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PRIVATE ATTORNEYS—GENERAL: GROUP ACTION IN THE FIGHT FOR CIVIL LIBERTIES*

Those who look to the government for protection or gain have long recognized the comparative inadequacy of individual action.1 They have learned that government will best serve those who merge their efforts into effective organizations.

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1. See Key, Politics, Parties, and Pressure Groups (2d ed. 1948).
The law of civil liberties, as developed by courts, legislatures, and administrative agencies over the last two decades has been profoundly affected by the work of private groups organized either to protect the civil liberties of all or to advance the cause of particular minorities. Representative and most powerful of both kinds of organizations are the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), and the Commission on Law and Social Action of the American Jewish Congress (CLSA). The NAACP and the CLSA entered the civil liberties field as part of their efforts in behalf of minority groups. The ACLU is concerned with defending the civil liberties of all who require assistance. All three came into existence in response to their founders' conviction that in some way American society was not fulfilling its promise of equal opportunity and fair play.

The attempt here will be to analyze the methods of the three organizations, their effect on civil liberties law, and their ability to enter into the more complex civil liberties issues currently facing minority groups and the American people as a whole.

THE ACLU—IN DEFENSE OF AN IDEA

The ACLU's key attribute is its willingness to fight for civil liberties for everyone, regardless of cause or circumstances. In the Union's twenty-eight year history, it has lost many supporters by giving aid to extremists, among them Communists and men of the extreme right like Gerald L. K. Smith, but there has been no deviation from the principle of civil rights for all.

The ACLU's prestige as a non-partisan defender of civil rights has enabled it to command free legal talent and extensive publicity through which it has exercised an influence far out of proportion to its small membership and limited expenditures. It has secured the support and services of outstanding leaders in all walks of life whose prominence has enabled the

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2. In addition to the three organizations herein discussed the following are among the many that have been active in the civil liberties field: Jehovah's Witnesses, the Japanese-American Citizens League, the American Jewish Committee, the National Lawyers Guild, and both the AFL and CIO, who have been the most powerful pressure groups in all civil liberties issues springing from labor disputes or legislation.

3. The Chicago Civil Liberties Committee of the Union withdrew from national ACLU affiliation in April, 1945, and then became the chief force behind efforts to convict one of Gerald L. K. Smith's associates for an alleged violation of a breach-of-the-peace statute. The Union's new Chicago Division opposed the conviction: see ACLU, 1944-1945 ANN. REP. 61 (1945); ACLU Monthly Bull., March, 1946, p. 3. The Union has split sharply with other civil rights organizations over the question of "race hatred" ordinances and group libel statutes. See notes 135-7 infra. For a succinct statement of ACLU's principles see ACLU, PRESENTING THE AMERICAN CIVIL LIBERTIES UNION (1948) and ACLU, WHAT DO YOU MEAN, FREE SPEECH? (1947).

4. ACLU's national contributing membership totals only 7,619. ACLU, 1947-1948 ANN. REP. 70 (1948). Expenditures from June, 1947 to June, 1948 were only $64,477. Id. at 69.

5. The Union's Radio Committee is headed by James Lawrence Fly, former Chair-
Union to be an influential behind-the-scenes force constantly considered by legislatures or administrative agencies faced with civil liberties problems. In a field in which public pressure to restrict the activities of an unpopular minority can often become intense, it has been especially effective for an organization to enter the fight not as a minority group trying to defend itself but rather as a non-partisan organization interested in the ideals of free expression and thought.

Organization and Method of Operation

The ACLU operates through a national office in New York and local civil liberties committees in twenty major cities. A National Committee (75 members) and Board of Directors (35 members) constitute the Union's active membership. The National Committee, a self-perpetuating group, elects the Board which meets bi-weekly and is theoretically responsible for day-to-day policy. But thirteen Committees of the Union, selected by the Board to deal with specialized problems like academic freedom or censorship, are actually the chief formulators of policy since the Board usually accepts their recommendations. 8,000 contributing members donate about $52,000 in annual dues, and special funds add between five and $15,000 annually to the ACLU's coffers. None of these contributions is deductible from individual tax returns because of the Internal Revenue Bureau's ruling that a substantial portion of the Union's activities is devoted to influencing legislation.

ACLU's chief efforts are exerted in the courts, although it also lobbies. The Union generally enters a case on the appellate level. Individuals who are arrested or sued usually employ their own counsel or are supplied counsel by the court. If the case attracts notice and poses a civil rights question, the local civil liberties committee or national office may intervene. Briefs and arguments are handled by private lawyers who, for the most part, are volunteers. Only one full-time lawyer is employed in the national office and the local civil liberties committees rely almost entirely on volunteer help.

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12. ACLU, 1947–1948 ANN. REP. 78 (1948). For the status of the NAACP and CLSA in this respect see notes 52 and 103 infra.
13. ACLU, PRESENTING THE AMERICAN CIVIL LIBERTIES UNION 3 (1948).
Scope of Activities

The ACLU has compiled an impressive record encompassing the entire field of civil liberties. Its function has been essentially defensive, helping individuals and groups whose civil liberties are threatened by suit, arrest, or the possible passage of restrictive legislation.

In support of free expression, the ACLU has with some success, defended persons prosecuted under various statutes which have attempted to restrict writing and speech. Typical were the state sedition, criminal anarchy, and criminal syndicalism laws which were used to restrict Communist and IWW activity in the 1920's and 1930's. The ACLU has assisted Jehovah's Witnesses, either by direct counsel or by *amicus curiae* briefs, in expanding the right to peddle literature and has been active in the still-befuddled sound truck controversy. In the courts and the legislatures the Union has fought mail, motion picture, and publication censorship.

To protect free thought the Union has defended those upon whom society

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14. ACLU, for example, helped in the appeal which successfully voided a New Jersey statute of 1935 designed to prohibit anti-Semitic speeches. *State v. Klapprott*, 127 N.J.L. 395, 22 A.2d 877 (1941). One of the Union's most significant earlier victories was against a Minnesota statute which made "malicious" publication an abatable nuisance. *Near v. Minnesota*, 283 U.S. 697 (1931). The Union also assisted in the unsuccessful defense of the Socialist Workers Party members prosecuted under the peace-time sedition act of 1940. *ACLU, 1943-1944 Ann. Rep.* 30-1 (1944).


16. ACLU filed *amicus curiae* briefs in practically all the important Jehovah's Witnesses cases including *Martin v. Struthers*, 319 U.S. 141 (1943) (voiding an ordinance forbidding door-to-door peddling of religious literature) and *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (voiding a municipal ordinance which required a license for the peddling of religious literature).


18. The Union has fought the exclusion, on grounds of obscenity, of periodicals and pamphlets from the mails. An *amicus curiae* brief was filed in the successful *Esquire case* and counsel was provided in several cases involving birth-control pamphlets. *ACLU, 1944-1945 Ann. Rep.* 47 (1945). See, also, *ACLU, 1943-1944 Ann. Rep.* 41-3 (1944), and *ACLU, No More Post Office CENSORSHIP* (1944).


