 1955, the United States Court of Appeals ruled that an Oklahoma statute that required candidates who were Negroes to be described as such on state election ballots was unconstitutional, because it involved discriminatory state action prohibited by the Fourteenth Amendment. The appellate court rejected the reasoning of the Federal district judge that the designation was "merely descriptive" and did not deny the Negro candidate the "equal protection of the laws." The United States Supreme Court refused to review the decision on November 14, 1955.<sup>79</sup>

THEODORE LESKES

## ANTI-JEWISH AGITATION

THE ANTI-SEMITIC movement continued its activities during the period under review (July 1, 1955, through November 30, 1956) at approximately the same level as the previous year. Noted, however, were marked shifts in stress of propaganda themes.

### *Themes*

Southern tensions over school desegregation (*see* p. 96-116) were most intensively exploited by bigots, who also concentrated on adapting political themes and Arab-Israel tensions as vehicles for their racism. Hatemongers

<sup>79</sup> *McDonald v. Key*, 224 F. 2d 608, cert. denied, 350 U.S. 895.

supplemented these propaganda lines with fomentation of such perennial canards as the *Protocols of the Elders of Zion*, or more topical anti-Semitic mendacities cast in the same conspiratorial format. They continued to smear Jews as being Communist, or Communist-dominated, and equated Zionism with Communism. To attract reactionary or ultra-conservative elements, they stepped up their attacks upon the income tax (characterized as a Socialist or Communist measure), opposed liberalized immigration, and called for the "abolition of government controls." The United Nations (UN) remained a frequent target of their attacks, and the North Atlantic Treaty Organization was deplored as the entering wedge of internationalism.

### *Desegregation*

With tension mounting in the South over the problem of public school desegregation, agitators stepped up their exploitation of extreme racist themes during 1955-56. Most of their output combined anti-Semitism with anti-Negro propaganda, reflecting the response to such propaganda on the part of "white supremacy" groups and individuals. Thus, they circulated canards that the Supreme Court's historic decisions of May 17, 1954, and May 31, 1955 (see p. 96) were part of a "Jewish-Negro conspiracy" inspired by the Communists to "mongrelize the country." Agitators also charged that the Jews dominated Negro organizations, and they stressed the activities of those prominent Americans of Jewish faith who were in any way linked with efforts to further civil rights. Illustrative of this approach was the May 15, 1956, issue of *Common Sense*, a publication put out by Conde McGinley in Union, N. J. Under a banner heading, *NAACP Leaders and Their Communist Front Citations*, it printed large photographs of Supreme Court Justice Felix Frankfurter, Senator Herbert H. Lehman (Dem., N.Y.), and Arthur B. Spingarn. Besides extensive mailing from New Jersey, McGinley's periodical, his pamphlets and leaflets, were shipped in bulk to the South for distribution. This activity marked a curious situation: Most of the anti-Negro and anti-Semitic literature distributed in the South originated from areas where desegregation was not a major issue. Much of the literature of this nature that flooded tense Southern states was published in such states as California, Colorado, Missouri, New Jersey, and New York. By comparison, most of the literature produced by Southern white supremacy groups, dealing with "states' rights" and exhorting Southern whites to resist desegregation by boycott, seemed temperate. Actually, many white supremacy groups and their members were paying for and relying on the imports from the North, Midwest, and West for the more extreme literature.

From Glendale, a Los Angeles, Calif., suburb, Gerald L. K. Smith and his staff increased production of literature along anti-Negro lines, as typified by his pocket-size booklet, *White Man Awaken!*, published in the latter part of 1955. Similar in content was another product of the Los Angeles area, *The American Nationalist*, published at Inglewood, Calif., by Frank L. Britton. This monthly was received by residents of all Southern states, and appeared to be the recognized source for agitation throughout the region.

