More state civil-rights laws were enacted in the United States during the period under review (October 1, 1960, to September 30, 1961) than in any similar period in history. Other major developments included the continued effective use of social action to win significant victories in the struggle for equality in the use of public accommodations, particularly transportation facilities; substantial civil-rights activities at the Federal level and the issuance of a series of meaningful reports by the United States Commission on Civil Rights; further progress in the peaceful desegregation of public schools in the South, specifically in several major cities, and the emergence of a difficult school-desegregation issue in a number of large northern cities.

State Civil-Rights Laws

In 1961 more than 40 civil-rights laws were enacted by state legislatures, in every part of the country except the South.

California

The legislature enacted and Governor Edmund G. Brown signed into law in July 1961 a group of bills which voided racial, religious, and ethnic restrictive covenants in documents of title to real property; prohibited discrimination in community-redevelopment and urban-renewal projects, and required anti-discrimination clauses to be included in all deeds, leases, and contracts affecting such projects. On July 6, 1961, Governor Brown also signed a measure extending the protection of the state's public-accommodations statute (which had previously protected only "citizens" against acts of discrimination) to all persons, whether citizens or not. A bill banning discrimination in the issuance of insurance policies, and prohibiting their cancel-
lation because of the race or color of the insured, passed both houses of the legislature unanimously and was signed by Governor Brown on July 19, 1961. In addition, the California legislature passed a resolution memorializing the United States Department of State to resist attempts by Arab countries to discriminate against United States citizens on the ground of religion.

Connecticut

On June 5, 1961, Governor John N. Dempsey approved a measure strengthening that state's prohibitions against discrimination in the sale or rental of housing. Before its amendment, the statute covered five or more contiguous units under the current control of one owner. The new law reduced the number to three contiguous units owned or controlled by the same person during the past year. The new act applied also to building lots on which residences were intended to be erected. These changes in the fair-housing law were made to plug loopholes which had become apparent when a property owner charged with discrimination was able to avoid legal sanctions by transferring to his wife several units of real property, thus reducing to fewer than five the number of units which he controlled. A court had also held that the original statute did not cover building lots on which houses had not yet been erected.

Idaho

On March 14, 1961, Governor Robert E. Smylie signed into law a bill prohibiting discrimination on the grounds of race, creed, color, ancestry, or national origin in places of public accommodation, resort, assemblage, or amusement; in educational institutions supported by public funds, and in employment. Violations were punishable as misdemeanors. Since the statute did not establish administrative machinery to enforce the prohibitions, Idaho could not be considered a state with fair-employment-practice legislation properly so-called. (A state with such legislation will hereafter be called an FEP state.)

Illinois

After 16 years of effort, Illinois finally joined the growing list of FEP states when Governor Otto Kerner, on July 21, 1961, signed a bill which had passed the Senate on May 24 by a vote of 31 to 23 and the House of Representatives on June 29 by a vote of 122 to 21. The new law created a five-member, nonsalaried Fair Employment Practices Commission, to be appointed by the governor with the advice and consent of the Senate. Discrimination in employment by employers, by employment agencies, and by labor unions was prohibited. Any person claiming to be aggrieved by an unlawful employment practice might file a complaint with the commission, which was authorized to investigate the charges in such complaints and to seek to eliminate, by conference and conciliation, any unlawful discrimination found as

a result of such inquiry. If the commission's efforts were unsuccessful, it could order a hearing before a commissioner or a hearing examiner who was empowered to take testimony and determine the issues. Either party might petition the whole commission to review such a determination; it would then hold its own hearing and promulgate its decision. In the absence of a petition for review, the hearing examiner's determination, if supported by substantial evidence, became the decision of the commission. The commission was empowered to issue cease-and-desist orders reviewable and enforceable by the courts.

A feature of the Illinois law, not included in any other state's statute prohibiting discrimination in employment, was the provision that only employers of more than 100 employees were subject to the law. The statute provided that after December 31, 1962, its coverage would be extended to employers of 75 or more, and after December 31, 1964, to employers of 50 or more employees.

On August 1, 1961, Governor Kerner signed a bill which increased the maximum criminal fines and civil damages for violation of the statutes prohibiting discrimination in places of public accommodation, resort, or amusement from $500 to $1,000. On the same date the governor signed a bill which provided for absentee voting for citizens unable to vote on election day because of a religious holiday.

Indiana

On March 9, 1961, Governor Matthew E. Welsh signed into law a measure which significantly strengthened the Indiana FEP statute, although it did not confer upon the commission the power to issue enforceable cease-and-desist orders. The new law created an independent Fair Employment Practice Commission with power to receive, investigate, and conciliate complaints of discrimination in employment, and to hold hearings, subpoena witnesses, administer oaths, and require the production of books and records. The new statute also required all government contracts to include an anti-discrimination clause. Another law, enacted in Indiana during the spring of 1961, broadened the definition of place of public accommodation, resort, or amusement to include "any establishment which caters or offers its services or facilities or goods to the general public." The law also included a prohibition against discrimination in public housing. Although an effort to provide administrative enforcement machinery was unsuccessful, criminal and civil penalties were provided for violations.

Kansas

On April 14, 1961, Governor John Anderson, Jr., signed a bill which made the Kansas FEP law fully enforceable. The new statute made discrimination in employment unlawful and gave the previously existing Anti-Discrimination Commission power to enforce the prohibition by cease-and-desist orders reviewable and enforceable by the courts. The Senate had weakened the House

3 The largest number of employees required by any prior state law was 12, under the Pennsylvania statute. But see under Missouri, below.
bill by deleting a provision to empower the commission to issue subpoenas and require the production of books and records, and by adding a requirement that the commission in its administrative proceedings should adhere to the rules of evidence "prevailing in courts of law or equity."

Maryland

On April 24, 1961, Governor J. Millard Tawes signed two bills which made it a crime, punishable by fines up to $500, to discriminate in public employment, and which required state contracts and subcontracts to contain a clause against discrimination in employment. Absence of the clause would void a contract.

Massachusetts

Massachusetts strengthened its statutes prohibiting discrimination in housing by the enactment of three new measures. One act authorized the revocation or suspension of a license in cases where real-estate brokers failed to comply with final orders of the Massachusetts Commission Against Discrimination requiring them to cease and desist from discriminatory housing practices; the bill was signed into law by Governor John A. Volpe on March 6, 1961. The second act clarified the existing statute by expressly including discriminatory sales of housing covered by the law. Finally, the legislature passed and Governor Volpe signed a bill which authorized the courts to issue temporary restraining orders to prevent property owners brought before the commission on charges of discrimination from disposing of the property in question during the pendency of the proceeding and thus frustrating any subsequently issued cease-and-desist order.

Minnesota

Minnesota joined the growing list of states which prohibited racial, religious, or ethnic discrimination in the sale or rental of private housing. On April 17, 1961, Governor Elmer Anderson signed a bill which had passed the House on April 12 by 84 to 41 votes and the Senate on April 13 by 36 to 30. The new measure changed the name of the FEP commission to the State Commission Against Discrimination and vested in the commission enforcement powers over discrimination in housing as well as in employment. The sale or rental of one-family houses and the rental of owner-occupied two-family houses were exempt from the prohibition against discrimination, provided the houses had not been built with government assistance. The prohibition against discrimination embraced the activities of owners, lessees, managing agents, real-estate brokers, salesmen and agents, and banks and other financial institutions to whom application might be made for financial assistance for the purchase, lease, construction, or improvement of real property. The new law became effective December 31, 1962.

Missouri

A fully enforceable fair-employment-practice bill passed the Senate on June 7, 1961, the House on June 29, and was signed into law by Governor
John M. Dalton on August 1, 1961, making Missouri the 20th state to enact such legislation. The new law barred discrimination in employment by employers of 50 or more employees, by labor organizations, and by employment agencies. Enforcement was vested in the 11-member State Commission on Human Rights, created in 1957 as a temporary commission with educational functions and made permanent in 1959. The commission was authorized to receive complaints, to investigate for probable cause, and to attempt to eliminate discrimination by persuasion and conciliation. In the event of failure to mediate the charges of discrimination, the commission could proceed to a hearing, make findings of fact, and issue a cease-and-desist order enforceable and reviewable by the courts. The limitation in the law to employers of 50 or more employees was estimated to eliminate about 85 per cent of the state's 37,000 employers, although it covered about 65 per cent of the state's industrial employees.

The Missouri legislature also passed a resolution memorializing the United States Department of State to resist attempts by the Arab countries to discriminate against United States citizens on the ground of religion.

Nevada

Governor Grant Sawyer, on April 6, 1961, signed into law a bill which created a five-member commission on the equal rights of citizens. The commission was given power to investigate complaints of discrimination, tension, or prejudice, to subpoena witnesses, and to require the production of evidence; and was required to report at stated intervals to the governor and legislature.

New Hampshire

On June 30, 1961, Governor Wesley Powell signed into law a bill which made New Hampshire the 28th state to prohibit racial, religious, or ethnic discrimination in places of public accommodation. The same bill contained a provision prohibiting discrimination in the "rental or occupancy of a dwelling in a building containing more than one dwelling." The state thus became the fourth in 1961 to prohibit such discrimination.

As originally introduced in the legislature, the bill dealt only with discrimination in places of public accommodation. Its purpose was to substitute a provision outlawing discriminatory practices for the existing provision, enacted many years previously, merely prohibiting discriminatory advertising by places of public accommodation. After the bill passed the House, the Senate amended it by adding a prohibition on discrimination in housing, in the belief that such an amendment might cause the bill to be rejected by the House when it was returned for concurrence. However, on June 28 the House

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passed the measure as amended by the Senate and two days later Governor Powell signed it into law.

Violations were punishable by fines of $10 to $100. A provision which also would have made possible punishment by imprisonment up to 90 days was deleted by the Senate.

**New Jersey**

A broad fair-housing bill which would have prohibited racial, religious, and ethnic discrimination in virtually all private housing passed the Assembly unanimously on February 6, 1961. The bill was amended by the Senate revision committee to exclude one- and two-family houses unless such dwellings formed part of at least a ten-unit development and to exclude houses consisting of three or fewer apartments where one was owner-occupied. As amended, the bill passed the Senate on June 2, received the concurrence of the Assembly, and was signed into law by Governor Robert B. Meyner on September 13, 1961, making New Jersey the ninth state in the country, and the fifth in 1961, to prohibit discrimination in private housing.6

The legislature also memorialized the Department of State to resist attempts by the Arab countries to discriminate against United States citizens on the ground of religion.

**New York**

On April 11, 1961, Governor Nelson A. Rockefeller signed into law a bill prohibiting racial, religious, or ethnic discrimination in the sale or rental of private housing. The new law, which vested enforcement jurisdiction in the State Commission Against Discrimination, was in addition to the existing statutes banning discrimination in publicly-assisted housing.

Some of the prohibitions of the new law covered all private housing, while others were limited to multiple dwellings with at least four units, to three-family houses provided the owner of the structure did not occupy one unit, and to one- and two-family houses provided they formed part of a development of at least ten contiguous units. The law also covered discrimination in the sale or rental of commercial space, the first such prohibition in the country. Real-estate brokers, salesmen, and agents were prohibited from racial, religious, or ethnic discrimination and from discriminatory advertising. Banks and financial institutions were prohibited from discriminating against applicants for financial assistance for the purchase, construction, or improvement of any housing accommodation and from using discriminatory application forms or inquiring into the race, religion, or ethnic origin of applicants for such financial assistance.

The legislature also memorialized the Department of State to resist at-

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6 Discrimination in private housing is now prohibited by law in Colorado, Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Oregon, and Pennsylvania. Discrimination in publicly-assisted housing is prohibited in California and Washington. (The Washington statute was held unconstitutional by the state supreme court in *O'Meara v. Washington State Board Against Discrimination*, No. 35436, Supreme Court of Washington, September 29, 1961.)
tempts by the Arab countries to discriminate against United States citizens on the ground of religion.

**North Dakota**

North Dakota made it a misdemeanor for any person to exclude another, on the grounds of race, color, religion, or national origin, from the full and equal enjoyment of any public conveyance, theater, hotel, barber shop, saloon, restaurant, or other public place of amusement, refreshment, entertainment, or accommodation. The bill was signed into law by Governor William L. Guy on March 16, 1961.

**Ohio**

On July 20, 1961, Governor Michael Di Salle approved a bill which broadened the authority of the Civil Rights Commission by giving it jurisdiction over complaints of racial, religious, or ethnic discrimination in places of public accommodation, resort or amusement. Ohio thus followed the lead of other states which had first created an administrative agency to deal with discrimination in employment and subsequently broadened its jurisdiction to include discriminatory conduct in other relationships.

**Oregon**

Oregon improved the complaint and hearing procedures before its Labor Bureau, the agency which enforced the various laws against discrimination in that state. The legislature also extended the coverage of the existing law against discrimination in places of public accommodation to “any place where public goods or services are offered.”

**Pennsylvania**

On February 28, 1961, Governor David L. Lawrence signed a bill prohibiting discrimination in public and private housing. Pennsylvania’s new law, which became effective on September 1, 1961, covered all housing except single homes that were owner-occupied and two-family houses of which one unit was owner-occupied. The prohibition against discrimination applied to the owners of housing accommodations and to lessors, builders, managers, brokers, salesmen, agents, and lending institutions. The law barred discrimination in the sale or lease of housing and in financing for the acquisition, construction, or maintenance of housing. The law also prohibited discriminatory advertising and making inquiries concerning race, color, religious creed, ancestry, or national origin in connection with applications for loans for housing. Enforcement was vested in the commission which since 1955 had administered the FEP law, and the commission was renamed the Human Relations Commission.

The Human Relations Commission was also given authority to enforce the existing law against discrimination in places of public accommodation. A person aggrieved by an act of discrimination in a place of public accommodation had a choice between using the existing criminal remedies or filing a complaint with the commission. The administrative procedures under the
new act were the same as those governing complaints of discrimination in employment under the FEP law.

A bill prohibiting discrimination in post-secondary educational institutions and in business, trade, and vocational schools at all levels passed the House on April 17, 1961, by 139 to 57 votes and the Senate on June 7 by 35 to 6. It was signed by Governor Lawrence on July 17, making Pennsylvania the fifth state to pass a fair-education law. A Senate amendment provided that it was not an unfair educational practice for a college to accept a gift containing racial or religious limitations. Enforcement of the fair-education law was likewise vested in the Human Relations Commission.

The Pennsylvania legislature also memorialized the United States Department of State to resist attempts by the Arab countries to discriminate against United States citizens on the ground of religion.

Washington

The legislature amended the civil-rights law to include a prohibition of discrimination in places "for burial or other places for the disposition of human remains."

West Virginia

On March 6, 1961, the legislature passed a bill which established a Human Rights Commission with authority to "consider" complaints of racial, religious, or ethnic discrimination in employment and in places of public accommodation. The Senate judiciary committee had eliminated the subpoena, investigative, and other enforcement powers originally included in the bill creating the commission.

Wisconsin

The legislature memorialized the United States Department of State to resist attempts by the Arab countries to discriminate against United States citizens on the ground of religion.

Wyoming

The legislature passed a bill prohibiting racial, religious, or ethnic discrimination "in all places or agencies which are public in nature, or which invite the patronage of the public." Violations were made misdemeanors punishable by fines up to $100 and imprisonment up to 90 days. The bill was signed into law by Governor Joseph J. Hickey in February 1961.