20. The distribution of novels such as "Strange Fruit" or "Memoirs of Hecate County" often subjects booksellers to criminal prosecution. ACLU has provided counsel in such situations. *ACLU, 1944-1945 Ann. Rep.* 49 (1945); *ACLU, 1946-47 Ann. Rep.* 40-1 (1947).
would impose orthodoxy: conscientious objectors; 21 government employees accused of disloyalty; 22 a pacifist attorney denied admittance to the bar; 23 school children who refused to salute the flag; 24 Communists denied WPA benefits; 25 and alien pacifists denied citizenship for refusal to bear arms. 26 Defending academic freedom, 27 the Union has protested the dismissal of professors because of political expression, but has rarely achieved any real result. 28 ACLU vigorously fought the Tennessee anti-evolution law, 29 teachers loyalty oath bills, and recent attempts to prohibit the teaching of communism in the public schools. 30

Although freedom to assemble peaceably is usually considered a firmly established principle, the ACLU has often been forced to contest the arbitrary power of minor city officials who usually hold the key to free assembly on a local level. The Union's most significant victory against an oppressive local government was the permanent injunction restraining Mayor Hague against further interference with peaceful assembly in Jersey City. 31


22. See ACLU, 1947-1948 Ann. Rep. 23-6 (1948) for the Union's position in opposition to the loyalty program. The ACLU has prepared a guide for the handling of loyalty review cases and has recommended procedural improvements to the Loyalty Review Board. It lobbied against efforts to embody the loyalty program in a federal statute and enlisted forty-five law professors to demand a hearing for Dr. Edward Condon to permit answers to charges of disloyalty. See, also, ACLU Monthly Bull., October, 1948, p. 1-2.


27. The Union has opposed the recent trend to bar "subversive" student organizations from campuses. This opposition has usually taken the form of public statements. ACLU, 1946-1947 Ann. Rep. 50-1 (1947); ACLU, 1947-1948 Ann. Rep. 48 (1948). It opposed the Rapp-Coudert investigation into New York's schools, and tested the right of the Committee to obtain membership lists of the Teacher's Union. ACLU, 1940-1941 Ann. Rep. 34 (1941).

28. Unless the professor has tenure it is extremely difficult to frame legal action. When there has been dismissal from a public school system, however, the Union has assisted in appealing cases to state educational authorities. ACLU, 1937-1938 Ann. Rep. 58-9 (1938).


Most government restrictions and repressive tactics of private organizations are aimed at weak or unpopular minorities. Communists, fascists, Mexicans, Japanese, Chinese, Negroes, aliens, religious dissenters, and workers, as well as individual proponents of free expression have at one time or another found the Union to be their chief source of organized defense. In labor's frequently bloody attempts at organization, for example, the ACLU provided legal aid to strikers and organizers who were continually victims of police brutality. Virtually all of the gains in the civil liberties field made through litigation involving members of these groups has been effected with either the direct or the indirect aid of the ACLU.

But within the last decade the importance of the ACLU in the defense of oppressed groups has diminished considerably. Most minority groups have learned that they can most effectively pursue their interests through organizations of their own. And labor cases, which once formed the bulk of the ACLU's legal defense work are handled today by the unions and the National Labor Relations Board.

As each group has taken over the major burden of its own struggle, the ACLU's function has become one of assistance through the joint handling of cases, amicus curiae briefs, lobbying, or publicity. Today the Union is the chief spokesman and defender only for the unorganized individuals or the groups which are too small or unpopular to have power by themselves.

While the Union's defense activities have been varied and successful, it has done little to enter new areas of civil liberties and attack restrictions on civil rights by instituting test cases and launching effective publicity campaigns. To attack successfully an undemocratic practice by positive campaigns requires a sharper focusing on a particular problem than the Union, with its diverse interests and limited resources, has yet achieved. The results, therefore, are meagre. It has unsuccessfully attempted to eliminate the poll tax by judicial decision. On a local level the Union has shown

32. Throughout the 1930's, before labor unions developed effective legal staffs of their own, ACLU was one of the chief sources of legal aid to workers. ACLU attorneys defended organizers prosecuted under state sedition laws. ACLU, 1934-1935 Ann. Rep. 26 (1935). Thousands of petty arrests would occur as a result of strikes, picketing and other workers' demonstrations, requiring immediate legal assistance. Id. at 16-20.

33. The Annual Reports of the ACLU offer the only complete summary of the Union's continuing support of minority groups.

34. Prominent in this group are federal employees who have required protection against possible abuses of the loyalty program. See note 22 supra. The Union has also assisted witnesses held in contempt for failure to answer questions before the House Committee on Un-American Activities.

35. The extreme fascist groups, such as the Nazi Bund or the followers of Gerald L. K. Smith, found the Union to be their chief legal support. They, like the Communists, were organized but were so unpopular that they required strong outside assistance to protect their rights of free speech and assembly.

only occasional initiative in enforcing state civil rights laws.\(^3\) An ACLU test case succeeded in voiding California's attempt to exclude incoming indigents.\(^4\) Test cases have also been instituted involving important new issues which have later been resolved through the efforts of other organizations or private individuals. Notable were the Union's restrictive covenants cases and the cases testing the validity of the wartime forced evacuation of Japanese-Americans from the West Coast.\(^5\)

Although the ACLU has lobbied actively in Congress and state legislatures, in general its efforts have been unsuccessful. Outstanding exceptions were the ACLU-sponsored anti-injunction laws in the 1920's\(^6\) and the repeal of the Chinese Exclusion Act by Congress during the war.\(^7\) But the ACLU has shared the defeat of the many organizations that have been campaigning for strong federal civil rights legislation. And although state FEPC laws have been passed in a few large industrial states\(^8\) and appear likely of passage in others,\(^9\) it is the Negro, Jewish, and labor organizations,
rather than ACLU, which have been the chief supporters of these statutes. Effective legislative campaigns require a strong and widespread organization and extensive financial resources. Lacking these essentials, ACLU has not been able to overcome the inertia and prejudices of legislators and the general apathy of the people.

Both in the courts and the legislatures, the ACLU has rarely succeeded in winning positive victories in new areas of civil rights. But, as a shield for the traditional rights of free expression and thought, the ACLU has made its most significant contribution.

The NAACP—for Negro Equality

The NAACP is the largest and most effective civil rights organization in the United States. Its cause is the advancement of the Negro. Not content with merely holding the line, the Association has struck hard and often to enlarge the scope of Negroes' rights. Its weapons are legal and political action. It has easy access to the Negro press, secures the full cooperation of Negro churches, is highly regarded by the non-Negro community, and is the most militant of all major minority group organizations.

Organized in New York in 1909, the Association now has 1600 branches and youth councils and an estimated national membership of 510,000, composed of members of all races. The work of the NAACP is financed by membership dues which range from the annual minimum membership of $2 to the lifetime membership of $500. In addition to this source of revenue, which supports the legal work of the branches, a separate Legal Defense and Education Fund, to which are tax exempt, contributions to which are tax exempt,

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45. For a discussion of the expenditures of powerful lobbies during the 89th Congress, see New Republic, Sept. 27, 1948, p. 18-9.
46. For competent summaries of the NAACP's work see Jack, History of the National Association for the Advancement of Colored People (1943); Overton, The Walls Came Tumbling Down (1947); White, A Man Called White (1948).
47. Jack, op. cit. supra note 46 at 4-5.
49. This is the membership figure quoted by the Association's membership secretary. Communication to the Yale Law Journal from Lucille Black, Feb. 15, 1949. The World Almanac figure is 500,000. 1949 World Almanac 421 (1949). But in November, 1948, the research director wrote that membership was only 300,000. Dubois, The Negro Since 1900: A Progress Report, New York Times Magazine, November 21, 1948, pp. 24, 55, col. 1.
52. Since the Legal Defense and Education Fund is devoted almost exclusively to sponsoring legal action, and is not used to support the legislative activities of the NAACP,
supplied about 80% of the $150,000 spent in 1948 by the national office for legal activity.  