From Denver, Col., Kenneth Goff, a former Smith assistant, published a pamphlet, *Father Divine—Fake or Father?*, with anti-Jewish, as well as anti-

Negro material. From St. Louis came *The White Sentinel*, edited by John W. Hamilton, another former associate of Smith, which was found to be used extensively as an ideological source by pro-segregation groups. A pamphlet widely circulated in the South and Southwest was Joseph P. Kamp's *Behind the Plot to Sovietize the South*, which smeared and attacked unions and Negro, Jewish, and other groups and their leadership. When a pro-segregation group in Texas conducted a mail solicitation in Houston (November 1955), it enclosed a reprint of Merwin K. Hart's *Economic Council Letter* of August 1, 1955, attacking desegregation and pointing out Jewish organizational support of the measure. The *Economic Council Letter* was published in New York City.

#### WHITE CITIZENS COUNCILS

The White Citizens Councils (WCC) movement, dedicated to resisting desegregation, became more receptive to anti-Semitic and anti-Negro publications and agitators during 1955-56. As early as the summer of 1954, Robert B. Patterson, executive secretary of the Mississippi state parent-group of the WCC, had recommended to WCC members the products of such agitators as Smith, Conde McGinley, and Britton. Coinciding with increased distribution by WCC members (and in some instances, by WCC units) of such literature, was the rapid growth of the WCC movement itself throughout the South. In its *Second Annual Report* (August 1956) the Mississippi state WCC claimed 80,000 members, boasting that it was "corresponding regularly with interested Americans in forty-eight states. . . . We have mailed over two million pieces of literature . . . and members and officials of the State [WCC] Association have traveled into eleven Southern States, telling them what we have accomplished in Mississippi and helping them to organize." Reliable estimates of WCC membership in the South were unobtainable, although various reports indicated that it had swelled to several hundred thousand. This increase was primarily the result of local reaction to flare-ups of tension in specific areas stemming from specific incidents of attempts to end desegregation. Immediately after the riots attendant upon the attempts of Autherine Lucy, a Negro student, to enter the University of Alabama (*see* p. 97-98), WCC units in that state rose from forty-seven to sixty-one. Another reason for the proliferation of the councils was that, while its original activators envisioned the WCC as a highly unified movement, the reverse proved to be the case. Actually, WCC units were highly varied in the intensity of their animus and resentment. Illustrative of this diversity was the situation in Alabama, where the state WCC split into two factions, one moderate, the other extremist. The latter, known as the North Alabama WCC, was headed by Asa Carter, a former radio commentator, who openly collaborates with leading anti-Semitic activists. In April 1956, five North Alabama WCC members ran onto the stage of Birmingham's Municipal Auditorium and assaulted Negro singer Nat Cole during his performance before a segregated audience. The five were arrested, along with a sixth who had waited outside in a parked car containing rifles, brass knuckles, and a blackjack. Two of the assailants were held for assault with intent to murder, the others on minor conspiracy charges.

On cordial terms with Carter was John Kasper, an associate and one-time publisher for anti-Semitic writer Eustace Mullins. In 1955 Kasper ran a "nationalist" bookshop in New York, later moved his store to Washington D. C., where in 1956 it became the headquarters for his Eastern Seaboard WCC's. The orderly integration of twelve Negro students into the high school at Clinton, Tenn., was disrupted (end of August 1956) by Kasper's appearance in that town, where he conducted an anti-integration rally attended by 800, haranguing the audience to oppose the Federal Court's integration order. As a result, considerable public disorder and some violence occurred in Clinton for several days before the disturbances were quelled. On August 30, 1956, Kasper was arrested on a writ of attachment for contempt of court. Another visitor to Clinton was Carter, whom Kasper characterized as being "the only sincere and courageous leader in the entire movement." Released on bail, Kasper traveled to other Southern communities, and at Birmingham, Ala., (September 12, 1956) urged the use of "every type of resistance" to fight the "open and naked display of power of the Supreme Court."