FREEDOM RIDERS

Direct action to win equality of treatment in the South, initiated with the Montgomery bus boycott in 1955 and extended by sit-in demonstrations in

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7 The states which now have fair-education laws are Massachusetts, New Jersey, New York, Pennsylvania and Washington. Oregon law prohibits discrimination in vocational, professional, and trade schools.
variety, drug, and department stores and libraries in 1960, was used again when a group of “Freedom Riders” challenged segregation practices and customs in interstate transportation.

Seven Negro and six white members of the Congress of Racial Equality (CORE) departed by bus from Washington, D.C., on May 4, 1961, after announcing their intention to travel through Virginia, North and South Carolina, Georgia, Alabama, Mississippi and Louisiana. The “Freedom Ride” was to end in New Orleans on May 17, the seventh anniversary of the Supreme Court’s school-segregation decision. The riders, after initial resistance, were served on May 7, 1961, at a segregated lunchroom in Danville, Va. One member of the group was arrested the following day in Charlotte, N.C., for refusing to leave a shoeshine stand in a segregated barber shop in the bus terminal. The first act of violence occurred on May 9 in Rock Hill, S.C., where two members of the group were beaten in a waiting room of a bus terminal, but the local police quickly restored order. Two more riders were arrested in Winnsboro, S.C., on May 10. The tour through Georgia was uneventful, but violence erupted soon after the Freedom Riders entered Alabama.

On Sunday, May 14, 1961, in Anniston, Ala., a white mob met the Freedom Riders and slashed the tires of one of the two buses on which they were passengers. A few miles beyond the city the bus was forced to stop and was set afire by an incendiary bomb thrown into it by someone from a pursuing car. When the second bus arrived at the Birmingham, Ala., terminal later that day, the Freedom Riders were attacked by a group of whites awaiting their appearance. Several members of the interracial group were given first-aid treatment for cuts and bruises, while two were briefly hospitalized for more serious injuries. Several bystanders, white and Negro, also were chased and beaten by the mob. The police were nowhere to be seen, although a police station was only two blocks from the bus terminal at which the Freedom Riders arrived.

The original Freedom Riders, after a conference with officials of the United States Department of Justice, departed by plane for New Orleans. They were replaced, however, by another interracial group, principally from Nashville, Tenn., which announced its intention to continue the interstate bus trip. Bus drivers, fearful of violence, first refused to permit the Freedom Riders to board buses departing from Birmingham for Montgomery, Ala., but on May 20 the Freedom Riders finally succeeded in boarding one.

When the bus arrived at Montgomery later that day it was met by a large group of white men who first taunted and then attacked the Freedom Riders. In the confusion that followed, bystanders and newspapermen in the bus terminal were also beaten. A full-blown race riot was in the making.

By mid-afternoon, mobs of bat-swinging, brick- and bottle-throwing white men, women, and teen-agers had swarmed about the bus station and on surrounding streets, beating the riders, newsmen, and others who presented a target.

It was considered a full-scale race riot, though a unilateral one. So far as could be determined, neither riders nor bystanders retaliated.

Once the first blows were struck—at newsmen—the screaming, howling mob that materialized did not discriminate between "agitators" and others. Police were not on the scene when the bus arrived, although they arrived 10 minutes later, backed by state patrolmen. Mounted deputies from the Montgomery County Sheriff’s office arrived more than an hour later.\(^9\)

President John F. Kennedy instructed Attorney General Robert F. Kennedy to take the necessary steps to protect interstate passengers in Alabama. Some 600 Federal officials from nearby stations were deputized as U. S. marshals and ordered to Montgomery by the Department of Justice. The marshals, wearing distinctive armbands, were stationed at the bus terminals and patrolled the nearby streets.

The Rev. Dr. Martin Luther King was scheduled to address a mass meeting at the First Baptist church on Sunday evening, May 21. The church soon became the target of the mob, and the marshals called for assistance from Governor John Patterson. That evening the governor called out the National Guard and declared Montgomery under "qualified martial rule." Shortly after 10 P.M. armed Guardsmen began arriving at the church. Those inside were ordered to remain until dawn for their own safety. The mob was finally dispersed and the Negroes were escorted to their homes at dawn. The marshals retired to Maxwell Air Force Base, leaving police action to the National Guard. During the following week most of the marshals were withdrawn while some 800 Guardsmen, with fixed bayonets, remained at bus stations and patrolled the streets and suburbs of Montgomery.

On May 24, 26 Freedom Riders left the city in two buses with a massive police, highway-patrol, and National Guard protective escort. At the state line the protection duties were turned over to the Mississippi authorities and the buses proceeded to Jackson, where all of the Freedom Riders on the two buses were arrested when they ignored a police officer’s order to leave the white waiting room at the bus terminal.

Seven more Freedom Riders arrived in Montgomery on May 24 and were arrested the following day when they attempted to eat with four Negro ministers at the Trailways bus-terminal counter. Included among those arrested were the Rev. F. L. Shuttlesworth, Birmingham Negro leader; the Rev. William S. Coffin, Jr., Yale University chaplain and a member of the Peace Corps Advisory Council; the Rev. Gaylord B. Noyce, assistant professor of religion at Yale Divinity School; David E. Swift, professor of religion at Wesleyan University; John D. Maguire, assistant professor of religion at Wesleyan University; the Rev. Ralph D. Abernathy, Montgomery Negro leader, and the Rev. Wyatt Walker of Atlanta, Ga.

Freedom Riders from all over the country and as far away as the West Coast arrived in Jackson by bus, train, and plane from the end of May until the end of August. Included were rabbis and Protestant ministers, a New York State Assemblyman, college students, labor leaders, and teachers. Over

300 Freedom Riders were arrested by the local police for breach of the peace in attempting to use, on a nonsegregated basis, the facilities of bus, train, and airplane terminals in Jackson.

The Freedom Ride movement was having repercussions elsewhere. Attorney General Kennedy filed a petition on May 29, 1961, requesting the Interstate Commerce Commission in Washington to adopt regulations prohibiting racial segregation on all interstate buses and in all terminal facilities used by such buses. On June 16, 1961, in a meeting with representatives of the Southern Christian Leadership Conference, he urged a discontinuance of the Freedom Riders' demonstrations against racial segregation in transportation facilities because "they had made their point" and no further advantage would be gained by continuing the protest rides. He suggested that the group shift its concern to Negro voting registration in the South.10

The Freedom Rides continued despite his suggestion, and riders tested segregation in transportation facilities in Little Rock, Ark.; Ocala and Tallahassee, Fla.; Shreveport, La.; Monroe, Raleigh, and Wilmington, N. C.; Charleston, S. C.; Chattanooga, Tenn., and Houston, Tex. A group of ten white and Negro clergymen, including rabbis and Protestant ministers from New York and New England, were arrested on June 16, 1961, and convicted six days later of unlawful assembly in Tallahassee after they had asked to be served in a restaurant at the city airport. In court, the members of the group testified that their purpose in participating in the Freedom Ride was to "bear witness as men of God to the struggle to obtain equal rights for all men."

On June 2, 1961, U. S. District Court Judge Frank M. Johnson, Jr., issued a temporary restraining order prohibiting CORE and others from financing, sponsoring, assisting, or encouraging tests of racial segregation in bus terminals and facilities in Alabama. Simultaneously he enjoined the Ku Klux Klan and four named individuals from interfering with bona fide interstate travelers. The temporary restraining order against CORE was permitted to lapse on June 12, after the Department of Justice had filed a brief requesting its recision on the ground that the Freedom Riders were merely exercising their constitutional rights.

On June 27, 1961, Federal District Court Judge Sidney Mize refused to remove a legal proceeding from the Mississippi courts until after the legality of the Freedom Riders' arrest had been ruled upon by the state courts. The U. S. Court of Appeals for the Fifth Circuit affirmed Judge Mize on July 22 and Justice Hugo Black of the United States Supreme Court refused to issue a writ of habeas corpus on July 26.

On June 1, 1961, the Greyhound bus terminal in Montgomery, without public announcement, removed the "Colored Intrastate Passengers" and "White Intrastate Passengers" signs from above the entrances to the waiting rooms. Although the Continental Trailways terminal in Montgomery retained the "White" and "Colored" signs, Negro Freedom Riders were served at the lunch counter in the "White" waiting room after June 1, 1961.

On August 5, 1961, two Freedom Riders, a blind white woman and her Negro companion, finally broke the color barrier in Jackson when they were served milkshakes at the lunch counter in the "Negro" waiting room of the bus depot. Two police officers stood by, refraining from ordering the couple to move on, which would have required their arrest for breach of the peace if they had disobeyed the order. Nine days later, when two Freedom Riders from New York, one white and one Negro, returned to Jackson to plead to the charge of breach of the peace, they discovered that police officials made no move to prevent their joint use of airport facilities marked "White."

The first trial of a Freedom Rider in Jackson took place before an all-white jury on August 21–24, 1961, and resulted in a conviction. The defendant was sentenced to pay a fine of $200 and to serve four months in jail, the same penalty as that prescribed by the police court where the defendant was originally convicted, and the same as that imposed by the local police justice upon other Freedom Riders.

The Interstate Commerce Commission, on September 22, 1961, promulgated the regulation prohibiting discrimination by interstate bus carriers which had been requested by Attorney General Kennedy.\textsuperscript{11} The burden of compliance was shifted from the passengers to the bus companies. The commission reaffirmed its prior ruling prohibiting racial segregation in seating on interstate buses\textsuperscript{12} and required all bus tickets sold after January 1, 1963, for interstate travel to assure passengers that seating on the vehicle was "without regard to race, color, creed, or national origin." Buses were prohibited from using terminals at which facilities were segregated, whether or not the facilities were owned or operated by the carrier. Bus companies were directed to report promptly to the commission all attempts by local officials to interfere with their full compliance with the regulation. Signs proclaiming that facilities were available "without regard to race, color, creed, or national origin, by order of the Interstate Commerce Commission" were required to be displayed conspicuously on all interstate buses and copies of the regulation were required to be posted in all terminals used by such buses. A schedule of substantial fines was prescribed for violations. The regulation took effect November 1, 1961.

**FEDERAL CIVIL-RIGHTS ACTIVITIES**

The legislative, executive, and judicial branches of the Federal government, in varying degrees, concerned themselves with civil rights.

**Congress**

The only civil-rights bill passed by Congress during the reporting period was one which extended the life of the Civil Rights Commission to September 9, 1963. On August 30, 1961, the Senate, by 70 to 19 (18 Southern Democrats and Sen. Milton R. Young, Rep., N. D., providing the negative

votes), voted to attach the extension measure as a rider to a bill which provided funds for the State and Justice departments. The amended appropriation bill, which had previously passed the House, was approved by a conference committee and signed by the President on September 21, 1961.\(^\text{13}\)

A desultory and unsuccessful attempt was made from September 16, to September 19, 1961, to modify Senate Rule 22. That rule required two-thirds of the senators present and voting to concur before any limitation might be imposed upon debate. Repeated efforts had been made by the pro-civil-rights forces in the Senate to liberalize the cloture rule but in September 1961 they failed to muster a majority in favor of taking up the issue.

A series of civil-rights bills was introduced in both houses of Congress on May 8, 1961, in an attempt to enact the civil-rights planks of the Democratic campaign platform.\(^\text{14}\) The following day a spokesman for President Kennedy announced that the administration “disassociated” itself from the drive for additional civil-rights laws at that time because the administration intended to rely primarily on aggressive administrative action to extend and protect civil rights. Roy Wilkins, executive secretary of the National Association for the Advancement of Colored People (NAACP), challenged President Kennedy’s decision not to sponsor new civil-rights bills, charging that the legislative branch “had sabotaged the Supreme Court’s [desegregation] ruling of 1954 and had lagged far behind the judicial and executive branches on school desegregation.”\(^\text{15}\)

**Executive Branch**

On March 6, 1961, President Kennedy promulgated Executive Order No. 10925, which combined the functions of two previously existing presidential committees in an aggressive program intended to eliminate discrimination in employment in government agencies and by contractors and subcontractors doing business with the government or any of its departments, divisions, independent agencies, or corporations. The order created a new committee called the President’s Committee on Equal Employment Opportunity, with Vice President Lyndon B. Johnson as chairman and Secretary of Labor Arthur J. Goldberg as vice chairman. The committee was charged with studying the employment practices of the various departments and agencies of the government and recommending steps necessary to realize fully the national policy of nondiscrimination within the executive branch.

Every government contract was required to contain a strengthened and expanded clause under which all contractors and subcontractors were required to take affirmative action to ensure nondiscrimination against employees and applicants for employment. All advertisements were required to state that qualified applicants for employment would be considered without regard to race, creed, color, or national origin. Periodic compliance reports were required to be filed by all contractors, and bidders for new contracts were required to submit their past compliance reports with their bids, if they had

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\(^\text{13}\) Public Law 87-264.

\(^\text{14}\) AJYB, 1961 (Vol. 62), pp. 84–86.

previously performed work on government contracts. The executive order required the committee to use its best efforts to cause labor unions and representatives of workers engaged in work under government contracts to cooperate in the implementation of the order. The committee was authorized to hold hearings concerning the practices and policies of labor unions and to notify Federal, state, and local agencies of its conclusions and recommendations for remedial action.

Primary responsibility for compliance was placed by the executive order on the various contracting agencies, although the committee was authorized to receive and investigate complaints charging discrimination by government contractors or subcontractors and to hold hearings on such complaints.

The order provided that the committee might publish the names of contractors or unions, with a statement that they had or had not complied with the president's directive, and might recommend to the Department of Justice that it take appropriate action to enforce the nondiscrimination clause or that it bring criminal proceedings against those who furnished false information. The committee was authorized, after hearing, to terminate the contracts of those who violated their obligations and to direct that contracting agencies refrain from entering into further contracts with noncomplying contractors. Contracting agencies were directed to attempt to bring about compliance through conference, conciliation, and persuasion before initiating steps to involve the Department of Justice or to terminate the contract. The order became effective on April 5, 1961.

On May 31, 1961, Secretary of the Interior Stewart L. Udall promulgated a special anti-discrimination regulation covering the facilities of the national parks. On April 11, 1961, Postmaster General Edward Day announced that all advertisements for bids to build postal facilities and all leases negotiated by postal authorities must contain nondiscrimination clauses.

On September 13, 1961, the State Department publicly urged the governor and legislature of Maryland to enact a law prohibiting discrimination in restaurants, hotels, and other places of public accommodation within the state. This unusual request from the Federal government to a state stemmed from a series of incidents involving African and Asian diplomats who were refused service in restaurants in Maryland while driving between New York, the seat of the United Nations, and Washington, D. C., the nation's capital. A State Department spokesman told Maryland's General Assembly:

Recently, during a period of two weeks, four foreign ambassadors were humiliated by private restaurant owners on Route 40 in Maryland. One of them was refused a cup of coffee while he was en route to present his credentials to the President of the United States.\(^{16}\)

While there was some pressure on Governor J. Millard Tawes to convene a special session of the General Assembly in response to the Federal request for a civil-rights law, no official action was taken.

\(^{16}\) New York Times, September 14, 1961; see also J. Anthony Lukas, "Trouble on Route 40," Reporter, October 26, 1961, p. 41.
The Department of Justice filed ten law suits from January 1, 1961, to the close of the reporting period to assert and defend voting rights under the Civil Rights acts of 1957 and 1960.\footnote{AJYB, 1958 (Vol. 59), pp. 43-44; 1961 (Vol. 62), pp. 75-77.} The actions charged interference with Negro voting rights in Bullock, Dallas, and Montgomery counties in Alabama; East Carroll, Ouachita, Plaquemines, and Madison parishes in Louisiana, and Clarke, Forrest, Jefferson Davis, Panola, and Walthall counties in Mississippi.