**Assisting Negro Criminal Defendants**

The NAACP is not a legal aid society for Negroes. It will assist Negroes only where there has been some irregularity of procedure or other discrimination because of color, or where the organization feels that a Negro criminal defendant is innocent. But even where there has been discrimination, branch offices shy away from defending an obviously guilty Negro because of the likelihood of unfavorable publicity and the difficulty of raising special funds to defend a guilty person. The ACLU, on the other hand, would welcome such a case. The difference is perhaps best explained by the fact that the NAACP is interested less in the principles of due process than in furthering the interests of Negroes as a group. For this end it is essential that the Association maintain its respected position in society.

The bulk of the NAACP’s criminal defense work is carried on by its city branches and to a lesser extent by the state conferences of branches. The national office handles only cases of constitutional importance, and since most of the constitutional issues relating to fair trials for Negro defendants have already been settled, the national office does very little criminal defense work. It does distribute literature informing Negroes of their rights and advising both the individual Negro and the local NAACP branch on proper procedure. The chief functions of the branch are to act as a complaint center, to keep alert for possible cases, to raise funds and generate public pressure. The branches do not hire lawyers on a full-time basis. Legal work is done by outside lawyers who are paid fees by the branch.

In years past the Association's criminal defense activities have given contributions are deductible under § 23 (o) (2) of the Internal Revenue Code which permits deductions of “... gifts ... [to a] ... fund ... operated exclusively for religious, charitable, scientific, literary, or educational purposes ... no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. . . .”

53. Communication to the *Yale Law Journal* from Thurgood Marshall, Special Counsel, NAACP, Feb. 18, 1949. These figures have not yet appeared in any official publication.
55. Ibid. See, also, Communication to the *Yale Law Journal* from Thurgood Marshall, Special Counsel, NAACP, Feb. 18, 1949.
58. See notes 62-4 infra.
61. Ibid.
birth to important Supreme Court decisions condemning systematic exclusion of Negroes from juries,\(^6^2\) forced confessions,\(^6^3\) and the obtaining of convictions under the undue influence of local mob hostility.\(^6^4\) Today, the issues are narrower. The branches are concerned primarily with police brutality cases\(^6^5\) and the discriminatory treatment frequently accorded Negroes by local authorities indifferent to Supreme Court rulings. Damage suits against abusive officials have met with little direct success.\(^6^3\) Legal action in this field has been valuable not to secure redress in the given case, but as a preventive against future brutality through a focusing of attention on the abuse of police power.\(^6^7\)

There are inherent limitations on the effectiveness of this branch activity. Because of a general reluctance to intervene until after the discrimination is evidenced, NAACP branches usually enter a case after the original trial, forcing their lawyers to take appeals based on unfavorable records.\(^6^3\) Often cases of obvious trial discrimination are overlooked by local branches until a conviction has been obtained.\(^6^3\) Only the more efficient branches are constantly alert for possible cases. Lectures and pamphlets urging immediate recourse to NAACP lawyers have had only partial success in surmounting this obstacle to effective legal defense. A full-time NAACP staff in all cities would partially solve the problem, but most branches today are manned entirely by volunteers\(^7^0\) who cannot be expected to be on guard for all cases of Negro discrimination in the courts.

The effectiveness of branch criminal defense work may be in part measured by the assistance it provides in rallying the support of the Negro community behind the Association. While all cases may not be of precedent-making value, they often involve people known to the local community and practically always have dramatic publicity appeal.\(^7^1\) A direct relationship can

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66. Ibid.
69. The Ingram case, still in the Georgia courts, is an outstanding example of the failure of NAACP branches to enter a case at the outset. Despite a murder and trial that stirred the small town of Americus, Georgia, the local NAACP branch did not enter the case until after the conviction. See also NAACP, Georgia “Justice”—The Ingram Case (1948) (pamphlet published as part of the fund-raising campaign).
71. For an excellent example of the type of publicity which can result from a criminal case, see NAACP, Georgia “Justice”—The Ingram Case (1948). An estimated
be found between a branch's criminal defense work and its success in recruiting new members.\textsuperscript{72}

\textit{Legal Action to Defeat Discrimination}

Recent years have seen vigorous NAACP campaigns to eliminate some of the more patent legal barriers in the path of equal opportunity for the Negro. Until 1936 the legal work of the NAACP consisted essentially of defending criminals or combating other types of discrimination in isolated cases taken principally because a Negro was in trouble and the NAACP could supply help. But the NAACP was not satisfied with the mere defense of the status quo. Many restrictive practices have long been integrated in society and are enforced either through established legislation or accepted private behavior. Southern segregated education is typical. The restrictive pattern has so long been accepted by the minority group that the organization which waits for someone to be sued or arrested will never come to grips with the more accepted patterns of discrimination. Here the minority, by instituting legal proceedings of its own, must carry the fight to the majority or accept the status quo. In 1935 the Association hired its first full-time lawyer\textsuperscript{73} and today the national office, with five paid lawyers devotes most of its efforts to affirmative action against discrimination. The local branches and state conferences have undertaken successful campaigns of their own,\textsuperscript{74} particularly in the educational field,\textsuperscript{75} but the most important work has been by the national office assisted by members of the Association's legal committee throughout the country.\textsuperscript{76}

\$45,000 has been raised for the Ingram Defense Fund. Communication to the \textit{Yale Law Journal} from Thurgood Marshall, Special Counsel, NAACP, Feb. 18, 1949.\textsuperscript{72}

72. Communication to the \textit{Yale Law Journal} from W. Lester Banks, Executive Secretary, Virginia State Conference of Branches, NAACP, Feb. 18, 1949.


74. The branches, for example, have instituted cases to abolish discrimination in public accommodations. Thus, in Baltimore the branch sponsored a suit to compel equal use of the municipal golf facilities. Communication to the \textit{Yale Law Journal} from Milton P. Brown, Executive Secretary, Baltimore Branch, NAACP, Feb. 22, 1949. Other branches, in 1947, conducted campaigns to gain admittance to such places as municipal parks and swimming pools. \textit{NAACP Legal Committee}, 1947 Ann. Rep. 15 (1947).

But surprisingly little has been done by the branches in enforcing state civil rights laws which provide criminal and civil sanctions for unequal treatment in public places. In its instructions to branches on legal procedure, the NAACP admits this shortcoming. \textit{NAACP, Outline of Procedure for Legal Cases} 20 (1944). For analyses of the difficulty of enforcing civil rights statutes, see \textit{Konvitz, The Constitution and Civil Rights} 122-3 (1947); \textit{Maslow, The Law and Race Relations}, 244 \textit{Annals} 75 (1946); \textit{Note, Legislative Attempts to Eliminate Racial and Religious Discrimination}, 39 \textit{Col. L. Rev.} 986, 1002 (1939). For ACLU experience in this field see note 37 \textit{supra}.

