AMERICAN CIVIL LIBERTIES UNION
170 FIFTH AVENUE
NEW YORK 10, N. Y.

MINUTES

Due Process Committee

Wednesday, December 19, 1956, 4 P.M.

ACLU Office, 170 Fifth Ave., N. Y. C.

Present: Judge Waring, President
Judge Dorothy Kenyon, Mr. Frank
Office: Messrs. Reitman, Watts
Guest: Mr. A. L. Wirin

1. CORRECTION OF PREVIOUS MINUTES: Mr. Frank noted that in item 3 of the minutes of the November 8 meeting the second sentence in the official ACLU statement concerning Communism to be used in amicus curiae briefs was not entirely clear as to its meaning. It was corrected to read, "The Union has recognized a similar duality with respect to various laws and governmental actions affecting totalitarian movements - Fascist, Ku Klux Klan as well as Communist, in the positions it has taken in the past, and will continue to do so in the future."

Mr. Frank also noted that in item 9 the word "jurisdictional" should be "judicial".

Both these changes were approved.

2. ANDREW WADE - MORTGAGE FORECLOSURE BASED ON RACIAL DISCRIMINATION: Mr. Watts summarized the Committee's earlier decision that there was no civil liberties issue in the mortgage foreclosure action against Andrew Wade in Louisville, Kentucky based upon the transfer of the mortgaged property by Carl Braden to Wade without consent of the mortgagee. The contention of Wade is that the standard mortgage provision requiring such consent is never applied in practice except to prevent transfer of property from white to Negro ownership and that, therefore, such requirement constitutes an invalid restriction against alienation of the property. The Committee believed that this contention had validity if it could be proved, but also agreed that this was a factual matter that could not be determined by the Union at this time, and that no action should be taken.

3. REQUEST FOR ACLU STATEMENT ON ABORTION LAWS: Mr. Watts reported that we are occasionally requested to take the leadership in a campaign for repeal or judicial challenge of laws against abortion. He reminded the Committee of the case in Colorado last summer where the state court refused to authorize an abortion even though the pregnancy had been caused by rape. The Committee agreed that this was a matter that required action by social agencies in the field, and that our function should be the support of such proper action to reform the various state laws. Since we know of no such campaign at present, no action should be taken at this time.

4. REQUEST FOR ACLU STATEMENT ON HOMOSEXUALITY: Mr. Watts reported that the national office and the affiliates are constantly requested to support or participate in the defense of persons who are being prosecuted under state and local laws against homosexuality. After considerable discussion of this matter, the Committee adopted the following statement:

"The American Civil Liberties Union is occasionally called upon to defend the civil liberties of homosexuals. It is not within the province of the Union to evaluate the social validity of laws aimed at the suppression or elimination of homosexuals. We recognize that overt acts of homosexuality constituted a common law felony and that there is no constitutional prohibition against such state and local laws on this subject as are deemed by such states or communities to be socially necessary or beneficial. Any challenge of laws that prohibit and punish public acts of homosexuality or overt acts of solicitation for the purpose of committing a homosexual act is beyond the province of the Union.

"In examining some of the cases that have come to our attention, however, we are aware that homosexuals, like members of other socially heretical or deviant groups, are more vulnerable than others to official persecution, denial of due process in prosecution, and entrapment. These are matters of proper concern for the Union and we will support the defense of such cases that come to our attention.

"Some local laws require registration when they enter the community of persons who have been convicted of a homosexual act. Such registration laws, like others requiring registration of persons convicted of other offenses, are in our opinion unconstitutional. We will support efforts for their repeal or proper legal challenge of them.

"The ACLU has previously decided that homosexuality is a valid consideration in evaluating the security risk factor in sensitive positions. We affirm, as does Executive Order 10450 and all security regulations made thereunder, that homosexuality is a factor properly to be considered only when there is evidence of other acts which come within valid security criteria."

The Committee agreed that the issue could be referred to the Board, and Committee members were asked to suggest any changes in this statement as soon as they receive the minutes.

5. FURTHER REPLY FROM TREASURY DEPARTMENT RE: TAX RAID ON "THE DAILY WORKER" AND THE COMMUNIST PARTY: Mr. Reitman reported that, as instructed by the Committee, we had communicated with the Treasury Department seeking further clarification of the use and disposition of various lists seized by the Treasury Department when it took possession of the "Daily Worker" and Communist Party offices for non-payment of taxes. The specific questions we asked were:

Were subscription lists of The Daily Worker seized, including free and sample subscription lists?

If these lists were copied, were these copies turned over to any other agency of the government?

If so, to what agency, and for what purpose?

If these copies have not been turned over to another government agency, have they been retained by the Treasury Department, and if so, for what purpose?