Beginning on November 10, 1960, the Department of Justice and the U. S. attorney in New Orleans filed four suits to protect the processes and orders of the Federal district court which had mandated desegregation of the New Orleans public schools. One action was directed against a Louisiana statute that sought to make it a crime for a Federal judge, attorney, or marshal to take any step to implement Federal court orders requiring desegregation of the public schools. On December 20, 1961, the Justice Department filed contempt actions against certain public officials who sought to frustrate desegregation orders by withholding salaries from public-school administrators and teachers and by refusing to certify the election of a member of the Orleans parish school board. Finally, the Department of Justice intervened as \textit{amicus curiae} in the basic cases in which a group of New Orleans parents were seeking to desegregate the public schools of that parish.\footnote{Orleans Parish School Board v. Bush, 364 U. S. 803 (1960); U. S. v. Louisiana, 364 U. S. 500 (1960).} All the state's legal efforts to prevent desegregation of the schools were defeated.

The Department of Justice also intervened as \textit{amicus curiae} in the Tuskegee gerrymandering case and in the New Rochelle school case, both of which are treated below.

On June 27, 1961, the Justice Department instituted a lawsuit to end racial segregation in the new terminal building at Moisant International Airport in New Orleans. The following day the manager of the restaurant at the airport announced a “new policy” to serve Negroes in the coffee shop.

\textbf{Civil Rights Commission}

Beginning in January, 1961, the Civil Rights Commission released a series of reports documenting and analyzing discrimination in higher education, voting, public elementary and secondary schools, employment, housing, and the administration of justice, and making specific and comprehensive recommendations to reduce and eliminate such discrimination.

The commission recognized that there had been substantial gains in civil rights since the publication of its earlier report in 1959.\footnote{AJYB, 1960 (Vol. 61), pp. 26-28.} “The gap between the promise of liberty and its fulfillment is narrower today than it has ever been.” Nevertheless, the gap remained, and in 1961 it appeared to the commission to be more urgent than ever that aggressive and forthright action be taken to close it. The commission also recognized the interrelationship of various types of discrimination. Fundamental as was the right to vote, assuring that right to Negroes would not immediately assure full equality in
employment, education, housing, public accommodations, and the administration of justice. Similarly, opening new opportunities in employment, while important, would be of little immediate value to members of minority groups who had had no opportunity or reason to prepare themselves for new careers. Segregation in housing produced segregated schools, which were generally inferior. Inferior schools perpetuated discrimination in employment and in housing, and discouraged young people from seeking the fullest development of their capabilities. To complete the circle, discrimination in education, housing, and employment reduced the desire of members of the victimized groups to participate fully in the political processes—to register and vote.

To remedy the existing conditions found by the commission, it made a series of recommendations.

**HIGHER EDUCATION**

On January 13, 1961, an interim report on higher education recommended:

1. Either by executive or congressional action, the Federal government should take steps to assure that funds under the various programs of Federal assistance to higher education were disbursed only to such publicly-controlled institutions of higher education as did not discriminate on grounds of race, color, religion, or national origin. (A dissent was noted by Commissioner Doyle E. Carlton.)

2. Congress should authorize the use of three-judge courts, with a direct appeal lying to the United States Supreme Court, to hear cases involving substantial factual issues as to whether persons were being denied equal protection of the laws with respect to public education. (Dissents were noted by Commissioners Robert G. Storey and Doyle E. Carlton.)

3. The Federal government should sponsor educational programs to assist talented public-school teachers and students who were handicapped professionally or scholastically as a result of inferior educational opportunity or training.

**VOTING**

On September 9, 1961, a 380-page report on voting made the following recommendations:

1. Congress should enact legislation providing that all citizens of the U.S. should have the right to vote in Federal and state elections and that right should not be denied or abridged by the U. S. or by any state except for inability to meet reasonable age or residence requirements, legal confinement at the time of registration or election, or conviction of a felony. The “right to vote” must include the right to register and to have the vote counted after it was cast. (Dissents were noted by Commissioners Robert G. Storey and Robert S. Rankin.)

2. Congress should enact legislation providing that completion of six grades of formal education should be sufficient for qualification under state “literacy”, “understanding”, “interpretation”, or “educational” tests for voting.
3. Congress should enact legislation to prohibit any arbitrary action or arbitrary inaction (where there was a duty to act) which deprived or threatened to deprive anyone of the right to register, vote, and have the vote counted in Federal elections.

4. Congress should consider the advisability of enacting legislation which would require voting districts to be substantially equal in population (where representatives were elected to state legislatures on the basis of population) and which would grant Federal courts jurisdiction over lawsuits to enforce such equality.

5. The Bureau of Census should compile nationwide registration and voting statistics by age, race, color, and national origin during each decennial census.

PUBLIC EDUCATION

On September 24, 1961, a 184-page report on education, dealing primarily with public elementary and secondary education, made the following recommendations:

1. Every segregated school district should be required by Federal law to submit plans for a first step toward desegregation within six months after such law was enacted.

2. Federal financial assistance to any state for education should be reduced if the state continued to maintain segregated schools. Such reduction should be in proportion to the number of segregated schools, but in no event should it exceed 50 per cent. (A dissent was noted by Commissioner Robert S. Rankin.)

3. Congress should consider new laws to speed up Federal court action in school-desegregation cases.

4. Congress should provide financial and technical assistance to local school systems undertaking desegregation.

5. Congress should provide loans for school districts whose state funds were cut off as a result of desegregation.

6. The commission should be authorized to serve as a clearing house for information about desegregation procedures and problems and to provide advisory and conciliatory services to local communities.

7. The Department of Justice should provide protection for children, parents, citizens, and school officials against harassment, intimidation, and reprisals for carrying out desegregation plans.

8. The President should arrange for desegregated schools on military bases for dependents of military personnel.

9. Federal assistance should be provided to the states for programs designed to identify and aid talented teachers and students handicapped by unequal educational opportunity.

10. Federal assistance funds should be withheld from states maintaining segregated libraries.

11. The president or Congress should order an annual survey of the ethnic
(e.g., Negro, Puerto Rican, Mexican) classification of all students enrolled in the public schools.

HOUSING

On October 5, 1961, a 195-page report on housing made the following recommendations:

1. The president should issue a broad executive order banning discrimination in Federally aided housing and by Federally supervised mortgage lenders.

2. The Federal Housing Administration (FHA), the Veterans Administration (VA), and the Federal National Mortgage Association (FNMA) should be directed by the president to include specific clauses in written agreements to assure nondiscrimination by builders, brokers, and banks participating in their programs.

3. Nondiscrimination should be required of all financial institutions supervised by Federal banking agencies. (Dissents were noted by Commissioners Robert G. Storey and Robert S. Rankin.)

4. Communities which received Federal urban renewal assistance should be required to relocate, in adequate housing, persons (mostly Negroes) displaced by slum clearance.

5. Highway-improvement programs of the Bureau of Public Roads should require similar relocation assurances.

6. All Federal agencies concerned with housing and housing credits should undertake frequent surveys to determine the availability of credit and the impact of Federal housing programs on members of minority groups.

EMPLOYMENT

On October 13, 1961, a 246-page report on employment made the following recommendations:

1. Congress should grant statutory authority to the President's Committee on Equal Employment Opportunity or create a similar agency.

2. The president should issue an executive order requiring equality of treatment and opportunity, without segregation or other barriers, for all applicants for or members of the reserve components of the armed forces, including the National Guard and student-training programs.

3. The president should make clear that employment supported by Federal funds was subject to the same nondiscriminatory policy as employment by Government contractors.

4. Congress and the president should take the necessary steps to encourage the fullest use of the nation's manpower resources and to eliminate the discriminatory denial of training and employment opportunities to members of minority groups by making Federal assistance for apprenticeship-training and vocational-education programs conditional upon nondiscrimination and nonsegregation.
5. Congress should enact legislation to provide equality of training and employment opportunities for youth through a system of Federally subsidized employment and training programs available on a nondiscriminatory basis.

6. The president should direct that appropriate measures be taken to support an affirmative program to make known the availability of jobs on a nondiscriminatory basis in the Federal establishment and with government contractors and to encourage training and application for such jobs.

7. Steps should be taken to strengthen the policy of the Bureau of Employment Security to render recruitment and placement services, to encourage merit employment, and to assist members of minority groups to overcome obstacles to equality of employment opportunity.

8. The secretary of labor should grant Federal funds for the operation of state employment offices only if they offered their services on a non-segregated basis and only if they refused to accept or process discriminatory job orders.

9. Congress should amend the Labor-Management Act of 1959 to include a provision that no labor organization should refuse membership to, segregate, or expel any person because of race, color, religion, or national origin.

However, the report did not call for the enactment of a Federal fair-employment-practice law, nor did it advocate that the National Labor Relations Board withhold certification from unions which discriminated against Negro workers.

JUSTICE

On November 16, 1961, a 307-page report on justice made the following recommendations:

1. Congress should enact a program of grants-in-aid to assist state and local governments to improve the professional quality of their police forces.

2. Congress should enact a criminal statute applicable to those who, under cover of law, maliciously:
   a. subjected any person to physical injury for an unlawful purpose;
   b. subjected any person to unnecessary force while such person was in custody;
   c. subjected any person to violence in the course of eliciting a confession to a crime or for the purpose of obtaining anything of value;
   d. refused to provide protection against unlawful violence at the hands of private persons, and
   e. aided or assisted private persons to carry out acts of unlawful violence.

3. Congress should enact a statute to make local governmental entities jointly liable with their police officers for any deprivation of civil rights resulting from the officers' misconduct.

4. The attorney general should be empowered to bring civil actions to prevent the exclusion of people from jury service on account of race, color, or national origin.
Supreme Court

In *Gomillion v. Lightfoot* the Supreme Court, on November 14, 1960, unanimously held that a legislature might not deprive Negroes of their right to vote by the device of gerrymandering municipal district lines. Before the court was an Alabama statute which had altered the shape of the city of Tuskegee from a square to a 28-sided figure and had had the effect of removing from the city all but four or five of its 400 Negro voters, while not removing a single white voter. The court struck down the state measure as a violation of the Fourteenth and Fifteenth Amendments. It recognized that normally the judiciary did not interfere with the legitimate exercise of the legislative power to define and redefine municipal boundary lines. In this case, however, the complaint had charged that the purpose of the redistricting was to deprive Negro citizens, and only Negro citizens, of their voting rights. This allegation in the complaint forced the court to consider whether a state could use its political power to disenfranchise a large group of Negro citizens. It concluded that "acts generally lawful may become unlawful when done to accomplish an unlawful end."

In a 7-to-2 decision on December 5, 1960, the Supreme Court held that the Interstate Commerce Act forbade racial discrimination in restaurants or bus terminals operated as an integral part of the carrier's transportation service for interstate passengers, notwithstanding that the carrier itself did not own or operate the terminal or restaurant. The court said that where a facility was operated as part of the carrier's transportation service, "an interstate passenger need not inquire into documents of title or contractual arrangements in order to determine whether he has a right to be served without discrimination."

On December 12, 1960, the Supreme Court, in a brief *per curiam* decision, held that a series of "interposition" statutes enacted in Louisiana was unconstitutional. "Interposition is not a constitutional doctrine," the court said. "If taken seriously, it is an illegal defiance of constitutional authority." Thus, a number of statutes enacted by the legislature for the clear purpose of preventing desegregation in the New Orleans public schools was swept away.

In a 6-to-3 decision handed down on April 16, 1961, the Supreme Court held that the exclusion of a Negro from a restaurant operated by a private owner in space leased in a building erected with public funds and owned by the Wilmington Parking Authority, an agency of the state of Delaware, was discriminatory "state action" which violated the equal-protection clause of the Fourteenth Amendment. This case represented a logical extension of the state-action theory of unconstitutional discrimination. The court pointed out that the authority which owned the building could have required the private operator of the restaurant to serve all persons without regard to

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race or color. The state's failure to insist upon such guarantee was held to be "joint participation" in the exclusion of Negroes from the enjoyment of the facilities offered and therefore unconstitutional "state action."23

The court also decided two civil-liberties cases which grew out of the efforts of southern states to hamstring the activities of pro-civil-rights organizations. In the first case, Shelton v. Tucker, decided on December 12, 1960, by a 5-to-4 division, the Supreme Court struck down an Arkansas statute which required teachers in state-supported schools or colleges to file annual affidavits listing all organizations to which they belonged or regularly contributed. The court held that although the governmental purpose for such a statute might be legitimate and substantial, it "cannot be pursued by means that broadly stifle fundamental liberties" when the same end could be achieved by a statute of narrower and more limited sweep.24 In the second case the court, on May 22, 1961, unanimously struck down a Louisiana statute which required local associations "affiliated with out-of-state non-trading associations" to file affidavits that none of the officers of the out-of-state association were members of a Communist, Communist-front, or subversive organization. The Louisiana statute, which had never been invoked against the Ku Klux Klan, was challenged by the National Association for the Advancement of Colored People. The court held that a constitutional issue of freedom of association was presented by the legislation and that, as in Shelton v. Tucker, a state cannot pursue ends (which may be legitimate and substantial) "by means that broadly stifle fundamental liberties."25

DESEGREGATION OF PUBLIC SCHOOLS

Desegregation issues arose in the North as well as the South.

South

In the fall of 1961, when public schools reopened, the 17 southern and border states that had required racial segregation in their public schools before May 17, 1954, presented substantially the same varied picture as the year before—from Maryland, Missouri, and West Virginia, where desegregation was virtually completed, to Alabama, Mississippi, and South Carolina, where it had not yet begun. With the peaceful desegregation of four public schools in Atlanta on August 30, 1961, the number of states which had not yet taken even a first step toward desegregating their schools was reduced to three. Although two elementary schools in New Orleans had been theoretically desegregated in November 1960, actually a boycott of the two schools by white students was almost totally effective until the opening of the new term in September 1961, when the effectiveness was substantially reduced (see below).

After a long period of community preparation and in response to a court order, Dallas, Texas, the nation’s largest segregated city school system, desegregated in September 1961, with 18 Negroes admitted to the first grade in eight public schools without incident. Tennessee’s largest city also took its first steps toward desegregation when Memphis admitted 13 first- graders to four previously all-white elementary schools on October 3, 1961.

In October 1961 there were 2,805 school districts with mixed white and Negro populations in the 17 states and the District of Columbia. (Consolidation had led to a decrease of 29 from the year before.) Eight hundred twenty-nine of these biracial districts had completed or made a start toward desegregation. It was estimated that about seven per cent of the region’s Negro students had been desegregated. *Southern School News*, published by the Southern Educational Reporting Service in Nashville, Tenn., reported that 1961 was “the second straight year” that the South’s public schools “opened without violence.” It was also another year in which total progress toward desegregation was scant.