75. See note 84 \textit{infra}.

76. The Legal Committee is composed of lawyers scattered throughout the country. Although the Committee has never met as a unit, its members are often called upon to assist in the preparation and argument of cases.
The NAACP court victories have been the result of continued pressure in the courts, on legislatures, and in the press. The cases fought and lost have often provided the publicity to give impetus to continued legal action. In four phases of the fight to destroy segregation and discrimination have the NAACP's legal victories been most notable: defeating the white primary, eliminating segregation in interstate travel, improving Negro education, and ending discrimination in housing. The legal fight has been a slow, whittling process wherein courts have usually decided cases on the narrowest possible grounds, thereby enabling individuals and governments to evade the effect of the decision.\(^7\) Renewed work and further expenditure is then necessary to invalidate the discriminatory practice, under each newer and cleverer disguise, until it is recognized in all its forms as illegal. Only in the case of the white primary, where most southern states have apparently exhausted their evasive tactics, can the victory be considered fairly complete.\(^7\)

The Association's attempt to outlaw segregation in interstate transportation, however, is more illustrative. The Supreme Court sustained the NAACP's contention that state segregation statutes, when applied to interstate commerce, were an unconstitutional burden on interstate commerce.\(^7\) But this victory was followed by charges of disorderly conduct

\(^{77}\) See, e.g., Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947), many civil rights groups challenged the segregation of Mexican school children. The court voided the segregation, not on the grounds that it was \textit{per se} illegal, but because no state statute authorized it. The white primary cases further typify the ability of the southern states to avoid narrow court decisions. Nixon v. Condon, 286 U.S. 73 (1922), holding that the Executive Committee of the Texas Democratic Party could not bar Negroes, was an invitation to the Party Convention to perform the same act, which, when done, was upheld in Grovey v. Townsend, 295 U.S. 45 (1935). The Grovey case was later overruled in Smith v. Allwright, 321 U.S. 649 (1944).

\(^{78}\) Smith v. Allwright, 321 U.S. 649 (1944) appeared finally to settle the white primary issue since the Court refused to allow the Texas Democratic Party, acting under the guise of a private association, to operate a white primary. South Carolina, however, sought a further evasion by repealing all its primary laws, thereby cutting any link between the state and the primary. This effort to exclude Negroes failed. Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), \textit{cert. deni\c}{\textit{ic}}, 333 U.S. 875 (1948). Recently a district court has voided South Carolina's latest effort, a requirement that Negroes, before voting, secure an election certificate and take an oath disavowing a belief in fair employment legislation or anti-poll tax laws. Brown v. Baskins, District Court for Eastern District of So. Car. 1948, see N. Y. Herald-Tribune, Nov. 27, 1948, p. 22, col. 7. The prevention of discriminatory registration is still considered an important legal task. Communication to the \textit{Yale Law Journal} from Thurgood Marshall, Special Counsel, NAACP, Feb. 18, 1949.

\(^{79}\) Morgan v. Virginia, 328 U.S. 373 (1946). The opinion rested on the theory that state statutes either enforcing or prohibiting segregation are unconstitutional as applied to interstate commerce, relying on Hall v. De Cuir, 95 U.S. 435 (1877). It is at least arguable, however, that the decision will not be so interpreted should the anti-segregation statutes be tested. See Bob-Lo Excursion Co. v. Michigan, 333 U.S. 23 (1948), Note, 58 \textit{Yale L.J.} 329 (1949).
against Negroes who refused to comply with the segregation rules of the private lines;\textsuperscript{80} by NAACP-supported damage suits against the companies;\textsuperscript{81} and, finally, by the Association's efforts to void as unreasonable under common law the segregation regulations of private interstate carriers.\textsuperscript{82} Attempts continue to pass an anti-segregation amendment to the Interstate Commerce Act or to secure an ICC ruling that the Act, as written, prohibits segregation.\textsuperscript{83}

Suits to equalize educational facilities and teachers' salaries have been directed primarily by the branch and state offices.\textsuperscript{84} It has been a case-by-case effort\textsuperscript{85} carried on by lawyers paid by the branch or state conference. In the last two years the Association, through the national office, has been waging the education fight through to its ultimate conclusion—the outlawing of segregated education \textit{per se}.\textsuperscript{86} In this rather extensive program of

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\item \textsuperscript{80} Taylor v. Commonwealth, 187 Va. 214, 46 S.E.2d 384 (1948) (refusal to move to rear of bus when ordered by operator pursuant to private regulation held not disorderly conduct. NAACP was \textit{amicus curiae}).
\item \textsuperscript{81} NAACP, 1947 \textit{ANN. REP.} 29 (1947).
\item \textsuperscript{82} This novel contention has received a cool reception in the courts. Day v. Atlantic Greyhound Corp., 171 F.2d 59 (4th Cir. 1948). See N. Y. Herald-Tribune, Dec. 9, 1948, p. 21, col. 2.
\item \textsuperscript{83} 24 Stat. 380 (1887), 49 U.S.C. § 3(1) (1946) declares it unlawful for an inter-state carrier "to subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . ." This provision has been interpreted as a bar against racial discrimination. See cases cited in Mitchell v. United States, 313 U.S. 80, 95 (1941). The ICC has thus far refused to sustain the NAACP's contention that the section prohibits segregation. Brown v. Southern Ry., 269 I.C.C. 711 (1948); Byrd v. Seabord Air Line Ry., 269 I.C.C. 344 (1947); Mays v. Southern Ry., 268 I.C.C. 352 (1947). Representative A. Clayton Powell of New York introduced a bill in the 80th Congress specifically amending the section to prohibit segregation. 93 Cong. Rec. 47 (1947).
\item \textsuperscript{84} The suits to equalize teachers' salaries were begun in 1939. As of July 1, 1945, 33 suits had been prosecuted in 12 states. NAACP, \textit{HISTORICAL REVIEW OF THE NAACP TEACHER SALARY CASES} 1 (1945). See NAACP, 1942 \textit{ANN. REP.} 16-7 (1942). The branches have recently been instituting suits to compel equalization of school facilities for Negro and white children. NAACP, 1947 \textit{ANN. REP.} 26 (1947). In Virginia, the Association's best state conference is concerned primarily with this type of action. Communication to the \textit{YALE LAW JOURNAL} from W. Lester Banks, Executive Secretary, Virginia State Conference of Branches, NAACP, Feb. 18, 1949.
\item \textsuperscript{85} The principle having been established that a state must provide equal facilities, Missouri \textit{ex rel.} Gaines v. Canada, 305 U.S. 337 (1938), each suit establishes no precedent or principle. Each case necessitates research to discover the unequal facilities and then a mandamus proceeding to compel equalization.
\item \textsuperscript{86} The Association regards the outlawing of segregated education as its most important immediate legal task. Communication to the \textit{YALE LAW JOURNAL} from Thurgood Marshall, Special Counsel, NAACP, Feb. 18, 1949. In the Oklahoma Law School case last year the NAACP tried unsuccessfully to force a decision declaring segregation \textit{per se} invalid. Fisher v. Hurst, 333 U.S. 147 (1948). The issue of segregation will come before the Court this term in two NAACP-sponsored suits: Sweatt v. Painter, No. 9,684, Ct. of Civ. App., 3d Supreme Judicial Dist., Texas (Feb. 25, 1948), \textit{writ of error denied}, No. A-1695, Sup. Ct. of Texas (Sept. 29, 1948) (Negro denied admittance to University of
legal action in the education field, the Association has not always been consistent within itself. While the National office instructs its branches not to condone any system of segregation, the branches continue to fight for "equal" facilities without clearly stating whether they seek to end segregation or merely to "equalize" facilities within the segregated pattern.