Evidence that the WCC movement was not confined to the South was confirmed when a new WCC was launched in Detroit, Mich., during July 1956. Claiming that additional units in Michigan were scheduled to open in Highland Park, Flint, Lansing, and other localities, the council rented headquarters in Dearborn, Mich., under the name of Homeowners' Association of the State of Michigan. After learning the true identity of his tenants, the landlord took steps to oust the organization. In charge of this WCC group was James Douglas Carter, brother of Asa Carter.

The foregoing is representative of the extremism in the WCC movement. However, it is noteworthy that the many WCC units ranged from extreme to mild; while some inspired violence, others concentrated on promoting legal means of avoiding integration, such as interposition (*see* p. 98); still others encouraged boycotts of those aiding the moves to integrate Negroes in public schools, or public accommodations; yet others, such as the Louisiana WCC's, took credit for a court decision prohibiting the activities of the NAACP; and some WCC's resorted to political moves. Most of the WCC's disavowed religious and racial bigotry (including anti-Negro bias), while the presence of locally important individuals in some councils provided a brake on fanaticism. Finally, WCC units tended to reflect the tensions and attitudes of the locality, and its membership and activities appeared to fluctuate in direct ratio to specific incidents involving integration, declining sharply as soon as those incidents were resolved.

### *Ku Klux Klan*

Attempts at revival of the Ku Klux Klan were accelerated during 1955-56. Considering the WCC's to be "too mild," rabble-rousers and other opportunists sought to stimulate public acceptance of the discredited Klan throughout the South. In Montgomery, Ala., (September 1956) Imperial Wizard E. L. Edwards attacked "Catholics, Communists, Jews, Negroes and Northern agitators" as the principal threats to "destruction of the white heritage." His remarks were applauded enthusiastically by the assemblage of 1,200, including 200 robed Klansmen. In Woodruff, S. C., a "Grand Titan," addressing a

Klan rally of 400 by the light of a thirty-foot gasoline-soaked fiery cross (June 1956), declared that "the Klan has always been against the use of violence and has never taken the law into its own hands. The record shows that any time the Klan took action, the facts justified it." A Klan meeting in Tuscaloosa, Ala., (August 1956) reportedly gave the state senator, Albert Davis, a tumultuous ovation as he intoned his peroration, "Give me segregation or give me death!" Several hundred journeyed from many points in Tennessee for a Klonvocation held in October 1956 at Clinton, Tenn., scene of school integration troubles. In Tallahassee, Fla., Bill Hendrix, Grand Dragon of the Florida Klan, informed his followers (August 1956) that he was organizing a Klan unit in Chicago. A state-wide organizing drive was launched at Lakeland, Fla., in July 1956, followed by another meeting at Orlando the following month.

In Atlanta, Ga., traditional home of the Klan, over 3,000 persons attended a Klonvocation and cross-burning ceremony atop Stone Mountain (September 1956), Imperial Wizard E. L. Edwards announcing that "the Klan is growing faster than you think." In June 1956, the Klan obtained a nonprofit corporate charter from Louisiana's secretary of state, Wade O. Martin. In July 1956, at Richlands, N. C., a cross was burned on the lawn of a country church whose pastor had invited a Negro to preach to his white congregation.

There were many other such instances of Klan activity. There were many cross-burnings, especially in connection with demonstrations in opposition to school desegregation. It must be observed that cross-burnings in themselves did not necessarily indicate the presence of the Klan, but rather the perpetration of a Klan-like act, the culprits generally escaping apprehension by authorities. Some prominent targets of cross-burnings were the Washington, D. C., residences of Senator Lehman, and Supreme Court Justices Earl Warren and Felix Frankfurter (July 1956); the home of Speaker Sam Rayburn (July 1956); and the home of Archbishop Joseph F. Rummel in New Orleans, La., (May 1956).

Despite the activity during 1955-56 here reported, the Klan had nothing like the integrated structure and direction it had in the 1920's, or even the 1940's.