**STATUS OF DESEGREGATION IN THE 17 SOUTHERN AND BORDER STATES IN SEPTEMBER 1961**

<table>
<thead>
<tr>
<th>State</th>
<th>Status of Desegregation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALABAMA</td>
<td>No desegregation.</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>The same ten school districts which had been desegregated in 1960 continued to be the only public schools complying with the Supreme Court’s desegregation decision. The total number of Negro students in biracial schools was estimated to be 152, against 113 a year earlier. Despite strong endorsement by Governor Orval E. Faubus, voters by a 3-to-1 margin rejected a proposed constitutional amendment which would have authorized school closings to avoid desegregation.</td>
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<tr>
<td>DELAWARE</td>
<td>Twenty-eight of the state’s 92 biracial school districts were desegregated. More than 50 per cent of Delaware’s Negro pupils were attending desegregated classes, according to a report of the Department of Public Instruction. On June 26, 1961, a Federal district court entered a final order directing the public-school authorities throughout the state to permit Negro students to enter previously all-white schools.</td>
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<tr>
<td>FLORIDA</td>
<td>Dade county began its third year of desegregation with 345 Negro children in ten schools attending classes with whites. Without fanfare, four additional counties, Broward, Hillsborough, Palm Beach, and Volusia, began desegregating their schools.</td>
</tr>
<tr>
<td>GEORGIA</td>
<td>The first desegregation of public elementary schools in Georgia took place calmly and peacefully when Atlanta, on August 30, 1961, transferred nine Negro students to four previously all-white schools. The peaceful changeover was praised publicly by President John F. Kennedy. The first two Negroes were admitted to the University of Georgia on January 10, 1961, and attended classes the next day. They were immediately suspended as a result of student rioting, but the Federal district court ordered their readmission. They returned to classes on January 16, after university authorities made it clear that student demonstrators would be expelled.</td>
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One hundred thirty-three school districts were desegregated, of 172 biracial districts—nine more than a year earlier. Over 90 per cent of Louisville's Negro pupils were reported as enrolled in schools with biracial student bodies. There was evidence that white families were moving from predominantly Negro residential areas, thus reducing the number of white students enrolled in the city's biracial school districts.

Four Negro students had been admitted to two previously all-white schools in New Orleans in November 1960, and in September 1961 eight more were admitted to four other schools. The boycott by white students, which was virtually 100 per cent effective from November to June 1960, weakened substantially in September, when the schools reopened with considerable community preparation and a complete absence of the rowdism by protesting whites which had accompanied the 1960 desegregation.

All 23 of Maryland's biracial school districts were deemed by school authorities to be desegregated "in principle." Negro pupils actually attended formerly all-white schools in 15 school districts. The number of Negroes in such schools was estimated to be 40,000, or about 28 per cent of the state-wide Negro enrolment. Sixteen of 19 public institutions of higher education in the state were desegregated.

Records had not been kept since 1955 of the race of children attending public schools. Despite virtually complete legal desegregation, the large majority of Negro children, because of residential patterns, still attended segregated schools. As a result of the tendency of whites to move when the neighborhood school had a sizable proportion of Negro pupils, St. Louis public-school authorities estimated that the schools in September 1961 had "more actual segregation" than shortly after the school system completed official desegregation in September 1955.

Only eleven of the state's 173 biracial school districts were desegregated—two more than in 1960. Over 200 Negro students were assigned with some 12,450 white pupils to 26 formerly all-white schools. The school districts where there was token desegregation were Asheville, Chapel Hill, Charlotte, Durham, Greensboro, High Point, Raleigh, and Winston-Salem; and Craven, Wayne, and Yancey counties.

Desegregation was in effect in 190 of the state's 240 biracial school districts—no change from a year earlier, when 30,000 of the state's 40,000 Negro students were considered to be in "integrated situations."

No desegregation.

Desegregation was in effect in 13 of the state's 143 biracial districts—seven more than a year earlier. It was estimated that 602 Negroes, as against 376 in October 1960, were attending desegregated schools. Memphis, with a Negro population of almost 200,000 in a total population of about 500,000, accepted desegregation without resistance and won the congratulations of President Kennedy.

One hundred forty-nine of 643 biracial districts were considered desegregated—19 new districts since September 1960. Dallas, the
nation's largest segregated school district, began desegregation with the admission of 18 Negro first-graders to eight formerly all-white schools. Houston, in its second year of desegregation, enrolled 32 Negroes in four schools with white children. It was estimated that in October 1961, 4,500 Negroes and 350,000 white students attended classes together.

**Virginua**

Nineteen of a total of 129 biracial school districts—eight more than a year earlier—had made a start toward desegregation. It was estimated that 537 Negro children were attending 75 public schools with 65,214 white students. The public schools of Price Edward county remained closed as the third year began, despite an August 23, 1961, decision of the Federal district court that tuition grants and tax credits could not be used to support the county's "private" segregated school system so long as the public schools there remained closed.

**West Virginia**

Desegregation was the official policy at all levels. No official records were kept of the number of white or colored children in "desegregated situations." The drop-out rate was reported as rising among Negro students.

**North**

A troublesome problem of racial segregation in the public schools of northern cities emerged during the 1960-61 school year.

In the desegregation cases\(^{26}\) the Supreme Court found that racial segregation in public education had a tendency to retard the mental development of Negro children and to deprive them of some of the benefits they would receive in racially integrated schools. It therefore held that state laws which permitted or required segregation were a form of "state action" which violated the equal-protection clause of the Fourteenth Amendment. In a series of subsequent decisions it struck down other forms of "state action" aimed at maintaining racial segregation.

There were numerous northern communities where racial segregation in public schools prevailed. It was not always easy to determine whether such segregation was the result of segregated neighborhoods or whether gerrymandering of school-district lines might have been a contributing factor. In the latter case "state action" would be involved.

One such case arose in New Rochelle, N. Y., in connection with the Lincoln school, at which the student body was approximately 94 per cent Negro. At the commencement of the 1960-61 school year, a group of Negro parents sought to register their children in other elementary schools in New Rochelle where racial segregation did not prevail. The board of education refused the request and an action was instituted in the Federal district court against the New Rochelle board. During the course of the trial, it appeared from the testimony that in 1930 the board had instituted a policy of gerrymandering the Lincoln school lines to coincide with Negro population movements. Until 1949 the board had allowed white children in the Lincoln district to transfer to other elementary schools in New Rochelle. By

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January 1949 the school had become 100 per cent Negro. As a result of public pressure at that time, the board terminated its policy of permitting white children to transfer out of the district, but no further steps were taken by the board, despite much public discussion and agitation, to desegregate the Lincoln school.

On the basis of the evidence, Federal District Judge Irving R. Kaufman decided on January 24, 1961, that the board of education had created a racially segregated school which denied the petitioners, and others similarly situated, the equal protection of the laws guaranteed by the Fourteenth Amendment. He ordered the board to submit a plan to desegregate the Lincoln school.

On May 3, 1961, two plans were presented by members of the board, which was divided 6 to 3. Judge Kaufman rejected the plan proposed by the majority and substituted his own plan, based largely on a brief amicus curiae submitted by the Department of Justice. In effect, the board was ordered to permit all Lincoln pupils to transfer to other, nonsegregated schools in the New Rochelle district, if their parents undertook to provide the necessary transportation. As a result of that order, when the public schools reopened in September 1961, 267 children of the 454 who attended the Lincoln school applied for and were authorized to transfer to other schools.

On August 2, 1961, the United States Court of Appeals for the Second Circuit affirmed Judge Kaufman's decision by a 2-to-1 division. The majority noted that there was a crucial finding of fact, supported by the evidence, that the New Rochelle board of education "had deliberately created and maintained the Lincoln school as a racially segregated school." The court said that the action of the board in accelerating racial segregation up to 1949 "negated the argument that the present situation in Lincoln School is only the 'chance' or 'inevitable' result of applying a neighborhood-school policy to a community where residential patterns show a racial imbalance." The majority approved Judge Kaufman's plan for desegregation, which it characterized as "an eminently fair means of grappling with the situation in accord with the principles stated in the Brown case."

Judge Leonard P. Moore, who filed a dissenting opinion, disagreed with the trial court's ruling that there had been unconstitutional discrimination. He believed that a fair reading of the evidence led to the conclusion that the board had set up the Lincoln school district in good faith in accordance with accepted educational policies, which favored creating schools to serve reasonably defined neighborhoods. Lincoln school, located in the center of a predominantly Negro area, was not, according to Judge Moore's interpretation, a "racially segregated school" created by "state action."

After the New Rochelle litigation, similar lawsuits were instituted by

29 On December 11, 1961, the United States Supreme Court refused to review the decision of the Court of Appeals. Board of Education v. Taylor, 82 S. Ct. 882.
Negro parents in Philadelphia on June 17, in Chicago on September 18, and in Newark on October 2, 1961.

In New York City, where the board of education had adopted a policy under which children from overcrowded, predominantly Negro or Puerto Rican schools were permitted to transfer to under-used schools with more heterogeneous student bodies,\(^3\) it was announced that 2,596 children from 95 elementary “sending” schools and 2,669 junior-high-school students took advantage of the open enrollment policy in September 1961. This represented a substantial increase over 1960 in the number of students whose parents elected to send them to racially integrated schools outside of their neighborhoods.

THEODORE LESKES

**Church-state Issues***

In the period under review (July 1, 1960, to June 30, 1961) the question of tax funds for church-related schools was the subject of heated controversy. The conflict was heightened by a head-on collision between President John F. Kennedy and the Catholic bishops, with the president insisting that tax funds be restricted to public elementary and secondary schools and the bishops that religious schools should be aided as well. Although the problem had long been before Congress, for the first time in many years there was a direct confrontation of Protestants and Catholics on the issue. And for the first time, too, the debate on tax aid revealed divisions within the Jewish community (see also p. 205).

The courts continued to play a significant role in shaping church-state relationships. The United States Supreme Court rendered a long-awaited decision on the Sunday-closing laws. The Dade county circuit court (Miami, Fla.) ruled that the depiction of the crucifixion and Nativity in public schools breached the separation principle. The highest appellate court of Vermont held that tax funds could not be used to pay tuition for children who elected to attend sectarian high schools, even where no public high school was available in the district, and the Supreme Court refused to review the decision.

The public school was again a center of conflict over Bible reading and distribution, prayers, bus transportation, released time, religious-holiday observances, and the display of religious symbols.

Humane-slaughter legislation was adopted in six more states, but no solution was in sight for the problem of the restraint of conscious animals in preparation for *shehitah*, the traditional Jewish method of slaughtering food animals.

As the government sought to cope with the influx of Cuban refugees, it

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\(^3\) AJYB, 1961 (Vol. 82), p. 75.

\(^\ast\) For meaning of abbreviations, see p. 497.
was confronted with demands that it assist in the education of children who selected parochial rather than public schools for their education. The role of the churches and missionary societies in the work of the overseas Peace Corps was subjected to sharp public scrutiny.

**FEDERAL AID TO EDUCATION**

In February 1961 President Kennedy sent a special message to Congress recommending a $5.6-billion program of Federal aid to education from elementary school through college which would provide:

1. Grants to the states of close to $3 billion over three years for public elementary and secondary schools. Use of the funds for school construction, teachers' salaries, or both would be left to the discretion of the states.

2. College scholarships, totaling well over $5 billion, to be awarded to students on the basis of ability and financial need; and direct grants to colleges, including sectarian schools, receiving such students.

3. Aid for the expansion of the dormitory-construction program and funds for a new program of aid in the construction of academic facilities, such as classrooms, laboratories, and libraries, in all higher educational institutions, including sectarian schools.

The president's program was immediately embroiled in religious controversy, besides meeting with opposition on other grounds.

In March 1961 Archbishop Karl J. Alter of Cincinnati, chairman of the administrative board of the National Catholic Welfare Conference, speaking for the Roman Catholic hierarchy in this country, stated flatly that unless long-term loans for private schools were included in the Federal-aid program his church would fight passage of the measure. A few days later House Majority Leader John W. McCormack (Dem., Mass.) demanded the inclusion of parochial schools in any aid-to-education bill.

Later in March, Monsignor Frederick G. Hochwalt, director of the education department of the National Catholic Welfare Conference, told a Senate subcommittee on education and labor that "public and private schools form a necessary partnership for the fruitful service of this country" and argued that they were "integrally a part of what is basically a dual system" of education. He pleaded for assistance to private elementary and secondary schools "by way of long-term, low-interest loans" and concluded:

We are proud of the products of the parochial-school system. They are first-class citizens and their children and their children's children ought to be treated as such.

**Jewish Reaction**

Majority Jewish opinion remained firm in opposition to Federal aid to religious schools, but unexpectedly strong support for the Catholic position appeared within the Jewish community, especially among the Orthodox. Late in March 1961 Rabbi Morris Sherer, executive vice president of Agudath Israel of America, making the first conspicuous plea by a Jewish organization for Federal aid to religious schools, urged Congress to include funds for
private schools in any aid-to-education bill. He told the House subcommittee on education and labor that his position expressed the prevailing sentiment of Orthodox Jews, who operated 251 elementary and secondary schools in 26 states which faced "extremely difficult financial circumstances." Early in April Rabbi Sherer's views were endorsed by Torah Umesorah, National Society for Hebrew Day Schools, which asserted that other Jewish organizations were creating a "false image" of the Jewish community as engaged "in a bitter struggle with the Catholic church on this issue." Shortly afterward the National Council of Young Israel joined in supporting Federal aid for religious schools.

The Union of Orthodox Jewish Congregations, which had not yet completed a review of its position at the time of writing, was presumably still bound by a statement (Safeguarding Religious Liberty, [December 1957]) of the Synagogue Council of America and NCRAC, declaring:

> We are opposed to governmental aid to schools under the supervision or control of any religious denomination or sect, whether Jewish, Protestant, or Catholic, including outright subsidies, transportation, textbooks and other supplies. . . .

In April 1961 the (Orthodox) Rabbinical Council of America reaffirmed its position against Federal support for religious schools by voting down a resolution to reconsider.

The two major arms of the Conservative movement also reaffirmed their traditional opposition to tax grants to nonpublic schools: at its annual convention, in April, the Rabbinical Assembly of America declared its continued opposition to Federal aid including loans (but some desire for change was expressed; see p. 207), and in June the United Synagogue of America adopted a resolution to the same effect.

In March 1961 Charles H. Silver, then president of the New York City board of education, president of B'nai Jeshurun, an important Conservative congregation in New York, and president of Beth Israel hospital, testified before the House subcommittee. Saying that "Jewish opinion" on the question was "by no means unanimous," Silver declared that any plan of "Federal aid that excludes nonpublic schools" would "tend to . . . do a disservice to our country." His statement brought an immediate joint expression of "indignation and disapproval" from organizations including the Public Education Association, the American Jewish Committee, AJCongress, the Citizens Committee for Children, ADL, the United Parents Association, and ACLU. They said that "religious schools are a private right, not a public responsibility" and feared that his position jeopardized aid for public schools.

Later in March, in testimony before the House and Senate subcommittees on education and labor, the American Jewish Committee warned that any "departure from experience and tradition which would use public funds to encourage the expansion of parochial-school systems would tend to accelerate the public-school crisis rather than solve it." Notwithstanding the needs of Jewish all-day schools, the American Jewish Committee reaffirmed its position that "public funds should be used for public education" only, adding that it would be "unfair and discriminatory to ask the general taxpayer to
foot the bill in whole or in part for . . . private-school education.” Later still in March, AJCongress told the House subcommittee on education and labor that religious liberty would be endangered if Federal loans or grants were made to religious schools. Also expressing opposition to tax aid for religious schools in the following days and weeks were the National Council of Jewish Women, Hadassah, CCAR, ADL, and the American Association for Jewish Education. In June the constituent agencies of NCRAC, with UOJCA abstaining, reaffirmed their opposition to “governmental aid to elementary and secondary schools under the supervision of any religious denomination or sect.”