In the campaign for adequate housing the NAACP last year won its most publicized victory: the Supreme Court's decision in the restrictive covenants cases. But preceding final victory were years of defeats in lower courts and the gradual development of public support by publicizing the Negro's housing needs and by supporting legislation to make the covenants unenforceable. The fight on the housing front is now concentrated on ending segregation in the many public or quasi-public housing projects erected since the war.

Texas Law School) and McLaurin v. University of Oklahoma, Dist. Ct. Western Dist. of Okla., 1948 (Negro graduate student compelled to sit in alcove separate from other students).

87. The NAACP's Special Counsel has written, "... we do not consider segregation statutes legal, do not recognize them as being legal and will continue to challenge them in legal proceedings. ... [The] NAACP cannot take part in any legal proceeding which condones segregation in public schools, or which admits the validity of segregation statutes." Marshall, The Legal Battle, NAACP Bull., October, 1947, p. 8, col. 4-5.

88. One cannot fight for "equal" schools within a segregated pattern and accept with consistency the NAACP's sociological position that the segregated pattern never has and never will produce equal schools, or the psychological argument that the effects on the individual would make even schools with identical facilities unequal. See Note, Segregation in Public Schools—A Violation of "Equal Protection of the Laws," 55 YALE L. J. 1059 (1947). Furthermore, by improving Negro schools, it often becomes far more difficult to eliminate segregation. In higher education, however, the fight for "separate but equal" facilities may also help eliminate segregation, since states usually cannot afford to establish physically equal colleges and professional schools for Negroes.

89. Shelley v. Kraemer, 334 U.S. 1 (1948) (decided together with McGhee v. Sipes which was argued by NAACP lawyers); Hurd v. Hodge, 334 U.S. 24 (1948). The support developed for the Association's position is indicated by the fact that 23 organizations as well as the United States Attorney General filed amicus curiae briefs. They ranged in interest from the CIO and AFL to the American Association for the United Nations.

90. See Comment, Race Discrimination in Housing, 57 YALE L. J. 426, 446 n.99 (1948).

91. Articles pointing out the serious problems of Negro housing appeared in The Crisis, the NAACP magazine. Apart from the excellent data submitted in the restrictive covenants cases, the Association published no comprehensive housing surveys of its own. See ABRAMS, RACE BIAS IN HOUSING (1947) (joint publication of NAACP, ACLU and the Council on Race Relations).

92. Comment, Race Discrimination in Housing, 57 YALE L. J. 426, 446 n. 99 (1943).

93. The NAACP has assisted in the preparation of the Study v. New York case. See notes 117-9 infra. An injunction was obtained preventing the city of East Orange, New Jersey from barring Negroes from certain units of a municipal housing project. Seawell v. MacWithey, No. C-334-48, N.J. Superior Ct., Ch. Div., (Jan. 10, 1949) (mimeo.). In Trenton the threat of a law suit forced the city to agree to process Negro applicants for a veterans' housing project without discrimination and to assign apartments on an unsegregated basis. Communication to the YALE LAW JOURNAL from Mrs. Marian Wynn Perry, Assistant Special Counsel, NAACP, Feb. 14, 1949.
Legislative Action

In addition to court action, the Association has lobbied extensively.\(^{94}\) While unsuccessful this far in terms of bills enacted, lobbying has had an important by-product in the development among Negroes of an awareness of their own rights.\(^ {95}\) Since the NAACP's Washington Bureau has a small staff and limited budget,\(^ {96}\) its effectiveness as a lobbying group depends largely on the strength of the branches and their ability to rally the Negro vote in key areas. The better-organized branches attempt to obtain pre-election commitments on civil rights legislation, and the Association, through its Bulletin, keeps members informed of Congressional voting records.\(^ {97}\) But the active opposition of the South and the inertia of the North have so far prevented the enactment of any legislation through NAACP efforts. The publicity involved has, however, spurred government action in other ways. It seems likely that both court and administrative action favorable to Negroes has been in part made possible by the gradual shift in the climate of opinion which the NAACP has helped to bring about.

The NAACP has had far greater success in opposing anti-Negro legislation. Its opposition generally is limited to proposed laws which condone some type of segregation. In the last session of Congress, for example, the Association helped defeat Congressional approval of a proposed compact among fourteen southern governors to set up segregated regional colleges.\(^ {98}\) General legislation not specifically related to Negroes may be opposed when it is felt that large numbers of Negroes will be unfavorably affected,\(^ {99}\) as in the case of the Taft-Hartley law.

Thus, the record of the NAACP in attacking discrimination in courts and legislatures is a complete rejection of indirect educational and propaganda techniques in favor of direct legal and legislative action. Without specifically publicizing its own philosophy of action, the NAACP has been the


\(^{95}\) The Washington Bureau maintains a close liaison with the branches keeping them informed of the progress of bills and requesting telegrams and letters from constituents of key Congressmen. When Congressional subcommittees hold hearings in various cities, the Bureau urges the local branch to testify and supplies it with pertinent data. This technique was used successfully in presenting testimony before a subcommittee on housing which held hearings throughout the country in 1947. The Washington Bureau encourages local branches to send delegations to Washington and has provided them with a set of instructions for lobbying techniques.

\(^{96}\) The Association has only one registered lobbyist, Leslie S. Perry, who does all the speechwriting and supplies Congressmen and administrators with requested information on Negro problems. Appropriations by the New York office for the Washington Bureau were only $3,925.05 in 1947. NAACP, 1947 ANN. REP. 59 (1947). The Bureau is under the general supervision of Walter White, the Association's Executive Secretary.

\(^{97}\) See NAACP Bull. September, 1948, p. 3-6.


first large civil rights organization to implement, at least in part, that method of attack most clearly defined by the American Jewish Congress as the "law and social action" approach to civil rights.

**CLSA—THE "LAW AND SOCIAL ACTION" APPROACH**

**Philosophy of Action**

The Jewish problem is unique. Discrimination against Jews in the United States is usually non-governmental, non-violent, and extremely subtle. An organization set up to fight defensive legal battles would be virtually useless. Until recently the chief method to combat these anti-Semitic practices was education through good-will propaganda. CLSA breaks from this method in insisting that the best existing means of education is to fight anti-Semitism by direct legal and legislative action, forcing people to support specific bills and work for court victories rather than wait for the slow process of education through propaganda to materialize. To the argument that prejudice cannot be outlawed by court decree or legislative fiat, CLSA answers that prejudice is not the cause but more often the result of discriminatory practices which can be outlawed. The forced segregation of groups into separate neighborhoods or schools, it is argued, creates in the rest of society the feeling of prejudice which will further enforce the segregated pattern.