## *Politics*

Anti-Semites concentrated on exploiting ultra-conservative political movements more than a year in advance of the 1956 presidential elections. Long accustomed to wooing extreme rightists by tying in their bigotry with attacks upon the UN, the income tax, liberalized immigration, and denunciations of alleged Federal government encroachments, agitators found the emergence of desegregation as a burning issue in the South a fertile political field. Non-Southern political dissidents formed alliances with pro-segregation movements in the South, under a common slogan of "states' rights." Agitators conspicuously lent their support to "third party" and "third force" movements throughout the United States, attending conferences of many such groups. Thus, the ultra-conservative Congress of Freedom, an amalgam of many rightist groups, meeting in Dallas, Tex., April 5-7, 1956, numbered among its participants Elizabeth Dilling, whose periodic newsletter was rarely

rivalled for racial and religious venom. Also present were Kenneth Goff, Denver, Colo., agitator, and Marilyn Allen, a Klan-apologist, and publisher of bigoted pamphlets. Resolutions adopted at the convention voiced the Congress of Freedom's opposition to Federal subsidies, compulsory unionism, income taxes, tax-exempt foundations, desegregation, and social security. Also adopted was a resolution which declared:

The Congress [of Freedom] has come to the conclusion that both major parties have been taken over by socialistic forces, that the socialistic revolution has taken place, and that only a counter-revolution can still save the Christian States from succumbing to the fate of European nations.

In 1952 the anti-Semites had achieved extensive notoriety. In 1956, however, the efforts of agitators to exploit the differences and divisions at the conventions of the major parties met with scant success. The Chicago Committee for the Reception of Nationalist Observers, a project sponsored by Matt Koehl and other local activists, set up headquarters. Its peak meeting, held August 12, was addressed by Joseph E. McWilliams, quondam fuehrer of New York City's Christian Mobilizers, an activist group of pre-Pearl Harbor days. McWilliams had not been overtly engaged in agitation for more than a decade prior to this meeting. He attacked President Dwight D. Eisenhower and ex-President Harry S. Truman for having "turned the country over to the leftists and Communists," and exhorted pro-segregationists to greater achievements. McWilliams praised "nationalist groups" who, he said, were "the nation's defenders against Communist, internationalist, and Jewish infiltration"; he also acclaimed Egypt's President Gamal Abdel Nasser for having seized the Suez canal (*see* p. 217). Materials distributed through the headquarters of the Chicago committee included *The Democratic Party, Arch-Foe of Civilization*, a leaflet from James Madole's National Renaissance Party (NRP) in New York, and *Fightum*, a pamphlet devoted to a letter by Gen. George Van Horn Moseley (ret.). This letter charged the Jews with using the Negro "to mongrelize the race," hoped for Israel to be "completely wiped off the map," and prayed "to see a fearless American leader arise from the Christian majority, take over our nation as did Mustafa Kemal Ataturk in Turkey." Conde McGinley's *Common Sense* also was extensively circulated.

At San Francisco, Gerald L. K. Smith achieved national press coverage by gratuitously endorsing Vice President Richard Nixon. Nixon immediately repudiated Smith, pointing to attacks which Smith had previously made on him.

The alertness of anti-Semites to exploit events of political import was best exemplified by Robert H. Williams' vitriolic *Williams' Intelligence Summary* and Conde McGinley's *Common Sense*. When it was uncertain whether President Eisenhower would run for re-election, the July 1955 issue of Williams' publication urged "some Republican patriot" to enter the Presidential race without waiting for President Eisenhower's decision. The October 1955 issue of the same publication, which appeared shortly after the President's heart attack, urged ultra-conservatives to "take advantage of the break." As the Presidential campaign of 1956 drew to a close, a "third party" ticket, headed by former Internal Revenue Commissioner T. Coleman Andrews and former Representative Thomas H. Werdel, running for President and Vice President, respectively, had been agreed upon by ultra-conservative elements



of the North and pro-segregationists of the South. Though this movement was not anti-Semitic, agitators such as McGinley joined it, and assiduously promoted the ticket. On October 1, 1956, *Common Sense* prominently displayed the photos of both these candidates, including what was labeled as the text of an address given before the National States Rights Conference at Memphis, Tenn., on September 14, 1956. It also gave considerable space to a so-called *New Party Directory*, listing the names of third party political groups in twenty-nine states, and it urged its readers to "register your protest against these former two parties which have been merged and are shadow-boxing, while directed by international Marxist Conspirators."