The pressure for Federal aid within the Jewish community reflected the financial straits of the Jewish all-day schools. In May 1961 RCA President Charles Weinberg, in an address to UOJCA, said that the Federal-aid controversy could be resolved for the Jewish community by the application of the ancient Jewish principle of “taking care of our own.” But, he said, this precept had been “almost totally ignored in the area of Jewish education, particularly the type of maximum Jewish education represented by the Hebrew all-day school.” He pleaded for the application of “the democratic principle of self-taxation, which had made it possible for our community to flourish without the problems of government supervision or control.”

Protestant Reaction

The Protestant churches were resolute in their opposition to the extension of tax funds to private, including religious, schools. In March the Rev. Gerald E. Knoff, executive secretary of the National Council of the Churches of Christ’s division of Christian education, told the House subcommittee that Federal aid to church-related schools would impair American democracy “by the increasing fragmentation of education, with its inevitable result of cultural segregation,” because many religious denominations would claim their share of Federal funds. It was entirely possible, he said, that the practical results of Congressional legislation “would be the shattering of the public-school system as we know it today.” He could see no merit in the claim that the parochial schools’ contributions to the public welfare entitled them to Federal aid, any more than the “churches, Sunday schools, church-youth societies, church camps, and all the rest of the educational efforts of American Protestantism and Orthodoxy . . . [which] also make contributions to the common good.” As to loans, he said that while some Protestants might not object “in theory,” they would in practice be wary, because of

an unhappy accumulated experience. One minor modification has been used to warrant a major modification, and one major modification always seems to lead to another.

The New York Herald-Tribune (March 5, 1961), in a report on the division among the faiths over Federal aid, cited statements of opposition to assistance to religious schools by Presiding Bishop Arthur C. Lichten-
berger of the Protestant Episcopal church and Rabun L. Brantley, executive secretary of the education commission of the Southern Baptist Convention. In March Robert E. Van Deusen, representing the National Lutheran Council, told the House subcommittee that when a religious group accepts the option of conducting its own schools, "it should provide the necessary financial support, thus insuring its own continuing autonomy and freedom." More than 150,000 children were being educated in Lutheran schools.

The mass media joined in the nationwide debate. Two examples may be cited: *Life* magazine (March 17, 1961) regarding the airing of the issues as "healthy," thought that President Kennedy was "fulfilling a campaign promise but . . . cloaking a political decision in constitutional clothing that doesn't fit it." The St. Louis *Post-Dispatch* (March 5, 1961) asked: "Is there any question that a parochial school is a religious institution. . . .?" It argued that the Supreme Court's interpretation of the "constitutional doctrine of church-state separation . . . accords with sound public policy. . . ."

The debate having centered on the validity of long-term loans, as distinguished from outright grants, the question of the former's constitutionality was referred by Senator Wayne Morse (Dem., Ore.) to the Department of Health, Education, and Welfare for an opinion. In March 1961 Secretary Abraham Ribicoff responded with a memorandum prepared by the department in consultation with attorneys of the Department of Justice. Citing *Everson v. Board of Education* (330 U. S. 1, [1947]) the memorandum held that across-the-board grants to church schools may not be made [because] such a broad grant would inevitably facilitate the performance of the religious function of the school. This the First Amendment forbids. . . . Across-the-board loans to church schools are equally invalid. A loan represents a grant of credit. When made at a rate of interest below what is normally available to the borrower, it also constitutes a grant of the interest payments which are saved. These benefits plainly have the purpose of providing financial advantage or convenience to the recipient. And like the broad grant, the across-the-board loan would inevitably facilitate religious instruction. . . . The Supreme Court has ruled that the First Amendment forbids the lending of a public classroom for religious instruction during released time. . . . The lending of public property and the lending of public credit are constitutionally equivalent forms of government assistance. . . . Tuition payments for all church-school pupils are invalid since they accomplish by indirectness what grants do directly. The form of governmental assistance is not controlling. . . .

Monsignor Hochwalt shortly thereafter suggested that efforts to secure Federal loans for private schools be dropped in favor of an attempt to obtain outright grants. The government brief, he said, "has shifted the emphasis to grants, since the same principle is seen as applying to both. The government brief has opened the door to the question of constitutionality all the way."

Late in March a measure sponsored by Senators Morse and Joseph S.
Clark (Dem., Penn.), authorizing $350 million in Federal loans for private-school construction, was introduced in the Senate. The action was in line with the administration's insistence that if there was to be any congressional consideration of sectarian and other private-school needs, it should be undertaken in a separate bill. However, Catholic opposition to a separate bill had been foreshadowed in a statement by Monsignor Hochwalt a little earlier. He said that to consider loans for private schools in separate legislation, as President Kennedy had requested, would create an undesirable distinction between public and nonpublic schools. "Speaking frankly, we are afraid our bill would be defeated standing alone. . . ."

In April Rep. Herbert Zelenko (Dem., N. Y.) introduced a seemingly promising face-saving solution in the form of amending the National Defense Education Act (NDEA). His bill (H.R. 6439) would have combined the administration's proposals with an expanded program of assistance to private, including parochial, schools for the purchase of equipment and the construction of facilities in which science, mathematics, and foreign languages would be taught. Passed in 1958, in the wake of the first Soviet sputnik, the NDEA was intended to help these three critical aspects of education through improved teaching and more effective instructional equipment. Francis Cardinal Spellman congratulated Congressman Zelenko on his "sound legislative proposal," but on June 20 the New York Times considered that such attempts to revise the NDEA threatened to obscure the real purposes and the original aims of the act. "This law," said the Times, "is now being used as a cover under which there is an attempt to slip through large-scale Federal aid to nonpublic schools."

Higher Education

The administration proposals for aid to higher education met with little opposition although they provided massive assistance to all institutions of higher learning, public and private, with the exception of seminaries and theological schools. Secretary Ribicoff's brief distinguished between higher educational institutions and elementary and secondary schools. While constitutional principles applied equally to all levels of education, it stated, the "factual circumstances surrounding the application of the principles are dramatically different. The reasons are largely historical." Education on the lower level, said the brief, was compulsory, thus obliging the states "to provide a system of education . . . open to all." The history of college and university education, it continued, "is almost precisely the opposite. While from a relatively early date the Federal and some state governments subsidized state universities and colleges, the bulk of advanced education has until recently been carried on by private institutions, the majority of which have a religious origin." Moreover, the college student was sufficiently mature not only to have selected his own school, but also to "better understand the significance of sectarian as compared to secular teaching." Finally, the brief found that "the connection between religion and education is less apparent and that religious indoctrination is less pervasive in a sectarian
college curriculum” than in that of an elementary or secondary parochial school.

In May 1961 the American Jewish Committee told the House committee on education and labor that the “crisis in higher education must be met within the framework of sound public policy adopted over 170 years ago—namely, that the institutions of church and state shall be kept forever separate and distinct. . . .” It opposed loans for expanding the academic facilities of sectarian colleges and labeled the proposed grant of $350 to any denominational school receiving a Federal scholar a “Federal subsidy.”

**Defeat**

In July the House rules committee tabled the administration proposals and no bill was submitted to Congress. In August there were enacted two-year extensions of the National Defense Education Act and of Federal assistance to public schools in “impacted areas”—i.e., areas of the country with large concentrations of Federal civilian and military personnel. In April the Department of Health, Education, and Welfare had issued a study showing that Federal grants to impacted areas had gone to 311 of the 435 Congressional districts. This explained why that ten-year-old aid-to-education program was so popular and why Congressmen opposing general aid-to-education bills on grounds of “Federal control”, “socialism”, and “discrimination” had voted consistently for aid to impacted areas. The impacted-areas law was extended by an overwhelming vote (378-32) in the House on September 6. The New York Times, which had rendered consistent and strong support for the administration’s school-aid program, bitterly assailed the adoption of the stripped-down version as political opportunism.

**Cuban Refugees**

In February 1961 Senator Kenneth B. Keating (Rep., N. Y.) criticized President Kennedy for “discriminatory treatment . . . unjustified and unnecessary” in denying Federal funds for Cuban refugee children attending parochial schools in the Miami area and restricting Federal aid to the public schools crowded by Cuban children. The senator suggested that Federal assistance be given directly to the Cuban children or their families, and thus ease the burden on private schools without raising constitutional questions. “The fact that many Cuban children desire to attend private rather than public schools does not affect their needs or the strain on the institutions involved,” he said.

Later in February, Father Bryan O. Walsh, director of Catholic Charities of the Miami diocese, noted that Florida Superintendent of Schools Thomas D. Bailey had appealed for Federal aid to assist Cuban children, whether enrolled in parochial or public schools, and added:

> The government permitted these people to come here and it therefore has the responsibility of looking after their welfare, which includes the education of the children, as well as food, clothing, and shelter. For the government, therefore,

1 The vote in the Senate, on September 12, was equally decisive—80–7.
to admit responsibility for those in public schools while at the same time refusing it for those in private schools is grossly unfair.

STATE AND CITY EDUCATION ISSUES

New York: "Scholar Incentive"

A spirited church-state controversy erupted in New York state when, in January 1961, Governor Nelson Rockefeller proposed his "scholar incentive" plan, initiated by the Board of Regents, calling for $200-a-year grants to residents of the state in attendance at private, including religiously-sponsored, colleges and universities. The plan's purpose was to allow the private colleges to raise their tuition fees in that amount without raising the actual cost of a college education to the student. The proposal ran into heavy opposition. It was charged that the plan was not designed to provide scholarships, but rather to circumvent the state constitution's ban against aid to church-related institutions.

In January the American Jewish Committee and the New York Board of Rabbis opposed the plan as an obvious attempt to circumvent the state constitution. Late in January the Protestant Council of the City of New York protested and early in February the (Protestant) State Council of Churches warned that if the plan were adopted, worse would follow. On February 7 the New York Times protested editorially. On the following day the Citizens Committee for Children, the Public Education Association, the Protestant Council, the United Parents Association, and AJCongress told the governor that his plan was unconstitutional.

At the same time the Council of Higher Educational Institutions, representing 50 colleges and universities in the state, strongly supported the governor's proposal. RCA President Weinberg said that the student-aid proposal was "vitaly needed" for the growth of higher education. Cardinal Spellman praised the governor for proposing that "a college education be made available for all children."

Later in February Governor Rockefeller outlined a new program to aid college students. Basically similar to his original "scholar-incentive" plan, the new proposal scaled state assistance from $100 to $300 a year, depending on the income of the student and his parents, and required that recipients meet certain (unspecified) academic standards, to be set by the Board of Regents. The State Council of Churches thereupon withdrew its objections, saying that the requirement of a "means" and a "merit" test had been satisfied. In March both houses of the state legislature adopted the revised plan, the lower house passing it by a vote of 120-26, and it became law with the governor's signature.

New York: Amendment Six

In January 1961 the New York legislature adopted for submission to the electorate in November an amendment to the state constitution (known as Amendment Six because of its place on the ballot) authorizing the legislature to assume responsibility to the extent of $500 million "for the payment
of the principal of and interest on bonds, or notes . . . of a public-benefit corporation created to provide, or to aid by loans or otherwise," institutions of higher education. Such loans or grants could be used for the construction of "dormitories or other buildings, improvements and facilities for the use of students or essential, necessary, or useful for instruction in the academic program." The New York constitution forbade state "property or credit or any public money . . . to be used directly or indirectly, in aid or maintenance . . . of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught. . . ." The proposed amendment seemed broad enough to embrace sectarian institutions, even seminaries. The amendment was defeated.

**Vermont: Tuition to Out-of-District High Schools**

In January the Vermont supreme court affirmed a lower court's decree that payment of tuition out of tax funds to Roman Catholic schools violated the Vermont and Federal constitutions\(^2\) (AJYB, 1961 [Vol. 62], p. 97). In a unanimous opinion, the court held that the payment of tuition by the school district violated the doctrine of the separation of church and state, even though no public high schools were maintained in the district and a state statute required the district to pay the tuition of students for attendance at a school of their choice outside the district.

In May the United States Supreme Court turned down an opportunity to rule on the constitutional question raised by the decision.

**Prayer**

In July 1961 the New York Court of Appeals in a 5-2 decision\(^3\) upheld the legality of the recitation in public schools of a prayer recommended by the Board of Regents in November 1951 (AJYB, 1953 [Vol. 54], pp. 43-44). Chief Judge Charles S. Desmond said that the recitation of the prayer is not "religious education" nor is it the practice of, or establishment of, religion in any reasonable meaning of those phrases. . . . [The Founding Fathers] could not have meant to prohibit mere professions of belief in God, for, if that were so, they themselves in many ways were violating their rule when and after they adopted it.

In another majority opinion, Associate Judge Charles W. Froesssel said that calling the prayer recitation unconstitutional would be "to stretch the so-called separation-of-church-and-state doctrine beyond reason."

In a dissenting opinion, Associate Judge Marvin R. Dye called the prayer recitation a form of state-sponsored religious education. . . . In sponsoring a religious program, the state enters a field which it has been thought best to leave to the church alone. However salutary the underlying purpose . . . it none the less


\(^3\) Engel v. Vitale, 10 N. Y. 2d 174, 1961.
gives to the state a direct supervision and influence that oversteps the line between church and state and cannot help but lead to a gradual erosion of the mighty bulwark created by the First Amendment.

Noting that pupils could remain silent or leave the room during the recitation of the prayer, Judge Dye said:

This is no answer, for it contains the very elements the prayer is supposed to eliminate: divisiveness, a type of compulsion exerting as it does a kind of pressure which an immature child is unable to resist because of his inherent desire to conform, and constituting a subtle interference by the state with religious freedom guaranteed by the First Amendment.

Judge Stanley H. Fuld joined in Judge Dye’s dissent.

In January 1961 the recitation of the Lord’s Prayer was questioned as a proper school exercise by Dr. Raymond B. Bragg, minister of All Souls Unitarian church of Kansas City, on the ground that the prayer “is not a part of the Jews’ sacred tradition.” He was seconded by Dr. Stanley I. Stuber, general secretary of the (Protestant) Council of Churches, and by the General Ministerial Alliance of Greater Kansas City.

Miami Case

In April 1961 Judge J. Fritz Gordon rendered his decision in the widely-discussed Miami case in which were challenged a wide variety of religious practices in the public schools (AJYB, 1961 [Vol. 62], pp. 89–90). He banned Christmas and Easter programs depicting the Nativity and the crucifixion of Jesus, which he said could be termed “religious teachings.” Also barred as religious teachings were “moving pictures, which to some degree are religious in their nature as they depict various religious happenings. . . .” And he forbade the use of public-school facilities for afternoon religious classes by church groups, finding them to be a “continuing and permanent arrangement and . . . not one of a temporary nature. . . .”

However, Judge Gordon did not enjoin the other practices to which the plaintiffs had objected. He upheld daily Bible reading and recitation of the Lord’s Prayer, provided objecting students might be excused from participating; the display of religious symbols (on the very narrow grounds that “art work” done by children in classes was permissible); baccalaureate programs, and religious songs and hymns. On the last the judge was enigmatically indecisive. He found evidence that “some songs are sung which could be termed religious in nature around the Christmas and Hanukkah season, but he went on to say: “The songs that were sung, such as ‘White Christmas,’ ‘Jingle Bells,’ ‘Silent Night’, ‘O Come All Ye Faithful’, and others, are so closely interwoven with the thoughts of the Christmas and Hanukkah season that it would be impossible for this court to rule on songs that might be considered by some to be sectarian.” The court found the question of a religious census to be of an isolated nature; on Bible distribution, it was found that no Bibles had been distributed since 1956, and on the question

of asking applicants for jobs as teachers whether they believed in God, the court ruled that was no concern to the plaintiffs.