To implement this philosophy of attacking prejudice by eliminating the discriminatory practices, CLSA was established in November, 1945. Its theoretical means of attack is to merge in one force trained sociological research necessary to uncover discrimination and legal skills and community pressure necessary to fight it. CLSA's activities are always limited, however, by the Federal Government's requirement, as a condition to tax exemption of contributions, that only an insubstantial portion of the organization's work be devoted to influencing legislation.

The Commission employs seven lawyers in its New York offices on a full-time basis. Virtually all important work is directed from New York.

102. Petegorsky, Report of the Executive Director to the Chairman of the Executive Committee of the AJC 5 (May 28, 1946) (mimeo.). See McWilliams, A Mask for Privilege 240 (1st ed. 1948), in which the author describes with approval the "law and social action" approach to combatting racism.
103. CLSA's funds are derived from Jewish community chests throughout the country, contributions to which are tax exempt by virtue of § 23(o)(2) of the Internal Revenue Code. See note 52 supra.
104. In addition, two full-time attorneys are employed by CLSA's Chicago office.
but some is done by CLSA regional offices in cooperation with the regional offices of the AJC.\textsuperscript{105}

The main force of CLSA's work has been directed, of course, at problems of particular concern to Jews. But the Commission realizes, perhaps more than any other organization, that a legal principle established by one minority group will often accrue to the benefit of others.\textsuperscript{106} It has therefore undertaken affirmative action \textsuperscript{107} beyond its own interest group, notably in fighting racial discrimination in the Stuyvesant Town housing project \textsuperscript{103} and in supporting Negro complainants before the New York State Commission against Discrimination.\textsuperscript{109} In addition, some of its best legal work has been done in support of the more direct campaigns of other organizations.\textsuperscript{110}

**Fighting Discrimination**

CLSA has implemented its approach most typically in its fight to combat religious discrimination in colleges and professional schools. To show that discrimination exists, often difficult in view of the many subterfuges which educational institutions can employ, CLSA published a series of surveys proving a policy of systematic discrimination by medical schools against Jewish applicants.\textsuperscript{111} This was merged with court action by Dr. Stephen S.

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\textsuperscript{105} There are CLSA offices in Boston, Washington, D.C., Chicago, and Philadelphia. AJC regional offices are located in Boston, Philadelphia, Chicago, Newark, Detroit, Baltimore, Washington, D.C., San Francisco and Los Angeles. Communication to the Yale Law Journal from Will Maslow, Director, CLSA, Feb. 15, 1949.


\textsuperscript{107} CLSA opposes the use of billboard advertisements or cartoons urging tolerance as a means of combating anti-Semitism among Negroes. It favors, instead, legal action which actually helps eliminate the discrimination to which Negroes are subjected.

\textsuperscript{108} See notes 119–21 infra.

\textsuperscript{109} CLSA cooperates with the Urban League in presenting cases of Negro employment discrimination before the New York State Commission Against Discrimination. Communication to the Yale Law Journal from Will Maslow, Director, CLSA, Feb. 15, 1949. See notes 114–3 infra.

\textsuperscript{110} See Brief for the AJC as amicus curiae, Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947) (in opposition to segregation of Mexican schoolchildren), described by Carey McWilliams as “a brilliant and devastating analysis of the social effects and unconstitutionality of segregation.” 164 Nation 302 (1947). See Brief of Synagogue Council of America and National Community Relations Advisory Council as amici curiae, Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948) (brief prepared by CLSA). Among its many amicus curiae briefs, CLSA filed briefs in the restrictive covenants cases, note 89 supra, and is presently working on briefs to be submitted in support of the NAACP education cases, note 86 supra.

\textsuperscript{111} The following surveys were prepared by CLSA staff members: Goldberg and Pfeffer, The “Distinctive Name” Method of Determining Jewish Enrollment in
Wise against Columbia University to cancel its tax exemption; it was dropped after a successful legislative campaign in New York secured the passage last year of the Quinn-Olliffe bill, the first fair educational practices law enacted in the United States.

In every state which has enacted a fair employment practices bill, CLSA has probably been the most active private organization seeking effective enforcement. In New York the Commission won the right to file complaints against firms using discriminatory pre-employment inquiries, and to request investigations by the State Commission Against Discrimination (SCAD) where a pattern of discrimination is alleged but no individual complaint has been filed. And in a complaint against Columbia University’s placement bureau, SCAD supported CLSA’s position that a university, when acting as an employment agency, could not claim exemption from the law as an educational institution. Some of these principles have been


113. N.Y. EDUCATION LAW § 313. The law operates on a principle similar to New York’s Law Against Discrimination, N.Y. EXEC. LAW § 125-36. An applicant to a New York college, who feels he has been discriminated against because of race, religion, creed, color, or national origin, files a complaint with the Commissioner of Education. If conciliation fails, the case is referred to the Board of Regents for a public hearing, and if the charges are sustained, a cease and desist order is issued followed by court action to enforce the Board’s order.

114. State Commission Against Discrimination, Press Release, Oct. 1, 1946. See New York Times, Oct. 8, 1946, p. 11, col. 1; Note, “Persons Aggrieved” Under the Ives-Quinn Law, 6 LAW. GUILD REV. 421 (1946). SCAD’s ruling of Oct. 1, 1946, however, applies only to those cases where application blanks or other types of pre-employment inquiries express a limitation on prospective employment based on race or religion regardless of whether there is actual discrimination in the hiring and treatment. Comment, 56 YALE L.J. 837, 855 (1947). It does not permit CLSA to file complaints as an “aggrieved person” in cases where there is alleged discrimination in hiring or treatment. Despite CLSA’s claims to have won the right generally to file complaints as an “aggrieved person,” there must be an individually aggrieved complainant in most cases.

115. The Urban League, NAACP, and AJC have made 52 requests for such investigations. Mather, Report on the Experience of the Urban League, NAACP, and AJC with the State Commission Against Discrimination 4-5 (Prepared for the Urban League of Greater New York, Mar. 11, 1948). In these cases SCAD has no enforcement power but the investigation may include conciliation to end discriminatory practices. Id. at 4.

applied in the enforcement of other fair employment laws or have been subsequently embodied in new statutes in other states. 118

Results to date in the Stuyvesant Town 119 case have strongly supported CLSA's advocacy of legal action as a catalytic force to generate social action. Meetings, petitions and polls have resulted from the CLSA-instituted suit against a private insurance company which bars Negroes from its largest housing project.120 If won, the case will have far-reaching implications in prohibiting racial discrimination in projects built under the urban redevelopment laws in twenty-four states.121

Recently, CLSA has attacked the economic discrimination which often results from the observance of the Jewish sabbath. It challenged a ruling of the Pennsylvania Unemployment Compensation Board that a Jew be forced to accept a job which required Saturday attendance.122 Efforts have also been made to exempt Jews from the effects of the New York Sunday Law.123

**Fighting Anti-Semitic Propaganda**

CLSA rejects the idea that false and misleading propaganda can best be fought with measured statements of the truth.124 In combatting anti-Semitic propaganda, the Commission has attempted to employ legal weapons to prevent it from ever being written or spoken. It has urged that criminal

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117. A ruling on university employment agencies similar to the Columbia case, supra note 116, was handed down by the Massachusetts FEPC. PETEGORSKY, RECORD IN REVIEW 18 (1948).

118. See Phila. FEPC Ordinance, approved Mar. 12, 1948. Section 7 provides that the commission can issue a complaint when a charge has been made “by an organization which has as one of its purposes the combatting of discrimination. . . .”