Mr. Fred C. Scribner, Jr., general counsel of the Treasury Department responded as follows:

"As I attempted to make clear in my previous letter and as I think is entirely clear in the record, the determination to seize assets of the Communist Party and the Daily Worker was arrived at by the District Director of Internal Revenue for the Lower Manhattan District.

"As I am sure you have been informed, all of the property of the Daily Worker which was present in the rooms occupied by it was seized by the Internal Revenue Service. I have been informed by the District Director, of whom I made inquiry, that all seized items were returned.

"The Internal Revenue Service will, of course, make use of any intelligence which it acquired as the result of the seizure to aid in the audit and collection of taxes. No use has been made of any information which came to the Internal Revenue Service as the result of its seizure except for the purposes of the Service itself."

The Committee agreed that the answer was capable of ambiguous interpretation but that we should assume that it was intended to state that the list had been reproduced for the sole use of the Treasury Department in its tax investigation only, and that it would not be used by any other agency of government or for any other purpose. The office was directed to write the Treasury Department setting forth our understanding of the answer with a request for further clarification if we were mistaken.

6. POLICY RE: CALIFORNIA DENTIST REFUSING TO TREAT NEGRO PATIENT: Mr. Reitman presented a report of civil action for damages in Southern California, under the state law against discrimination in public places, against a dentist who had refused to treat a Negro child after an appointment for his treatment had been made by telephone. Our Southern California affiliate is participating in this case as amicus. Mr. Wirin gave further details on the case and the California law which specifies barber shops among others as an example of the type of public place that is included in the law prohibiting discrimination. He also reported that it was the stated public policy of California to eliminate discrimination. Mr. Frank pointed out that in the absence of a specific law there probably was no general right to require the performance of personal services on a non-discriminatory basis. It was agreed that we should continue to observe the progress of the California dentist case.

7. FURTHER REPORT ON THE INSURANCE COMPANIES REFUSING INSURANCE TO PERSONS LISTED BY THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE: Mr. Reitman reported that the office had received further information from Ralph E. Edwards, an ACLU supporter and Vice-President of the Baltimore Life Insurance Company on this subject. Mr. Edwards stated:

"I talked with the head life underwriter of the Union Mutual and he said that in their life business such cases had arisen and the underwriting was based on their best judgment as to future mortality, which would not bring in an extraneous matter such as was

involved here.

"He did not know what their underwriters in accident and health insurance would do, but felt that they, too, were likely to consider the hazard of claim as the only basis of underwriting.

"He mentioned the other possibilities I discussed with you, which seem to make it clear that underwriting is a matter of opinion at times, but is almost exclusively based on financial considerations."

The Committee noted Mr. Edwards' statement with appreciation.

8. FEDERAL DISABILITY RETIREMENT: Mr. Watts reported that there is now pending on petitions for certiorari before the Supreme Court Smith v. Dulles, Ellmore v. Brucker, and Murphy v. Wilson, all of which involve the question of the legality and constitutionality of the retirement of civil service employees for disability without being informed of the specific charges against them or having opportunity to answer such charges. This is a recurring problem which apparently affects many civil service employees.

The Civil Service Retirement Act provides for retirement before the statutory age of persons who had become "totally disabled for useful and efficient service in the grade or class of position occupied." The regulations provide for disclosure of the information on which retirement is required only "when such disclosure would not be injurious to the physical or mental health of the claimant or be regarded as a breach of confidence. Determination as to when disclosure of information would be injurious to the physical or mental health of a claimant will be made by the Medical Division."

It is contended that this regulation is in violation of the Lloyd-LaFollette Act which requires that any person whose removal is sought shall "(1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits, etc."

It is further contended that this non-disclosure of the specific charges is a denial of due process. Our assistance has been requested in two of the cases which are now pending before the U. S. Supreme Court on petitions for certiorari. It was agreed that the office should obtain the government's answering affidavits to the petitions and that we should consider the matter further if certiorari is granted.

9. HUGO DE GREGORY: During the course of the meeting, the office received a phone call from Joseph Kovner, an attorney in New Hampshire, informing us that Hugo de Gregory had just been found guilty of contempt by the Superior Court in Concord, New Hampshire. Mr. de Gregory had claimed the Fifth Amendment in refusing to answer questions put to him by the New Hampshire Legislative Committee investigating subversive activities. Under the provisions of the New Hampshire Immunity Law, he was subsequently granted immunity from prosecution by court order, and directed to answer the questions. He continued to refuse to answer on the basis that the Immunity Law only granted immunity from state prosecution. Having been found guilty of contempt, he was remanded to jail until he purges himself of such contempt. A motion for a stay of execution and release on bond pending appeal was denied by the trial court and by the Supreme Court of New Hampshire.

Our advice was requested as to procedure for application to a U.S. Supreme Court justice for bail. This advice was given and the Committee agreed that there was a substantial federal constitutional question in this case with which we should be concerned. Staff counsel was instructed to give such assistance as was needed.

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