Rowland Watts, legal director of ACLU, and Leo Pfeffer, director of the commission on law and social action of AJCongress, which organizations had provided counsel for the complaining parents, hailed Judge Gordon's "landmark rulings" as signaling "a historic advance in the effort to protect the public-school child from invasions of his religious conscience...."

The school board declined to take an appeal from those parts of the decision that were adverse; instead, it instructed the superintendent of schools to put into effect the injunctions against sectarian Christmas and Easter holiday practices, the exhibition of religious films, and the use of school facilities for after-school religious instruction. At the time of writing, it appeared likely that the interveners (church leaders) would nevertheless appeal from the three injunctions. AJCongress and ACLU announced that they planned to appeal those parts of the decision which had gone against them, and to take the case to the United States Supreme Court, if necessary.

**Religious Holidays**

There were incidents of tension in a number of communities in different parts of the country on such issues as the display of a Nativity creche on public property (Hartsdale, N. Y., and Portland and Salem, Oregon) and the observance of Christmas and Easter in the public schools (Boulder, Col., Jersey City, N. J., Milwaukee, Wis., and Portland, Ore.).

The most bitter controversy arose in Boulder over the attempt of the school board to limit Christmas programs to the hours after school. (This had the support of the Boulder Council of Protestant Churches.) At a public meeting in December 1960 the president of the school board explained that the only purpose of this change of policy was to insure respect for the rights of those who did not attribute divinity to Jesus. Many protests were voiced at this meeting and on the following day a cross was burned in the yard of School Superintendent Nat Burbank. Attorneys for five protesting parents obtained an order from Colorado District Judge Donald Carpenter restraining the school board from enforcing its ban, but the board succeeded in getting another district judge, William E. Buck, to dismiss the parents' complaint. Although the board was then free to enforce its "deemphasis" order, it announced that it would not do so because Christmas programs had already been planned.

The Rev. A. B. Patterson, Jr., Episcopalian chaplain at the University of Colorado, a key figure in the controversy, said that his opposition to the school board's action was based not on the separation issue, but on the means employed. "It was done without reference to the community. It came as a bolt out of the blue," he said. The Denver *Catholic Register* (December 15, 1960) foresaw a "tremendous loss to the schools" if Nativity scenes were banned. "Certainly there is nothing in the Christmas message that can be in the least bit offensive to anyone, whether they personally believe in Christ or not...." In mid-December the executive committee of the local council
of churches issued an appeal "to the community and to member churches" which said, in part:

... we encourage ourselves and other citizens of Boulder to bring under control the anger, bitterness, and enmity which have been expressed during the past few days ... this is an exceedingly complex problem and ... the weeks between now and Christmas, and the months following, are a time to speak the truth in love and express the Christian way of reconciliation.

The Denver Post (December 15, 1960) said: "Boulder is suffering today for the error of intermingling what the Bill of Rights sought to keep strictly apart."

As a result of the conflict, in January 1961 the school board appointed a committee to study "the question of Christmas and other religious activities in the public schools." The majority report, issued in May and signed by 15 of the 21 members of the committee, found that in certain schools there was "elaborate pageantry built around and seeming to deify Christ. Often, work on these programs had begun as early as Thanksgiving." Also found in some schools were "class drama projects drawing heavily on the New Testament"; an inquiry by a teacher of students concerning Sunday-school attendance; "a sermon-like speech at a junior-high-school assembly"; "an anti-Christian speech at the high school," and kneeling for prayer in a primary grade. The report noted that there were "Hanukkah songs and pageants during school hours," but that Jewish citizens had pointed out to them that "Hanukkah is a minor Jewish holiday and neither this nor any other of their religious rites should be used by the public schools to counterbalance Christmas observances." The majority concluded that traditional holiday programs should be continued, but "with moderation and restraint." Since it was difficult to "draw the line between religious and secular programs," they felt that the "details of Christmas programming must be left to the good judgment and common sense of the individual principals and teachers." Moreover, "members of all faiths and sects must be tolerant of and sensitive to the attitudes and beliefs of others. Regrettably, we find some programs have violated this principle. There was an overuse of sectarian symbols, literature, and general religious atmosphere in conjunction with music."

The minority report, signed by two members, declared it "a dangerous educational precedent to delete religious reference from an observance of a national holiday season, such as Christmas ... which is fundamentally and historically religious in nature." It said that any member "of a religion which objects to any particular practice or program is entitled to refrain from participation and the freedom of dissent should be encouraged."

Two members of the committee declined to sign either report, while two others could not participate in the work of the committee and withdrew.

The Christian Century (December 14, 1960) had this to say on the issue of religious-holiday observances in the public schools:

... The [Minnesota rabbinical] association has rightly asked public schools to abstain from Hanukkah observances "even where there is a considerable enroll-
ment of Jewish children.” Although many principals and teachers of public schools are obviously motivated by good will in planning such services to balance Christmas pageantry, it is also obvious that Hanukkah, a minor celebration in the Jewish calendar, should not be so used. The invasion of the public schools by religious interests has been generally and consistently opposed by Jews. . . . The statement of the Minnesota rabbinical association deserves to be read by Christians who insist on carrying the Christmas celebration into the public schools. . . . Hanukkah and Christmas belong to synagogue and church respectively and to the home, not the public school.

**Released Time**

In September the Bureau of Jewish Education and the Jewish Community Council of Metropolitan Boston joined in denying that released-time religious education benefited Jewish children. They said that it gave only a “short and hence superficial lesson in Jewish religion. Obviously, this cannot possibly measure up to the minimum requirements of the Boston Jewish community’s schools . . . the educational effect of a released-time program is of negligible educational value, as evidenced by the bureau’s past experience.”

In September 1960 the Evangelical Pastors’ Fellowship in Duluth, Minn., claiming to represent 26 churches of ten denominations, was rebuffed by the school board in its effort to have released-time authorization cards distributed in the public schools. It thereupon demanded that the board also bar all materials circulated in the schools in connection with Brotherhood Week, insisting that the school board be “consistent in applying the principle they [had] adopted. . . .”

In October 1960 Thomas E. Harney, superintendent of schools of Dunkirk, N. Y., announced that he would defy an order from the state education department that the use of public-school property for released-time religious instruction be discontinued. He said that released time was used not for religious instruction but for “character and ethical-guidance courses. . . .” The “guidance courses” would continue on school property until state education officials ruled out the use of school facilities for such activities as the Hi-Y program of the YMCA, he said, admitting no difference between the two programs. The Rev. George C. Brooks, minister of Adam Memorial Unitarian church, demanded Harney’s resignation on the ground that the United States Supreme Court had declared unconstitutional the use of public schools for religious instruction.

**Bus Transportation**

In April 1961 the supreme court of Alaska held, to 1, that a statute which allowed the furnishing of transportation at public expense to parochial-school students violated the state constitution. The court overruled the contention that the statute was designed to aid parents and children by eliminating the hazards of highway and climatic conditions in Alaska, and therefore was a health and welfare measure. “The furnishing of such transportation at public expense constitutes a direct benefit to the school,” said the court. The

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decision was not believed subject to further review, since it rested on the state constitution.

In April 1960 C. Watson Hover, prosecuting attorney for Hamilton county, O., ruled that under existing statutes a board of education was not permitted to use school-owned buses to transport students to their nonpublic schools either within or without the boundaries of its school district.

In May 1960 Governor John H. Reed of Maine approved an act authorizing bus transportation for students of nonpublic schools after it had passed in the lower house by a 74–68 vote and in the upper by 23–8. The law required that local option be determined by referendum. Thus ended a long and bitter dispute, dating to the Maine supreme court's ruling in May 1959 that the expenditure of public funds to transport children to parochial schools was unconstitutional (AJYB, 1961 [Vol. 62], p. 94). After passage of the bill, Protestant opponents sought to compel a statewide referendum but failed to secure the necessary number of signatures to a petition.

Religious Symbols

In October 1960 a five-foot-high crucifix on a wall in the hallway of Wilbur Wright high school in Dayton, O., provoked criticism. Saying that he was amazed by the criticism, the principal, Jay Holmes, defended the display as "purely a work of art."

"Public" Parochial Schools

The Bremond, Tex., school controversy seemed headed for eventual judicial determination (AJYB, 1960 [Vol. 61], p. 34). In March 1959 a group of taxpayers, including ministers from five Protestant denominations, had instituted a suit charging that the school board was operating and maintaining St. Mary's school with public funds, that St. Mary's teachers were ecclesiastically garbed nuns, that the school was owned by the Catholic church to which it was adjacent, and that these and other factors constituted sectarian instruction. In August 1960 the Texas supreme court upheld two lower-court decisions rejecting the suit on the ground that the plaintiffs had not exhausted their administrative remedies. The plaintiffs thereupon carried their complaints successively to the Bremond school board, the state education commissioner, and the state board of education. All three appeals were lost. State Education Commissioner J. W. Edgar ruled in December 1960 that he was powerless to estop nuns from teaching in public schools in religious garb or a local school board from leasing church-owned property for public-school use. These were matters, he said, which required "the force of court action or of statute." In January 1961 the state board upheld Commissioner Edgar's decision by a vote of 14–1.

Bible in the Schools

In October 1960 the United States Supreme Court vacated the decision by the three-judge Federal district court in the Schempp case (AJYB, 1961

The district court had held unconstitutional the Pennsylvania law requiring the reading of ten verses from the Bible each day in the public schools. In December 1959, while an appeal from that decision was pending, the state legislature amended the law by providing that upon written request by his parent or guardian a pupil must be excused from attending the Bible reading. One of the findings of the district court having been that attendance at Bible reading was compulsory, the school board asked the court to set aside its decision in view of the revision in the state law. The lower court refused to do so because the case had already been appealed to the Supreme Court. The Supreme Court remanded the case to the three-judge district court “for such further proceedings as might be appropriate” in the light of the amendment. That court would now have to decide whether the right of a pupil to be excused from Bible reading affected the decision it had previously reached.

In December the Second District Court of Appeal of Florida \(^7\) unanimously held that the distribution of Gideon Bibles in the public schools violated the First and Fourteenth Amendments of the Constitution. The case had been instituted by nine Jewish residents of Orlando. The decision reversed a lower court’s dismissal of the complaint, saying, in part:

The distribution of Gideon Bibles through the school system each year certainly approximates an annual promotion and endorsement of the religious sects or groups which follow its teachings and precepts. This distribution likewise would tend to impair the rights of plaintiffs and their children to be free from governmental action which discriminates against free exercise of religious belief.

In March 1961 Michigan Attorney General Paul L. Adams, in an opinion solicited by the council of churches of Jackson county, ruled illegal Bible instruction and distribution of materials by the Rural Bible Mission in the public schools. The attorney general was satisfied that the program of the mission involved religious training through Bible instruction on public-school property during the regular school day. He found that teachers announced the program, convoked the children in assemblies, and maintained discipline during the program. “These activities,” he said, “represent an even greater involvement of religion in the public schools than the Supreme Court of the United States struck down in the key case” of \(\text{McCollum}^8\). The program covered 31 counties in Michigan and involved more than 60,000 public-school pupils. The Rural Bible Mission was supported largely by fundamentalist and evangelical groups.

**Sunday-Closing Laws**

In May 1961 the United States Supreme Court sustained Sunday-closing laws in four cases involving the statutes of Maryland, Pennsylvania, and Massa-

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\(^7\) Brown v. Orange County Board of Public Instruction, District Court of Appeal, 2nd District of Florida, 1961.

In two of the cases, having to do with the operation of discount stores on Sunday, the court divided 8–1, with Associate Justice William O. Douglas dissenting. In the other two cases, it split 6–3 in upholding enforcement of the Sunday laws of Massachusetts and Pennsylvania against Orthodox Jewish merchants who closed their stores on Saturday and were prevented by law from being open on Sunday. The dissenters in these cases were Associate Justices Douglas, William J. Brennan, and Potter Stewart.

Chief Justice Earl Warren, writing for the majority in each of the four cases, acknowledged that there was "no dispute that the original laws which dealt with Sunday labor were motivated by religious forces." But, he said, "we must decide . . . whether present Sunday legislation, having undergone extensive changes from the earliest forms still retains its religious character. . . ." He found it "not too difficult to discern" that most such laws, as presently written, are "of a secular rather than a religious character and presently bear no relationship to the establishment of religion as those words are used in the Constitution of the United States. . . ." Chief Justice Warren went on to say that "we are a cosmopolitan nation made up of people of almost every conceivable religious preference. It cannot be expected, much less required, that legislators enact no law regulating conduct that may in some way result in economic disadvantage to some religious sect and not to others because of the special practices of the various religions. . . ." Relying on this reasoning, he concluded that "we cannot find the state without power to provide a weekly respite from all labor . . . a day of rest, repose, recreation and tranquility . . . a day when the hectic tempo of everyday existence ceases and a more pleasant atmosphere is created. . . ." In a word, said the Christian Century (July 19, 1961),

the majority argued for the power of a state to establish a secular day of rest and held irrelevant the fact that the day generally appointed has a religious origin and for many people a continuing religious significance.

As though in anticipation of such criticism, Chief Justice Warren said:

We do not hold that Sunday legislation may not be a violation of the "establishment" clause if it can be demonstrated that its purpose—evidenced either on the face of the legislation, its legislative history, or its operative effect—is to use the state's power to aid religion.

Joining issue with the majority, Justice Douglas stated:

The question is not whether one day out of seven can be imposed by a state as a day of rest. The question is not whether Sunday can by force of custom and habit be retained as a day of rest. The question is whether a state can impose criminal sanctions on those who, unlike the Christian majority that makes up our society, worship on a different day or do not share the religious scruples of the majority.

In the *Crown Kosher Super Market* and *Braunfeld* cases, Orthodox Jewish merchants had contended, among other things, that the enforcement of the closing laws interfered with their free exercise of religion by compelling them to close on Sunday and thus suffer a substantial economic loss. In the *Braunfeld* case, the majority granted that such persons were “burdened economically by the state’s day-of-rest mandate,” but reasoned that since the law simply regulated a “secular activity,” any incidental or indirect economic hardship which was thereby imposed upon those who observed a Saturday Sabbath merely made “the practice of their religious beliefs more expensive” and was not an interference with such religion. The same reasoning was held applicable to the *Crown* case.

In his dissent in the *Braunfeld* case, which he said was equally applicable to the *Crown* case, Justice Brennan granted that the closing laws do not say that appellants must work on Saturday. But their effect is that appellants may not simultaneously practice their religion and their trade, without being hampered by a substantial competitive disadvantage. Their effect is that no one may at one and the same time be an Orthodox Jew and compete effectively with his Sunday-observing fellow tradesmen. This clog upon the exercise of religion, this state-imposed burden on Orthodox Judaism, has exactly the same economic effect as a tax levied upon the sale of religious literature. . . . All this the Court, as I read its opinion, concedes. What, then, is the compelling state interest which impels the Commonwealth of Pennsylvania to impede appellants’ freedom of worship? What overbalancing need is so weighty in the constitutional scale that it justifies this substantial, though indirect, limitation of appellants’ freedom? . . . [The answer is the] mere convenience of having everyone rest on the same day. It is to defend this interest that the Court holds that a state need not follow the alternative route of granting an exemption for those who in good faith observe a day of rest other than Sunday. . . . [It is true] that the granting of such an exemption would make Sundays a little noisier, and the task of police and prosecutor a little more difficult. It is also true that a majority—21—of the 34 states which have general Sunday regulations have exemptions of this kind. We are not told that those states are significantly noisier, or that their police are significantly more burdened, than Pennsylvania’s.