120. See the following issues of Town & Village, a weekly newspaper circulated in Stuyvesant Town and Peter Cooper Village, for reaction of the residents: Nov. 4, 1948, p. 4, col. 4-5; Nov. 18, 1948, p. 1, col. 5; Nov. 25, 1948, p. 1, col. 3 (reporting sample poll showing residents in favor of admitting Negroes).

121. See appellants' consolidated brief, Dorsey v. Stuyvesant Town Corp., 85 N.Y.S.2d 313 (1st Dep't 1948). For a discussion of the importance of urban redevelopment laws in housing development, see Comment, Urban Redevelopment, 54 YALE L.J. 116 (1944).

122. CLSA appealed the Compensation Board's ruling that the refusal to work on Saturday was “unreasonable” refusal of employment. The Board has since obtained an order from the Superior Court of Pennsylvania returning the case to the Board for reconsideration. 3 LAW AND SOCIAL ACTION 90 (1948).

123. Ibid.

124. The Director of CLSA has written, “The shocking or the enormous lie is not always refuted by the patient, temperate marshalling of facts. . . . We must remember that freedom of speech or the press is not an absolute right or an absolute end. . . . Society can no more tolerate deliberate efforts to poison race relations than it can permit pornography, abuse of judges, or defamatory attack on public officials.” Maslow, GROUP LIBEL RECONSIDERED, Congress Weekly, Jan. 23, 1948, pp. 7, 8.
liability be imposed for the dissemination by mail of false literature ex-
posing members of a religious or racial group to hatred or harm. It has
supported the prosecution of an anti-Semitic speaker under a "breach of the
peace" ordinance. It would broaden such ordinances specifically to pro-
hibit defamatory remarks or the distribution of literature which defames
members of a religious or racial group.

But the Commission realizes that if anti-Semitic propaganda is to be
effectively combatted, the attack must be directed not only at the rabble-
rousing agitators but also at the private owners of large media of communi-
cation whose anti-Semitic views can reach larger audiences in more subtle
form. CLSA sought, therefore, to prevent the granting of an FM radio
station license by the FCC to the New York Daily News because of that
newspaper's alleged unfair treatment in news and editorials of Jews and
Negroes. Supported by a content analysis comparing the News' treat-
ment of items relating to Jews and Negroes with that of other New York
newspapers, CLSA argued that the News' past record was proof of its
future inability to operate a radio station in the public interest. The much-
criticized content analysis, a new evidentiary technique in this type of
hearing, was admitted in evidence but was not the official basis of the
FCC's denial of the News' application. The CLSA has filed another
petition with the FCC to revoke the license of station KMPC (Los Angeles)
because the owner has forced his allegedly anti-Semitic views upon his news
commentators.

125. CLSA, Draft of Federal Group Libel Statute (1943). Maslow, Group Libel Re-
126. 1 LAW AND SOCIAL ACTION 13-4 (1946).
127. CLSA, Model Race Hatred Ordinance for Municipalities (1947).
128. PETEGERSEY, RECORD IN REVIEW 21 (1948).
129. For a discussion of the Daily News case see Comment, Radio Program Controls:
A Network of Inadequacy, 57 YALE L.J. 275, 283-6 (1947).
130. Memorandum in the Nature of Proposed Findings Submitted at the Direction
of the FCC by the AJC, News Syndicate Co., FCC Docket No. 6175, November 12, 1946.
See Note, Content Analysis—A New Evidentiary Technique, 15 U. OF CHI. L. REV.
910 (1948).
6175 April 9, 1947 at 3: "We are unable to find any evidentiary meaning in the study in
relation to the purpose for which it was offered."
132. Memorandum Opinion, News Syndicate Co., F.C.C. Docket No. 6175, April 7,
1948. This reversed a prior decision granting the Daily News' motion to strike CLSA's
evidence. Memorandum Opinion, note 131 supra.
133. The FCC denied the license on the ground that ownership of a radio station by
a newspaper would be an undesirable centralization of communication in New York.
134. The FCC directed an investigation and scheduled hearings for Feb. 21, 1949.
3 LAW AND SOCIAL ACTION 89 (1948). See Morse, Poison on the Air?, 168 NATION 185
(1949); 168 NATION 201 (1949).
CLSA's efforts to protect Jews as a group from anti-Semitic propaganda have involved the Commission in disputes not only with the alleged disseminators of propaganda, but with the ACLU and other civil liberties organizations which oppose CLSA's actions as an unreasonable restraint on free speech. This has been especially true of CLSA's attempts to enact group libel laws. In arguing that a written or spoken anti-Semitic tirade is not an "idea" and therefore not within the protection of the free speech concept of the First Amendment, the Commission is employing a rationale which the ACLU feels could easily go beyond the narrow limits within which CLSA would confine it. But the ACLU did not oppose CLSA's radio station cases, probably because a station, unlike a newspaper, operates under a federal privilege and supposedly in the public interest.

Evaluation

It is perhaps too soon to pass judgment on the totality of CLSA's efforts. If its cases do not have the significance of NAACP or ACLU court victories, it is because the Commission is fighting a set of private discriminatory practices, each one fairly insignificant in itself, which the Commission hopes to eliminate by singling out each practice and fighting it by law suit or by statute. Perhaps because the Jewish local communities are not so closely-knit as the Negro communities, CLSA has not been able to produce among Jews the mass group support which the NAACP has created among Negroes.

That the CLSA's methods of direct action have emphasized merging technical social science research with legal skills is due less to a new approach than to the fact that an organization concerned with Jewish problems must employ sociological research to expose the more subtle discrimination to which Jews are subjected. In using sociological research as a basis for legal action CLSA's skills have not always been equal to the task. Sharp crit-

135. *Law and Social Action* 13 (1946); ACLU Monthly Bull., March, 1946, p. 3. This conflict is discussed in Fraenkel, Our Civil Liberties 88 (1944).


137. See *Law and Social Action* 13-4 (1946).


140. Unlike the NAACP, which is the only large Negro civil rights organization, the American Jewish Congress shares the field of Jewish activities with the American Jewish Committee and the Anti-defamation League of the B'nai B'rith, powerful organizations which espouse less direct educational methods such as good-will propaganda and which thus far have avoided the more direct legal action that typifies CLSA's approach. It is understood, however, that the American Jewish Committee has laid plans for its own program of positive legal activity.
icisms were leveled at the *Daily News* analysis, and the Commission recognizes the need for improved techniques in the future.

While other organizations, notably the NAACP, have employed affirmative and legislative techniques, CLSA has been the chief proponent of this method in the field of Jewish affairs. And it has been the first civil rights organization to clearly formulate and extensively publicize this positive approach which offers to all civil liberties organizations the most effective program yet suggested for meeting the complex civil rights problems of the future.

**The Task Ahead**

The emphasis in recent years on the development of new areas of civil rights has perhaps overly obscured the vital defensive role that organizations like the ACLU and NAACP must continue to play. The position of the United States in the world struggle for power has created pressures on free thought and expression which can be withstood only by strong organizations, like the ACLU, whose loyalty is beyond question. The task will require every resource that the Union can muster. Legal defenses must be found to combat the effects on free expression of loyalty programs or Congressional investigations into political beliefs. The technique employed in the Taft-Hartley Act of denying economic leadership because of political belief raises issues of free expression which have yet to be explored. The ACLU must employ every legal and propaganda device at its disposal to take a firm stand against those who would scuttle free institutions under the guise of saving them.

