FEDERAL BUREAU OF INVESTIGATION

FREEDOM OF INFORMATION/PRIVACY ACTS SECTION

COVER SHEET

SUBJECT: American Civil Liberties Union

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE: 5/3/55

FROM : L. B. Nichols

SUBJECT:

Tolson
Boardman
Nichols
Belmont
Harbo
Mohr
Parsons
Rosen
Tamm
Sizoo
Winterrowd
Tele. Room
Holloman
Gandy

I have talked to Irving Ferman, the Washington representative of the American Civil Liberties Union, from time to time. Ferman is quite exercised over the possibility of the Senate Civil Service Committee investigating the security program on a case basis and not maintaining the principle of the inviolability of FBI files.

I have expressed our concern from time to time on this and Ferman now tells me that the American Civil Liberties Union is taking a very decided stand with the Johnston Committee now before they get started on anything with the hope that the Johnston Committee will not force either the Bureau or the Department into the position where it will have to defend its not opening up the files.

Their letter is attached. LBN

cc - Mr. Boardman
Mr. Belmont
Mr. Rosen

LBN:fc
(5)

Attachment

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IRVING FERMAN

Director, Washington, D. C., Office
American Civil Liberties Union

May 3, 1955

Mr. L. B. Nichols
United States Department of Justice
Federal Bureau of Investigation,
Washington 25, D. C.

Dear Mr. Nichols:

In accordance with our previous conversation, I am attaching herewith, some copies of correspondence sent from this office to Senator Johnston and Mr. Finzel.

With best wishes,

Very truly yours,

IRVING FERMAN

IF/p
Enc.

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ENCLOSURE

May 3, 1955

Senator Olin D. Johnston,
Senate Office Building,
Washington, D. C.

Dear Senator:

I would like to commend you and your committee staff for the responsible and thorough manner with which the investigation of the Federal Employees Security Program has been pursued.

However, there is one aspect to your contemplated investigation deserving of mention at this time.

Since your investigations will rest largely on analyses of individual cases, there will probably be brought into sharp focus factual issues concerning a particular file resolvable by a review of confidential data in the investigative files maintained by the appropriate agencies of the Executive. Even though we would agree on the inviolability of investigative data in individual files, public excitement stimulated by knowledge of the alleged abuses of a particular case might cause pressure to have such data disclosed.

It is inherent in our whole concept of due process that investigative data concerning an individual should only be disclosed in a manner provided by law, either to a Grand Jury, a quasi judicial agency, or to an authorized person in

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ENCLOSURE

the Executive.

I believe you will agree that this principle needs reaffirmation now, before your investigation reaches the hearing stage.

With best wishes,

Very truly yours,

IF/p

IRVING FERMAN

May 3, 1955

Mr. Hubert H. Finzel,
Senate Post Office & Civil Service Committee,
Room 216
101 Indiana Ave., N.W.,
Washington, D. C.

My dear Mr. Finzel:

In accordance with our previous conversation, I am attaching herewith a copy of a letter sent by me to Senator Johnston on the inviolability of the files.

Of course, if the situation permits and if I am not being too presumptuous, I would like to suggest that it might be a good idea to have the letter answered publicly in the Congressional Record.

With best wishes,

Very truly yours,

IF/p
Enc.

IRVING FERMAN

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FEATURE PRESS SERVI

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May 9, 1955

Weekly Bulletin #1697

ACLU REPORTS ROTC LOYALTY OATH VICTORY

A major victory in the campaign against government-imposed loyalty oaths was reported last week by the American Civil Liberties Union.

The Union released a letter from the Department of Defense stating that the Department had rescinded an oath for college students enrolled in basic training courses of the Reserve Officers Training Corps. The oath required the ROTC enrollee to certify that he is not a member of any organization listed by the Attorney General as "subversive," that he did not attend any meeting or social activity sponsored by these organizations, or distribute the groups' literature, or give them any other form of aid.

The Union protested the oath in a letter to Secretary of Defense Charles E. Wilson on March 25, asserting that under the regulations a student listing the proscribed associations could not be formally enrolled in the ROTC program but could only participate on an informal basis, without being permitted to march in uniform or to borrow the necessary textbooks and drill equipment.