Justice Stewart, in his dissent in the *Braunfeld* case, said that he agreed substantially with Justice Brennan and added:

Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no state can constitutionally demand. For me this is not something that can be swept under the rug and forgotten in the interest of enforced Sunday togetherness. I think the impact of this law upon these appellants grossly violates their constitutional right to the free exercise of their religion.

President Weinberg of RCA expressed “deep dissatisfaction” in the July 1961 *Rabbinical Council Record*. While accepting the decisions “as a legal expression of constituted authority,” he stated his firm “belief that the dissenting opinions of Justices Stewart, Brennan, and Douglas will eventually be adopted as the ruling law” and appealed to “state and local officials and
legislators . . . to rectify the injustices which flow from the Supreme Court's opinion. . . ."

Although the decisions in these cases were a keen disappointment to the many Jewish organizations\textsuperscript{11} that had filed \textit{amici} briefs in support of the Orthodox Jewish merchants, there were two redeeming features worth noting. One was the majority's promise to scrutinize the closing laws to insure that they do not "use the state's power to aid religion." The other was Justice Douglas' explanation, in his dissenting opinion in \textit{McGowan}, of what he meant by a famous dictum:

The Puritan influence helped shape our constitutional law and our common law. . . For these reasons we stated in \textit{Zorach v. Clauson}, 343 U. S. 306, 313 [1952], "We are a religious people whose institutions presuppose a Supreme Being." But those who fashioned the Constitution decided that if and when God is to be served, His service will not be motivated by coercive measures of government. . . . This means, as I understand it, that if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the government. . . .

\textbf{Atheism and Public Office}

In June 1961 the United States Supreme Court\textsuperscript{12} unanimously struck down a provision of the Maryland constitution which provided: "No religious test ought ever be required as a qualification for any office of profit or trust in this state, other than a declaration of belief in the existence of God" (AJYB, 1961 [Vol. 62], p. 102). The case reached the court because of the denial of a notary public's commission to Roy R. Torcaso, an atheist. Maryland's highest court had upheld the denial, declaring: "It seems clear that under our constitution disbelief in a Supreme Being, and the denial of any moral accountability for conduct, not only renders a person incompetent to hold public office, but to give testimony, or to serve as a juror." Associate Justice Hugo L. Black, who delivered the Supreme Court's opinion, said:

The power and authority of the State of Maryland thus is put on the side of one particular sort of believer—those who are willing to say they believe in "the existence of God." . . . Neither [a state nor the Federal government] can constitutionally pass laws nor impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God, as against those religions founded on different beliefs.

No dissents were filed.

Leo Pfeffer of the AJCongress and Lawrence Speiser of the ACLU represented Torcaso. The American Jewish Committee, ADL, and the Unitarian Fellowship for Social Justice filed a brief \textit{amici curiae} supporting Torcaso.

In a letter to the New York \textit{Times} (July 10, 1961), the Rev. Robert F.  

\textsuperscript{11} American Jewish Committee, ADL, AJCongress, CCAR, Jewish Labor Committee, Jewish War Veterans, Rabbinical Assembly, RCA, UAHC, UOJCA, United Synagogue, and 52 local Jewish community councils.

Drinan, S.J., dean of the Boston College Law School, said the Supreme Court's decision in *Torcaso* conformed to Catholic theology:

The Maryland oath which required of prospective public officials "a declaration of belief in the existence of God" would seem to violate Catholic theology. For traditional Catholic teaching has always held that belief in the existence of God, which comes from faith and not merely from reason, is a gratuitous gift from God which no man can merit. It is, therefore, most unfair for a state to require an office holder that he have a gift of faith from God which he cannot in any way merit or obtain since it comes freely and unmerited from God.

**Birth Control**

In June 1961 the United States Supreme Court\(^{13}\) declined 5–4 to pass upon the merits of three suits brought to enjoin the enforcement of a Connecticut statute making it a crime to use birth-control devices or for physicians to counsel their use (AJYB, 1961 [Vol. 62], p. 103). The state's ban, dating to 1879, had been attacked by Dr. C. Lee Buxton, chairman of the obstetrics department of Yale Medical School, and two of his married women patients. The majority of the court considered that the suits were academic, since Connecticut had neither prosecuted nor threatened to prosecute married couples for using contraceptives or physicians for prescribing them. Justice Brennan said it would be time enough to decide the constitutional question when and if there were prosecutions of those who operated birth-control clinics.

Justices Douglas and Harlan thought the constitutional question ripe for adjudication and indicated that they would have declared the statute unconstitutional. Justices Black and Stewart also thought that the constitutional issue ought to be decided, but gave no hint of how they would rule on the merits.

**Urban Redevelopment**

In June 1961 the Missouri supreme court unanimously upheld the right of St. Louis University, a Catholic institution, to acquire land adjacent to its campus in an urban-renewal area\(^{14}\) (AJYB, 1961 [Vol. 62], pp. 103–104). The complaining taxpayers had contended that the sale to the university by the city's land-clearance authority was an unconstitutional use of public power and public funds in aid of a private sectarian school controlled by a religious denomination, and that the sale constituted an abuse of the power of eminent domain. The court agreed with Circuit Court Judge Robert L. Aronson that both contentions were without merit. The facts showed, said the court, that competitive bidding had produced but one inadequate bid, which the authority had rejected in favor of a sale by negotiation "for almost double the amount of that bid." It was therefore clear to the court that the

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\(^{14}\) *Kintzele v. City of St. Louis*, 347 S.W. 2d 695, 1961.
sale could not be considered as a subsidy from public funds for the benefit of the university. Nor was there an abuse of eminent domain, for the “entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also schools, churches, parks, streets, and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented.”

**PEACE CORPS**

In June 1961 the United Presbyterian Church in the U. S. A. advised President John F. Kennedy and Peace Corps officials that it opposed all financial and contractual arrangements between churches and the Peace Corps. The statement noted that it was the aim of the Christian mission “to proclaim the Gospel,” whereas the Peace Corps aimed “to give personal assistance. . . . These goals may parallel each other, but they are not identical.” The government was urged to “affirm our historic belief in the separation of church and state, in the United States and other nations of the world.” A church spokesman, elaborating on the statement, said: “We have been struggling to separate the Christian mission from the stigma of imperialism in the minds of people overseas. Taking government aid would betray our position. . . .”

In testimony before the Senate foreign-relations committee in July 1961, Dr. Robert E. Van Deusen, speaking on behalf of the National Lutheran Council, said:

The Peace Corps has understandably ruled out “proselytizing and propagandizing” in connection with its projects. One mission-board executive stated that to accept this limitation is to forfeit the church’s primary mission. Other church officials feel that there are service projects of a non-missionary character which might properly be carried on with Peace Corps support. Here an awkward situation may arise due to difference in viewpoint among various church groups. If one denomination sees no ideological hindrance to participation in Peace Corps projects, while others are prevented from doing so by conscientious scruple, a skewed pattern of church-state relations may result.

In June 1961 AJCongress expressed “vigorous opposition” to participation of religious groups and missionary societies in Peace Corps projects overseas. But the New York Times reported (June 19, 1961) that many clergymen thought the churches could play a role in the Peace Corps without violating the separation between church and state, and that Peace Corps Director R. Sargent Shriver, Jr., concurred. No religious group, said Shriver, would receive Peace Corps funds without foreswearing all proselytizing on its proposed project. Nor would money be appropriated, he said, if it would in effect release church funds for missionary work. In addition, he declared, church-administered projects would be required to accept personnel from the

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Peace Corps pool without regard to creed. Shriver explained that the Peace Corps wished to be helped by the overseas experience of the churches, believing that not all humanitarian problems could be solved by direct government programs alone.

While many of the church leaders interviewed by the Times were optimistic about the role of the churches in the corps program, none believed that a workable church-state relationship overseas would be as easily achieved as the Peace Corps seemed to think. As one Protestant leader put it, although the basis of religious welfare projects was humanitarian, the underlying motive of most of them was the advancement of the faith.

HUMANE SLAUGHTER

Twenty-eight humane-slaughter bills were introduced in state legislatures in 1961. Six were passed—in Connecticut, Florida, Kansas, Maine, Oregon, and Rhode Island. This brought to 12 the number of states with humane-slaughter laws currently in effect or to become effective in 1962 (AJYB, 1961 [Vol. 62], p. 100). States where legislation was introduced but was not passed were Alabama, Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and Vermont.

Virtually all of the 28 bills sought to prohibit as inhumane the shackling and hoisting of conscious animals. Shackling and hoisting were the restraining device used in shehitah, but shehitah was explicitly mentioned in all such bills as a humane method of slaughter (with the possible exception of the measure adopted in Oregon, about which there was some doubt).

Sponsors of the measure were under the impression, as were the Jewish organizations, that the restraining device developed by Canada Packers, Ltd., of Toronto, would make shehitah without shackling and hoisting possible. (See p. 289.) However, in March 1961 Robert K. Somer, acting director of the meat-inspection division of the United States Department of Agriculture, ruled that the Canadian device failed to meet the sanitary requirements of the Meat Inspection Act, although he thought the device “could readily be modified” to satisfy the demands of the United States authorities. Some revisions were made in the Canadian mechanism, but the Department of Agriculture did not consider them adequate, and the problem remained when this report was written.

PHILIP JACOBSON
Anti-Jewish Agitation*

While the activities of antisemitic agitators and their followers continued at an undiminished rate during the period under review (December 1, 1960, to November 30, 1961), the epidemic of swastika-daubing and hoodlum terror which had characterized the preceding period abated.

Hatemongers attributed virtually all international and domestic tension to a "Jewish" plot to seize control of the nation and the world. In their view, Jews and "the Zionists" were the sinister tools—if not the architects and directors—of the Soviet Union and international Communism; the United Nations was a Zionist-Jewish façade for conspiratorial machinations; southern desegregation troubles were the product of Jewish schemes to "mongrelize" the nation in preparation for Communist conquest; Adolf Eichmann was a martyr, and six million Jews never died in the holocaust. They depicted Israel as the seat of a world-conspiracy, equated Zionism with Communism, and characterized NATO and other collective security arrangements as dominated by both. Exploiting anti-Catholic sentiment, they attacked the Kennedy administration, too, for its "domination by Jews and Communists."

Finally, antisemites exploited themes appealing to ultraconservative elements such as attacks on "Federal control," welfare legislation, the income tax, improved mental-health procedures, metropolitan-government consolidation, and the fluoridation of drinking water, in attempts to influence and infiltrate into the respectable area of the far right.

A nationwide upsurge of ultraconservative and nationalist groups received public attention during March and April when it was revealed that Robert H. W. Welch, leader of the John Birch Society, had made startling, free-swinging charges of Communist involvement against high government officials, including former President Dwight D. Eisenhower. The publicity touched off denunciations by prominent Americans, but this was accompanied by a revitalization of moribund rightist groups and a proliferation of new ones, large and small, during the balance of the period reviewed. Three major groups appeared to predominate on the right: the John Birch Society, the Christian Anti-Communist Crusade, led by Dr. Fred Schwarz, and the Christian Crusade, led by the Rev. Billy James Hargis. Striving to avoid antisemitism, and even claiming Jewish members, ultraconservative leaders emphatically disclaimed religious or racial bigotry in any form. They were, however, confronted with the problem of dissociating themselves from antisemites.

Thus, Fred Schwarz pointed to Catholic and Jewish as well as Protestant sponsorship for the rallies held by his Christian Anti-Communist Crusade. Hargis, in the course of an address at a Houston, Tex., meeting of the Chris-

* For meaning of abbreviations, see p. 497.
tian Crusade in June 1961, declared that he would have nothing to do with Gerald L. K. Smith. Life Lines, a rightist radio organization largely supported by Texas millionaire H. L. Hunt, distributed leaflets in Texas in October 1960 soliciting volunteer scripts; a list of "subjects not dealt with" included "criticism of Jews and other minorities."

Robert Welch, in the April 1961 issue of the John Birch Society's Bulletin, wrote a lengthy denunciation of "the Communist tactic to stir up distrust and hatred between Jews and Gentiles, Catholics and Protestants, Negroes and whites," and declared that:

I am not anti-Semitic, never could be, and could never allow the John Birch Society to become an agency or even a haven of anti-Semitic feeling as long as I am directing its policies. . . .

Despite these and similar efforts, antisemites continued their enthusiastic endorsement and promotion of ultraconservative programs and leaders.

**Southern Tensions**

Antisemites and racists stepped up their exploitation of desegregation tensions against a backdrop of "freedom rides", "sit-ins," and public-school desegregation. Klansmen and other extremists, including adherents of the White Citizens Councils, held demonstrations. Besides publishing the usual anti-Negro scurrilities, leaflets and other literature accused the Jews of plotting to "mongrelize" the South in pursuance of a Communist conspiracy; many confined their attacks to the Jews exclusively. The circulation of hate sheets originating in the South increased, although the bulk of the bigoted matter continued to be shipped from points outside the region.

**Ku Klux Klan**

Although suffering from schisms and internal rivalries, the Klan as an overall movement was highly active. In Atlanta, Ga., during the Christmas season, robed Klansmen counter-picketed Negroes who were demonstrating against lunch-counter segregation, and only decisive precautions by the city's police prevented disorders. Klansmen distributing hate literature were among the rioters in Athens, Ga., in January 1961, when two Negroes were admitted to the University of Georgia; eight of those arrested were members of the Klan. In February 1961 hooded figures called at the homes of two Baton Rouge, La., school-board members, leaving "no integration!" messages, and another board member received a telephoned threat to his life. A cross was burned at the home of Congressman Overton Brooks in Shreveport, La., in protest, according to the congressman, against his having voted for a measure which would facilitate the course of legislative bills from committee to the floor of the House of Representatives. The incident coincided with an organizing campaign in the area by R. E. Davis, Sr., of Dallas, Tex., Imperial Wizard of the Original Knights of the Ku Klux Klan, a group started by him
after his ouster as Texas Grand Dragon of another Klan. Police questioning of Davis in April did not produce evidence for further action.

Klansmen were in evidence during the May rioting attending Freedom Riders' bus trips through Alabama, especially at Birmingham, Anniston, and Montgomery. In Montgomery, Federal District Judge Frank M. Johnston issued in June a temporary injunction against further bus violence, citing the two principal Klan organizations in the state, the U. S. Klans, Knights of the Ku Klux Klan (Alabama Grand Dragon Alvin M. Horn) and the Alabama Knights of the Ku Klux Klan, a group founded by Robert M. Shelton after his ouster the previous year as Alabama Grand Dragon of the U. S. Klans. The injunction referred to charges that the Klans "conspired to and did commit acts of violence against these student passengers or damage to the busses" at the three cities named (see also p. 158).

Efforts of the Klan and other racist groups in August 1961 to prevent the peaceful integration of Atlanta schools were unavailing, again largely because of effective city police procedures. A score of participants at a Klan "protest meeting" in September unsuccessfully rushed the police chief's car under the "mistaken" impression that he was an FBI agent. Nearby, one-time Rockwell supporter and National States Rights party organizer Roy E. Frankhauser, Jr., of Reading, Pa., was arrested for having assaulted a police captain.