Jack Tenney, former California state senator and colleague of Gerald L. K. Smith, fared poorly at the June 1956 primaries in Los Angeles in his bid for nomination for Municipal Court Judge; Tenney received 79,000 votes against 340,000 for his opponent.

### *Pro-Arab Propaganda*

As tensions in the Middle East mounted during 1955 and 1956, anti-Semites accelerated their promotion of pro-Arab and anti-Jewish themes. At times they actually aided the dissemination of official Arab propaganda in such a manner as to give rise to the inference that there was a working liaison between agitators and official and semi-official Arab units in the United States.

Thus, the May 1956 issue of *The National Renaissance Bulletin*, organ of the neo-Nazi NRP, devoted a page to an "urgent appeal" to its readers "to assist by purchasing any two of the following books for \$1." Of the eight items listed, seven were of Arab origin, including *Zionist Espionage in Egypt*, a tract originating at the Egyptian Embassy. Also advertised were such items of general Arab propaganda as *The Philosophy of the Revolution*, by Egyptian President Nasser, which, according to the NRP Bulletin, "every nationalist needs for his library." An indication of the strenuous effort of Arab agencies in the United States to stir up suspicion and hatred of American Jews was a 250-page manual for American pro-Arab speakers and writers, *Tension, Terror and Blood in the Holy Land*. Issued toward the end of 1955 and extensively distributed during 1956, the book bore the official seal and imprint of the Palestine Arab Refugee Institution, Damascus, Syria. One of its characteristic excerpts read:

It is time that Americans realize that these teeming masses of Zionists who infest their cities and sit astride the arteries of their commerce are, in every sense of the word aliens. They are aliens by choice and by tradition. They are aliens because they render their first allegiance not to the United States of America, but to their own so-called state of Israel.

Charges of "Jewish dual loyalty," either outright or by pointed implication, were contained in most of the public addresses by Arab officials, and by pro-Arab speakers. The leading instance of this charge during 1955-56 was the address of Syrian Ambassador Farid Zeneiddine before the Women's National Democratic Club (November 13, 1955). Zeneiddine was quoted as saying that Jews throughout the world considered themselves "different," rather

than as an integral part of the country in which they resided, and that their allegiance was only to Zionism. The ambassador was reported to have queried, "Why not let New York be a homeland for the Jews?" Some pro-Arab American publicists went beyond this point. Lawrence Griswold published a newsletter, *Background for Tomorrow*, which in its October 31, 1955, issue, referred to "the selfish aggressiveness of privileged Jews, both in this country and abroad. . . . Thoughtful Americans should consider well, if they wish to avoid the demoralization of society which follows pogroms, whether they should employ enlightened self-interest now and write off the ugliness of Israel."

Anti-Semites made continuous use of the Middle Eastern tensions as springboards for their bigotry. Gerald L. K. Smith, for instance, tied in the Presidential campaign with this problem, writing to his followers in his *Special Appeal Letter* (August 6, 1956):

You can rest assured that if Eisenhower can be propped up long enough to get the nomination, and if Stevenson or whoever is nominated heads the ticket of the "kidnapped" Democrat Party, these internationalists who agree on practically everything will outpromise each other in order to get the Zionist Jew vote.

Merwin K. Hart's *Economic Council Letter* (August 1, 1956), copies of which were mailed to legislators, feared that "barring a miracle, the same Marxist-Zionist forces will select the candidates of both parties."