Pointing out that in many states universities and colleges which receive federal land grants must require students to take the basic two-year ROTC course, the ACLU letter had stated that the loyalty oath forces the student "to choose his associations, the speakers he wishes to listen to, the literature he wishes to disbribute, at the penalty of being expelled from the university if his choices do not meet with the approval of the Defense Department." The oath presented a danger both to education and to democracy, the ACLU had said, by giving the government control of "education and ideas and associations without that control having any reasonable relationship to national security."

The Defense Department's reply, made public by ACLU executive director Patrick Murphy Malin, came from Rear Admiral J.M.Will, Director of Personnel Policy, on April 5. Admiral Will wrote that the Department had just completed a "thorough reevaluation of our policies" on the loyalty oath subject, "and have concluded that we could greatly improve our method of administering the law by adopting a positive loyalty oath for basic students in lieu of the present certificate. We have issued instructions to the military departments to implement these findings." In its March 25 letter, the ACLU had stated that the purpose of Public Law 458, which covers candidates for ROTC training, could be met by a simple affirmative oath.

The new oath for basic ROTC students reads as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

Admiral Will stated that the original oath, embracing organizational membership and association, would be continued for the advanced ROTC students "of the Army and Air Force and to Naval ROTC students, as candidates for commissions in the Armed Forces."

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In a letter sent to Admiral Will expressing the Union's gratitude for the elimination of the broad oath for the basic ROTC students, Malin said:

"The retention of form DD98, which is the basic loyalty oath required for all members of the Armed Forces, as applied to the advanced ROTC students, is now under study by our organization, in line with its review of general problems affecting civil liberties growing out of the Armed Forces security program."

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PITTSBURGH COURT BANS PUBLIC PAYMENTS TO RELIGIOUS ORPHANAGES

Public funds can no longer be used for the maintenance of delinquent, neglected and dependent children in sectarian institutions, a Pittsburgh Court of Common Pleas has ruled.

The Pennsylvania Constitution bars appropriations to any denominational or sectarian institution, but, in 1933, the State Legislature adopted a law directing county authorities to place children, "as far as possible, under the care, guidance and control of persons having the same religious beliefs as the parents of the children or with some association, institution or society which is controlled by persons of such religious belief." The law also directed that expenses for such care be paid by either the city or county.

Defendants in the action were nine religious orphanages who had received more than $250,000 from Allegheny County in 1953. It was brought out at the trial that there were no public institutions in Allegheny County for the care of dependent children, nor any private institutions not affiliated with church groups.

Recognizing the difficulty in making an immediate switch to publicly-operated facilities, Judge A. Marshall Thompson held that, "It may require some period of time to provide for the maintenance of these children in private homes or in some suitable institutions that are not sectarian...a period of time in which to make the adjustment should be provided before a final decree becomes effective."

Judge Thompson relied on several previous cases of the Pennsylvania Supreme Court reaffirming the constitutional separation of church and state even where the legislature or state-created agency is willing to modify this basic tenet.

The State Attorney General and the County Solicitor appeared in defense. They maintained that the expenditure of public funds in this manner was permissable because it was raised by county rather than state taxation, and because the moneys were not gifts or appropriations to the institutions involved, but payments for specific services. Judge Thompson, however, rejected both contentions in view of the clear and imperative language of the State Supreme Court in previous cases.

ACLU CRITICIZES LAWYER'S DISBARMENT BASED ON 5TH AMENDMENT PLEA

The American Civil Liberties Union has criticized the disbarment of Leo Sheiner, a Florida attorney, who had invoked the constitutional privilege against self-incrimination.

Sheiner, whose case is now awaiting decision in the Florida Supreme Court, first invoked the Fifth Amendment when he was called to testify before a Senate Interral Security subcommittee inquiry last year, and when disbarment proceedings were brought against him in the Florida court because of his stand, he again raised the privilege.

Speaking for the ACLU, executive director Patrick Murphy Malin declared that no lawyer should be asked whether he was a Communist until there was competent evidence before the court considering disbarment that he was a Communist, and that no adverse inference can properly be drawn from the exercise of the privilege against self-incrimination. "This privilege," Malin said, "exists to protect the innocent as well as the guilty."