The death of Imperial Wizard Eldon L. Edwards of the U. S. Klans in August 1960 resulted in discord which culminated in the resignation of Edwards' successor, Robert Lee ("Wild Bill") Davidson of Macon, Ga., and of Grand Dragon Calvin Craig of Atlanta, leaving the U. S. Klans under the control of Edwards' widow and the new Imperial Wizard E. E. George. Davidson and Craig immediately formed the United Klans of America, Inc., further fragmentizing the movement, while Mrs. Edwards, claiming ownership of the copyright to the Klan ritual, continued her dispute with them. Craig set up an "educational department" of the new Klan and solicited donations for speakers and literature, which he represented to be tax-deductible. This was promptly and publicly denied by the Internal Revenue Service. Occasional boasts of Klan leaders that the movement had been strengthened by mergers and federations appeared to have little basis. The smallest "Klan" continued to be the one-man outfit of the semi-invalid Horace Sherman Miller of Waco, Tex., whose proliferation of photo-offset materials created an illusion of strength to uninformed recipients of his literature. The most significant statement from a Klan figure was by Bill Hendrix of Oldsmar, Fla., a leader in the movement for over 20 years. Announcing his resignation as Grand Dragon of the Southern-Northern Knights of the Ku Klux Klan, in December 1960, he said:

I see no way to stop racial integration and it looks to me like the best thing to do is to accept it. . . . Those in the Klan can only block it by illegal means. I'm not going to agree to such things as bombings and burning schools. But that's what the Klan is going to have to turn to unless it agrees to go along with the laws.
National States Rights Party

The National States Rights party (NSRP), a combination of bigots from all parts of the country, concentrated most of its activities in Southern trouble spots. NSRP had made its greatest political impact during the 1960 presidential elections in Arkansas by garnering 7 per cent of the state's votes (AJYB, 1961 [Vol. 62], p. 109). In Chattanooga, Tenn., in November 1960, it elected its Arkansas leader, Mrs. E. L. Bishop of Little Rock, as national chairman. The real leadership, however, continued to remain with Ed Fields, who edited NSRP's monthly Thunderbolt from the Birmingham, Ala., headquarters, and with the party's counsel, J. B. Stoner, who also held the title of Archleader and Imperial Wizard in the Christian Knights of the Ku Klux Klan in Atlanta.

The most significant development in NSRP was the increase in venom and volume of the Thunderbolt. Copies were circulated wherever desegregation moves were imminent. A "special Georgia edition," dated February 1961, was widely distributed in Atlanta during the picketing of eating places there. In a vitriolic attack on Georgia's Governor S. Ernest Vandiver and Senator Herman E. Talmadge, the publication charged them with responsibility for the decision to desegregate the schools, portraying them as subservient to "the Jews." Most of the issue, dealt with the 1915 lynching of Leo Frank under a two-page banner headline, "Leo Frank Case and Today's Jewish Rape of the South." A lurid picture of the lynching was captioned: "Jews Could Buy Politicians But Not the People." Other issues were headed: "Reds Move Into White House" (January), "Jews Control NAACP" (March), "Eichmann Trial Giant Propaganda Hoax" (April), "If Atom Bombs Fall—Who's To Blame?" (September). The January issue carried a Streicher-style cartoon of "Jewish Money Power." Members of the Arkansas legislature were shocked to find a current issue on their desks in January 1961. Mrs. Bishop later claimed that she had received "permission" for the distribution. Amid denunciation in both chambers, the Arkansas lower house unanimously adopted a resolution prohibiting any literature distribution unless authorized by the clerk, while senators called for stricter enforcement of existing rules.

FBI Director J. Edgar Hoover and Attorney General Robert F. Kennedy were hanged in effigy at an NSRP rally in Anniston, Ala., in September. In October Ed Fields and NSRP member Robert Lyons were arrested for contempt of a court order prohibiting a "white workers rally" in Fairfield, Ala. The mayor had taken steps to halt the meeting upon learning of its auspices, saying: "Race relations have been good in Fairfield. We don't want a bunch of outside agitators here." However, in November NSRP succeeded in holding a meeting attended by 300 in the municipal auditorium of Montgomery. With Mrs. Bishop in the chair, the meeting's principal speaker was the Rev. Gordon Winrod, also of Little Rock, son of the deceased propagandist Gerald Winrod. At the close of the period under review, NSRP was engaged in protesting its "deprivation of civil rights."
White Citizens Councils

“White Citizens Councils” (or “Citizens’ Councils”) continued to be a generic designation for autonomous groups loosely associated at the state or regional level. In character they ranged from those seeking to preserve segregation “by all legal means” while avoiding religious bigotry to those engaged in outright hatemongering. Total membership was estimated at 300,000, although, as in previous periods, active participation appeared to rise and fall with the rise and decline of desegregation tensions in any given area. The Mississippi WCC appeared to be increasingly rightist, but its propaganda remained free of antisemitism. The Louisiana councils were led by Leander H. Perez, a former district attorney of St. Bernard and Plaquemines parishes and an ardent segregationist, who since 1960 had been charging “Zionist Jews” with responsibility for Southern problems. An Atlanta meeting of Georgians Unwilling to Surrender (GUTS) in February 1961 was reported by the New York Times of that date as follows:

Mr. Perez called out the names of a number of prominent members of the legislative and executive branches of the Federal Government, while some in the audience shouted, “Communist Jews.” He referred to these officials as ‘another pinko’, ‘that Zionist’, ‘a smart mulatto,’ and ‘that 18-time Commie front member.’

American Nazi Party and George Lincoln Rockwell

The most notorious Nazi-style hatemonger was George Lincoln Rockwell, “Commander” of the American Nazi Party (ANP). Rockwell pursued his aim of “aggravating the Jews so bad” that he would achieve extensive public notice (AJYB, 1960 [Vol. 61], p. 46). A ramshackle barracks-like “headquarters” in Arlington, Va., a Washington suburb, housed about a dozen fanatical young “storm troopers” and his printing equipment. With their assistance, the native Fuehrer sought to capitalize on topical issues, using picketing and a “hate bus ride” to New Orleans to win publicity. Adept at writing and printing, he used his photo-offset machine to turn out a variety of leaflets, as well as the monthly, swastika-emblazoned National Socialist Bulletin.

Taking the local premieres of the motion picture “Exodus” as their picketing targets, Rockwell and some of his followers were the occasion of considerable disorder in Boston and Philadelphia, although similar ANP demonstrations elsewhere had little effect.

Publicity attending Rockwell’s advance notice to Boston authorities of his interest to picket the opening of “Exodus” in January 1961 impelled several thousand people to assemble for a counter-demonstration. Upon his appearance at the theater, accompanied by three uniformed storm troopers, the Fuehrer was rushed by the crowd and then taken into protective custody by the police, who put him on a plane to Washington. A truckload of other Nazis was turned away by the police and escorted to the Connecticut line.

Shortly afterwards, Rockwell notified the police commissioner of Philadelphia of his intention to picket the movie premiere in that city in February.
As protests mounted, police dissuaded Rockwell from appearing. However, ANP lieutenant Ralph P. Forbes and two other uniformed Nazis appeared at the opening amid considerable disorder among the large crowd waiting for Rockwell. Police swiftly removed the Nazis from the area. They were charged with incitement to riot, disorderly conduct, and breach of the peace. Over 60 anti-Nazi demonstrators were arrested for disorderly conduct and an equal number, mostly youths, were detained but were later released. Rockwell supporters arriving by car and truck from other parts of Pennsylvania and from New Jersey were turned back by authorities.

Encouraged by the nationwide publicity, Rockwell made similar forays into Detroit and Washington, D.C., in February. Efficient police handling in both cities prevented any disorders. The exercises attracted little publicity.

In May Rockwell dispatched a “hate bus” plastered with antisemitic and racist signs and carrying a cargo of Nazis, from Arlington, Va., to New Orleans, La., and then flew to meet the bus at its destination. At the city's outskirts, police halted the bus, refusing it entry into the city until the signs were removed. The Nazis picketed an NAACP rally and the New Orleans premiere of “Exodus.” They were arrested on charges of “disturbing the peace in a manner which would unreasonably disturb and alarm the public.” In an obvious imitation of the Freedom Riders, the jailed Nazis went on a hunger strike while awaiting trial. Rockwell was released on bail and after a hearty meal wired his followers a message absolving them from fasting. In June they were convicted on two counts of conspiracy. Rockwell, fined $100 and sentenced to 60 days, posted bail and returned to Arlington, where his henchmen had already started an appeal for funds.

In November 1961 the United States Supreme Court upheld Rockwell's right to a permit to hold an Independence Day rally in a New York city park. In May 1960 the park commissioner had refused such a permit, at the direction of Mayor Robert F. Wagner, who said he rejected “an invitation to riot and disorder from a half-penny Hitler.” The state supreme court upheld the mayor in August 1960 (AJYB, 1961 [Vol. 62], p. 108), but the appellate division of that court reversed the decision in February. Justice Charles D. Breitel, speaking for the majority, ruled that “there is no power in government under our Constitution to exercise prior restraint of the expression of views unless it is clearly demonstrated on a record that such expression will immediately and irreparably create injury to the public weal.” After affirmance, in June, by New York's highest court, an appeal was taken by the city to the United States Supreme Court. The result was the final affirmation of Rockwell's right of free speech. In these proceedings Rockwell was represented by ACLU, which stressed that the repugnant nature of Rockwell's views was in its view no bar to his right to speak.

Other legal proceedings involving ANP members were as follows: In June 1961 “Deputy Commander” Ralph Forbes and troopers Raymond D. Goodman and Schuyler D. Ferris were acquitted in a Philadelphia court of charges of inciting to riot and conspiracy in connection with the “Exodus” picketing in that city. In July Rockwell's convictions for two breaches of the peace in
connection with his open-air meetings of July 1960 (AJYB, 1961 [Vol. 62], p. 107), were affirmed by the municipal court of appeals of the District of Columbia. Also in July, troopers Richard Braun and Robert Garber were sentenced to a year on the county road gang by an Arlington, Va., court on charges of assault against a 13-year-old Jewish boy. In another Arlington court, trooper Anthony Edward Wells was sentenced to a jail term and fined $100 for assault and battery on a 16-year-old boy, while James C. M. Malcolm and Roy James were acquitted of disorderly conduct. In March 1961 Rockwell was arrested in Topsfield, Mass., for having violated a state law prohibiting false hotel registration when he so registered in connection with the Boston picketing of "Exodus."

In January 1961, before retiring from office, Attorney General William P. Rogers, while personally condemning the ANP, decided against listing it as subversive, saying that the group, by using the Nazi name, had, in effect, sufficiently warned the public against itself.

At the close of the period under review, Rockwell's autobiography, This Time the World, was published under the imprint of J. V. Kenneth Morgan, one of Rockwell's confidential aides. Promotional fliers had previously urged Jews to buy it—at $10 a copy—warning: "The very lives of American Jews may depend on their reading and understanding this book in time!"

**ARAB AND PRO-ARAB PROPAGANDA**

Arab propagandists generally aimed their attacks against "the Zionists," while native antisemites exploited Near East tensions by using "Jew" and "Zionist" synonymously in unfavorable contexts.

The principal sources of Arab propaganda in the United States continued to be the Arab League's Arab Information Center (AIC); the embassies and UN delegations of Arab League countries; the Organization of Arab Students, with a membership of approximately 4,000, and such special Arab agencies as the Palestine Arab Refugees Office (PARO).

In a pamphlet published during 1961, The Arab World and the Christian World, PARO Director Izzat Tannous wrote that "the people of the Middle East in general and the Arab people in particular are more concerned with Colonialism in its new form—Zionism." Referring to the author in connection with another pamphlet, Gerald L. K. Smith's Cross and the Flag of July 1961 editorialized:

The story of Jew-organized gangsterism has been told by a great citizen, a former citizen of Jerusalem, Dr. Izzat Tannous. I have met Dr. Tannous. He is a gentleman of breeding, intelligence, and honor.

Who Benefits from Anti-Semitism?, an AIC pamphlet by Sami Hadawi, director of the agency's Dallas office, which was published in May 1961, declared that "Zionism thrives on insecurity, real or imagined, in Jewish communities throughout the world. . . ." In July 1957 Hadawi had received an accolade from the Cross and the Flag similar to that accorded Tannous. An-
other group, the Arab Palestine Delegation, launched in New York in 1961, issued a semimonthly newsletter, Palestine. Its August 15 issue stated:

Zionists want to get away with crime, murder and robbery. Any person who mentions Zionist crimes in Palestine is branded a “bigot” and an “anti-Semite.”

Domestic hatemongers dovetailed their propaganda with that of the Arabs: Common Sense (January 15, 1961) charged that “Zionists engineered the United States into World War I to steal Palestine, to do so created the Soviet Union and unleashed Communism upon the world!” The Economic Council Letter of April 15 echoed: “Had it not been for the Zionists, America would undoubtedly never have got into that War [World War I]. Probably there would have been no World War II. Soviet Russia might never have existed. . . .”

**ANTI-SEMITIC PRESS**

There was no diminution in the volume of antisemitic literature. Common Sense, the semimonthly published by Conde McGinley at Union, N. J., reported a new circulation high of 89,500 as of October 1, 1961. Its statement of ownership revealed John G. Crommelin of Montgomery, Ala., to be a stockholder of the Christian Educational Association, the owning corporation. Crommelin, a retired admiral, was a perennial candidate for a variety of state and national offices, campaigning on an all-out antisemitic platform (AJYB, 1961 [Vol. 62], p. 110).

The American Mercury, after eight years of control by Russel Maguire, was acquired in January 1961 by Defenders of the Christian Faith, a fundamentalist missionary organization founded by the late Gerald Winrod. Since Winrod’s death, however, the Defenders’ literature had greatly improved in tone, an improvement which was reflected almost immediately in the American Mercury. Together with articles of general interest the new ownership featured extreme rightist, rather than antisemitic content.

The Winrod name, however, was still a factor in hate literature. The Rev. Gordon Winrod, emulating his father, began publishing his monthly Winrod Letter at Little Rock, Ark., in 1961, after having been forced out of a pulpit by congregational opposition to his bigotry. A compilation of vicious canards, the September issue proclaimed that “there is nothing wrong with hate,” proposed an anti-Jewish boycott, and charged Jewish “involvement” in “race mixing.” The December 1961 issue promoted the distribution of a publication of PARO.

The National Renaissance Bulletin, the pro-Nazi publication of James H. Madole’s National Renaissance party, courted Southern extremists with a lurid drawing of a Negro embracing a white girl in the July-August issue. (Madole held a pro-Castro meeting in March 1961.)

The Truth Seeker, a free-thought monthly, continued its anti-Negro, antisemitic propagandist along with its usual attacks on religion.

Gerald L. K. Smith’s monthly Cross and the Flag adhered to its format of
short, concise items which attempted to adjust the antisemitic line to virtually every current topic. Supplementing this was Smith's lesser-known New Letter. Smith appeared to stress his Citizens Congressional Committee over other fronts.

Among other antisemitic literature sold and distributed were John O. Beaty's1 Iron Curtain Over America, in its 16th printing, and World Conquerors, by Lajos Marschalko, a Hungarian fascist. Translated into English and published in London in 1958, Marschalko's compendium of nearly all antisemitic canards was widely circulated in the United States.

GEORGE KELLMAN

1 Beaty died in November 1961.