Horace Sherman Miller, of Waco, Tex., digressed from his white supremacy publicity to distribute a flyer reproducing a letter dated March 16, 1956; the letter urged, "I call upon the American Government to arm the Arabs, and help them drive the Jews and Jewish parasites into the sea." Easily the bellwether of anti-Jewish propaganda in discussions of Middle East tensions was McGinley's *Common Sense*.

### *Specific Agitators*

Joseph Beauharnais, who had formerly headed Chicago's anti-Negro White Circle League, started (March 1956) the World Federation of the Pure White Race, and issued a "call" to a convention for anti-Semitic, anti-Negro leaders. However, Beauharnais was unsuccessful in his endeavors to consolidate the segregationist movement. Eustace Mullins, anti-Semitic writer, published a German-language edition of his book, *Federal Reserve*, in West Germany. The work was reported seized by authorities in August 1956. In a suit filed by Mullins against an oil industry public relations group, American Petroleum Industries Committee, for breach of contract (February 1956), Mullins alleged (and the defendant denied) that he had been hired to run what was tantamount to "a clearing-house for anti-Zionist propaganda." John Kasper, Seaboard WCC leader, was charged (September 25, 1956) in Tennessee with sedition for inciting to riot, arising out of his participation in the Clinton, Tenn. demonstrations against integration of Negro students in that city. [He was acquitted after trial in November 1956.] Previously, Kasper had been adjudged in contempt of a Tennessee Federal Court decree, and sentenced to a year in jail on August 30, 1956. He was released on bail pending appeal.

Attempts were made by the NRP to hold weekly outdoor meetings in the Yorkville section of New York City. After disturbances at the first meeting (June 1956), this project was discontinued. Agnes Waters was active in Chicago during the Democratic Convention there (August 1956), resuming her agitation after several years of quiescence.

### *Anti-Semitic Press*

The anti-Semitic press generally continued to register improvement in the quality of its typography. New items consisted mainly of flyers and pamphlets dealing with desegregation, while such staples as the *Protocols of the Elders of Zion* were extensively circulated through the South. The most widely circulated periodicals appeared to be *Common Sense* and the *American Nationalist*. Examples of poorer typography were Elizabeth Dilling's *Patriotic Newsletter*, and Howard Pyle's *Grass Roots*. Leonard E. Feeney, excommunicated priest of Boston, continued publication of a small, four-page periodical, *The Point*, which stressed Talmud exposé themes during 1955-56. Frederick C. F. Weiss, neo-Nazi promoter, issued a new section of his book, *Russia*, in pamphlet form, under the imprint of LeBlanc Publishers; its advertisements contained anti-Semitic cartoons. Alexei Jefimov, a Conde McGinley assistant, occasionally produced flyers in Ukrainian linking Jews with Communism: these, McGinley produced in English. Robert H. Williams gave extensive distribution to a large flyer in telegram format condemning President Eisenhower and libeling Jews as Red Zionists. Gerald Winrod's *Defender* continued to mix racism with religious messages. Perhaps the low point of racist publications was reached in a pornographic pamphlet, *Virginians on Guard*, distributed by Frederick Kasper, ostensibly suggesting legislation to reinforce segregation. *The Coming Red Dictatorship*, a large flyer containing photos of prominent Americans of Jewish faith smeared as being Communist-influenced, continued to be widely distributed throughout the country, its contents revised with each edition. This work was also published during the summer of 1956 in Oberammergau, West Germany, under the title *Die Kommende Rote Diktatur*, and was accompanied by many Streicher-like caricatures. Its concluding phrases may be said to sum up the import and objective of all such literature:

In case you think we are prejudiced, history for more than 1,000 years indicates that wherever these people have settled, it was necessary to evict them eventually—Babylon, Spain, France, England, and as recent as 1939, Germany. And it will happen in America.

GEORGE KELLMAN