In asserting that the use of the Fifth Amendment itself should never be the sole ground for disbarment, Malin emphasized that there was no evidence of Sheiner's Communist activity or association. The ACLU added that even if membership in the Communist Party was shown, this should not be the reason for disbarment, unless it was proved that the membership had resulted in the lawyer performing acts inconsistent with his professional duties.

Malin commented that "no witnesses had testified against Sheiner before the judge who disbarred him asked Sheiner whether he was or ever had been a Communist Party member. At the very least, Sheiner should have had an opportunity to cross-examine his accusors before being forced himself to answer the question. Otherwise the protection of due process of law was lacking.

"In disbarring Sheiner, the judge relied solely on the fact that Sheiner had refused to answer the question about Communist Party membership, and that Sheiner had invoked the privilege against self-incrimination. But the federal courts have held that no adverse inference can be drawn from the exercise of the Fifth Amendment which is imbedded in our Constitution, and that it exists as a shield for the innocent as well as the guilty. Therefore, no inference should have been drawn that Sheiner was or ever had been a member of the Communist Party.

The ACLU recognizes that the Communist Party plays a dual role," the ACLU spokesman added, "in that it carries on some work that is political agitation protected by the First Amendment, but that it is also part of an international conspiracy. But we do not believe that a lawyer can be properly disbarred for membership in the Communist Party alone. It may be that in some cases membership in the Party may go beyond mere association into external obedience which actually results in the distortion of a lawyer's duty. But when a lawyer has been practicing for a long period of time, as Sheiner has, distortion - if there has been distortion - would be visible. In the absence of adverse evidence relating overwhelmingly to actual distortion, we believe that Sheiner could not properly have been disbarred."

ACLU AIDS IN HUIE DEFENSE

The ACLU has noted the appeal of author William Bradford Huie's contempt of court conviction in the Florida Supreme Court with a public statement upholding Huie's position.

Huie had been preparing a book on the case of Ruby McCollum, who had been accused of murdering her lover in Florida. His research led him to believe that Judge Hal W. Adams, who tried the case was actually involved himself in a net of intrigue that emerged as background to the murder. Huie was cited for contempt by Judge Adams when he tried to publicize this and other facts about the case uncovered while he tried to obtain an interview with Mrs. McCollum.

The ACLU statement declared that due process was denied Huie when Judge Adams was permitted to try a contempt citation based on a charge Huie had made against the judge himself.

Using the language of the United States Supreme Court in a similar case, the ACLU pointed out that "when a judge might have to blacken his own reputation by finding in favor of the defendant, 'the temptation of the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused,' renders a trial by the judge unconstitutional."

CATHOLIC OBJECTORS APPEAL DROPPED

Efforts of the Northern California ACLU to appeal the case of two Catholic conscientious objectors, George Lillis and Albert Duffy, have apparently come to an end.

The ACLU had moved in Federal court for leave to prosecute the appeal at government expense, but was turned down by Federal Judge O.D. Hamlin who was, "satisfied that the proposed appeal is without merit and not taken in good faith."

The ACLU decided to drop the appeal because of the expense of continuing and because of the slim chances for success in view of previous refusals of the Court of Appeal and Chief Justice Earl Warren to grant bail on the ground that there was no substantial question involved in the case.

TENNESSEE GOVERNOR VETOES SEGREGATION BILLS

Governor Frank G. Clement of Tennessee has vetoed two bills passed by the State Legislature for the purpose of maintaining segregated schools in Fayette and Haywood counties. Similar bills for other counties have been introduced and, if passed, presumably will be turned down by the governor. The Legislature failed to override the veto.

In his veto message, the governor pointed out that the measure was merely an attempt to circumvent the segregation decision of the United States Supreme Court.

He noted that the "only possible effect (of the bills) can be to foment racial hatred and disorder where none exists, and to precipitate issues to the detriment of all concerned."

The bills, invoking the "police power," would give school boards in certain counties the authority to assign pupils to any school the board might designate.

CIVIL LIBERTIES BRIEFS

The St. Paul, Minnesota, City Council unanimously adopted an FEPC ordinance, making it the 35th city in the nation to bar discrimination in hiring...New Jersey has had a law prohibiting discrimination in public housing since 1950, but court action in each case was required to enforce it. The State Legislature has now given the Division Against Discrimination, an administrative body, power to enforce the law on its own.