On a local level the ACLU is still a tremendously important force in defending the rights of unpopular and unorganized dissenters in all fields of thought who daily are confronted with some form of restriction on their right to free expression. The enforcement of rights already won requires a far-flung and highly alert organization. Local ordinances governing meetings and parades, or the use of public buildings, can still be invoked to infringe on free speech unless organizations are prepared to fight the issues in the courts at every turn.

Similarly, the NAACP's defensive role will be an important element in the Association's total performance as long as Negroes remain a segregated minority, subject to mob violence and unequal treatment by police and courts. To perform this defensive function well, both organizations, especially the ACLU, must further develop their local branches, enlisting more grass-roots support and the increased aid of local lawyers.

In addition to the defensive functions of the organizations, however, the

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141. See note 131 *supra*.

142. In a similar case in the future, CLSA would probably rely on two independent analysts with a final correlation of their findings, rather than the one here used. Communication to the *Yale Law Journal* from Will Maslow, Director CLSA, Feb. 15, 1949.
new methodology pioneered by the CLSA presents a continuing challenge to all civil liberties organizations. Civil liberties issues have become too complex and their solution too dependent on diverse skills to be properly handled by lawyers on a part-time basis. This is true as much for the problems facing the ACLU as it is for the Jewish and Negro organizations. ACLU, for instance, feels that free expression is seriously endangered by private monopolistic practices in communications industries. If true, this restriction can be fought only after long research and a well-planned legal campaign. And the needs of affirmative action have gone beyond the mere necessity of full-time legal talent. The NAACP brief in the restrictive covenants cases contained a lengthy sociological section; the CLSA brief in the case of the segregation of Mexican schoolchildren recognized the psychological effects of segregation. And the organizations do not doubt the importance of public opinion upon the major civil liberties decisions of legislatures and courts. They must be capable of meeting the problem which Jewish organizations have long faced and which the NAACP has recently attacked—to carve out new and more extensive rights rather than merely to defend an individual against violations of clearly recognized rights. And when the practice sought to be eliminated is in the field of private communication, housing, education, or employment, the problem requires the combined talents of lawyers, social scientists, and publicists.

As presently constituted, ACLU is structurally incapable of being an effective force for positive advance in the fields of free expression and thought. Its structure nationally is loose, with the branches geared primarily for defensive action or support of other organizations' efforts. Nor has the ACLU accumulated the necessary staff of lawyers and trained social scientists. The Union does have access to publicity and has considerable public prestige and influence, and were it able to revamp its structure and basic approach it could be a far more potent force in the civil liberties field. The chief obstacle is ostensibly one of funds. Its budget is far smaller than the other two organizations. But the organization does not appear to have at-

143. The Board of Directors in January, 1945 resolved: "That action should be directed to greater competition and consequent diversity in the channels of communication. Issues of civil liberty are involved in economic practices which create private controls in this field resulting in the denial of full and free access to information and opinion." ACLU, 1944-1945 Ann. Rep. 60 (1945). See, also, ACLU, 1945-1946 Ann. Rep. 57 (1946).


145. Brief for the AJC as amicus curiae, Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947).

146. ACLU's expenditures from June, 1947 to June, 1948 were $64, 477. ACLU, 1947-1948 Ann. Rep. 69 (1948). The NAACP's New York legal office spent $150,000 in 1948, communication note 53 supra, while the last available annual figure for expenditures of the entire NAACP New York office was over $360,000 in 1947. NAACP, 1947 Ann. Rep. 59 (1947). CLSA spent $100,000 in 1948, part of the total American Jewish Congress budget of $1,234,000. Communication to the Yale Law Journal from Will Maslow, Director, CLSA, Feb. 15, 1949.
tempted mass fund-raising, having resigned itself to the position that it is a group with an intellectual, not emotional, appeal. It is difficult to believe that a contributing membership of 8,000 is the limit of ACLU's potential following.

The NAACP, which has already done effective positive legal work, is especially lacking in social science research and proper intra-organizational coordination. The Association, in both its national and local legal efforts, has already recognized the importance of a firm sociological basis for its legal argument. The need for personnel trained in sociology and public relations will increase as the Association's efforts become directed at the less obvious forms of Negro discrimination.

Although the NAACP has a publicity office, there has been no attempt to support its legal efforts with properly timed publicity. There has been still less coordination between the Association's lobbying activities, legal campaigns, and publicity. And, finally, there has been little of that close coordination between national and branch offices which is required to create social pressure for particular objectives.

The NAACP's financial obstacles are not insurmountable. Only a tiny fraction of the Negro population has given financial support. The emotional appeal of the Association's work lends itself to fund-raising and membership campaigns. Comparatively slight reorganization and planning could make the Association a still more powerful striking force for the Negro people.

CLSA still has much to do before it lives up to its proclaimed goals as a legal and social force. There must be greater efforts for local organizational work if "social action" is to have concrete meaning. Its sociological work must do more than raise a mere presumption of discrimination; it must meet the burden of proof with a "Brandeis brief," a task not always accomplished in the past. CLSA is assured of financial support and

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148. The NAACP's social science research "staff" consists of one person. Although the NAACP magazine, The Crisis, published articles on housing before the restrictive covenants decision, the Association published no studies of its own. It has done virtually nothing in the field of psychological analysis of the effects of segregation with the limited facilities available. However, excellent sociological work has been done in the housing and education cases.

149. Support is derived from only about half a million persons, not all of whom are Negroes. See note 49 supra. According to the 1940 census, the Negro population was slightly under 13 million. 1949 World Almanac 203 (1949).

150. See Note, 15 U. of Chi. L. Rev. 910, 914 (1948); Memorandum Opinion, News Syndicate Co., note 131 supra. The CLSA brief in Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947), while recognizing the psychological implications of segregation, was not a professional psychological analysis of its effects.

151. CLSA, part of the American Jewish Congress, receives its money from Jewish community chests. See note 146 supra and Peter Gorsek, Record in Review 36 (1949).
within the scope of Jewish problems can undoubtedly make significant progress in fighting discriminatory practices and anti-Semitic propaganda.

The CLSA and NAACP offer the best future promise of effectively bringing to bear on civil liberties issues the public pressures, legal skills, and social science research which the problems demand. Group action in the civil liberties field, however, has witnessed the same alarming phenomenon which has marked group action elsewhere—the increasing ineffectiveness of the organization that represents no minority but rather the broader interests of society as a whole. The possibility that the ACLU either will not or cannot make the necessary adjustments in organization and approach represents a serious danger to the future of American civil liberties. The minority group organizations, which depend for financial support on their ability to further the interests of their own particular group, will not in all likelihood exert extensive positive efforts in the fields of free expression and thought.

The records of the ACLU, NAACP, and CLSA demonstrate the necessity for continuous revision of organizational techniques. This necessity will become more pressing as the organizations continue to withstand the repressive measures of governments and at the same time turn to fight the more subtle restraints which society has imposed on individual freedom.

152. This has been true primarily in the field of economic legislation where the general public has often found itself with no organized representation. Rev. op.cit. supra note 1, at 196–8.