

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## TRIAL BY JURY

### ITS ABOLITION IN THE BOMBAY STATE

It is not at all surprising that the Bombay Government followed the precedent of the Uttar Pradesh Government in announcing by an executive order that the jury system is abolished in the whole State except in the area immediately surrounding the State's capital. Indeed it is a matter of surprise that with the example of the U. P. before it the enterprising Bombay Government waited as long as three years in the step it has now summarily taken. The reason given for this drastic measure is not that the jury system has failed to fulfil its historic function, which of course could not be contended with any justification, but that people are reluctant to serve as jurors and that the jury system makes trials protracted and expensive. The "Statesman" points out how the grounds advanced are without substance. It says that "some citizens' reluctance to do their civic duty under jury summons" could be "counteracted by a few heavy fines," and that the supposed expense could be "remedied by general overhaul of procedure," "a much more important cause of law's delays (being) the egregious number of adjournments granted by courts of first or higher instance." The newspaper characterizes the order of the Bombay Government as "a typical act of bureaucratic autocracy: when the file has acquired enough important signatures, the public, however affected, is merely called upon to accept the decision and like it." The "Statesman" recalls how the Government of India repelled the suggestion that the jury system had failed in 1953 when a private member introduced a bill to abolish the system. It remarks:

"It would be a perversion of the truth," said the Central Law Minister, "to say that juries have been tried and found wanting in this country." The Home Minister held that 95% of corruption charges levelled against them were untrue. An occasional jury may be sentimental in its approach to criminals, but history shows many instances of judges who were over-harsh; besides, the Indian legal system permits frequent appeals by the prosecution as well as the defence. In these days, when even a democratic State aims to be all-embracing in its relations with the subject, the loss of historic safeguards is not to be re-

garded with equanimity: no doubt Indian judges have a fine reputation for independence and impartiality, but the essence of jury trial is hearing, not by some remote even if sympathetic professional, but by a man's own peers.

The Bombay and the U. P. Governments have taken no note of the high value traditionally attached to the jury system in British jurisprudence from which our legal system has derived. Trial by jury has been recognized in England as "a prized shield against oppression" and as such was incorporated in Magna Carta. It was part of England's common law. Blackstone called it "the glory of the English law." The United States, which inherited all the safeguards of civil rights incorporated in the British Constitution, adopted this safeguard and gave it greater strength. While trial by jury was, in Blackstone's words, "a privilege" in England, it was transformed into a right by the framers of the United States Constitution. Art. 3, sec. 2 (3), of that Constitution lays down: "The trial of all crimes, except in cases of impeachment, shall be by jury." Justice Story says in his Commentaries:

When our more immediate ancestors removed to America, they brought this great privilege (trial by jury in criminal cases) with them as their birthright and inheritance, as a part of that administrative common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our state constitutions as a fundamental right, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized it in the most solemn terms.

While the original Constitution was content to provide that criminal cases be tried by jury, "the people and their representatives," as Justice Murphy observed in *Glasser v. United States*, 315 U. S. 60 (1942), "leaving nothing to chance, were quick to implement that guarantee by the adoption of the Sixth Amendment which provides that the jury must be impartial." "Whatever limitations were inherent in the historical common law concept (prevailing

in England) as a body of one's peers do not prevail in this country. Our notions of what a proper jury is have developed in harmony with our basic conceptions of a democratic society and a representative government." As said in *Smith v. Texas*, 311 U. S. 128 (1940): "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." So much emphasis is laid on the proper constitution of the jury that an indictment or a conviction of a Negro for instance is set aside if it be found that in the summoning of the jury Negroes were excluded by reason of race or colour, however strong the evidence may be which goes to establish the guilt. This will show what a fundamental place the jury system holds in the United States. Such a system is scored out by the Bombay Government by a stroke of the pen!

## Missionary Activities in Madhya Bharat

### A Committee's Recommendations

Unlike the Madhya Pradesh committee, the Madhya Bharat committee's report on its inquiry into Christian missions confines the scope of the inquiry to missionary activities in the state of Madhya Bharat, instead of turning it into a global inquiry, and makes practical and reasonable recommendations based on facts as it found them instead of on wild premises on which the Madhya Pradesh committee's recommendations are founded.

What above all distinguishes this committee from the Madhya Pradesh one is that it absolves Christian missions from the grave charge levelled against the missions in all States by the Madhya Pradesh committee that the one aim of the missions is to bore cells in the Indian body politic so that India be brought under the domination of Christendom, which in the committee's opinion is only another name for Western political powers. The Madhya Bharat committee thinks that it would be unjust to accuse missionaries of any subversive activities carried on from a political motive. It observes that it found no tangible evidence of any active anti-national propaganda by the missions. All that could be asserted in this connection is that the missions, backed as they were by political power in the British regime, have, after achievement of independence, "left a heritage of glamour for foreign missionaries in the minds of illiterate masses." And apparently the committee takes the view that the glamour will in course of time fade out and nothing need be done by way of surveillance to check missionary activities.

When this charge of treasonable activities is once out of the way, the matter can be looked at in proper perspective, and all that remains to be done is to take measures to prevent conversions by fraud, coercion or any other illegal means. And in this respect the recommendations made by the committee appear to us to be sensible. Mass conversions and conversions of minors are, it will be

agreed, improper, and the committee's chief recommendations are for the purpose of putting a stop to them. Mass conversions, the committee says, are against "the creed of the missions" and are "a departure from their principles;" they "may sterilise the Church and dim its glory;" and in order to check them it would rely, it appears, on an appeal to the good sense of the missions to make their conversions conform to the true spirit of Christianity instead of increasing their flock by exploiting the ignorance and poverty of the Indian people and making converts who "have merely the stamp of Christianity in name," and few of whom, if at all, "give up their adherence to their old religion and (degraded) social customs and have any knowledge of Christ or Christianity." The committee considers conversion of minor children even with the consent of their guardians not only improper but even illegal according to the law in force in the State. "It is possible," says the committee, "to educate a deserted or abandoned child in a real spirit of social service even in a Christian institution and atmosphere without converting the child until it becomes a major." For this purpose the committee has recommended that conversions from one faith to another should be duly registered in the office of the Collector of the district or some other office on a prior notice of the intended conversion on an application and affidavit of the convert and the priest solemnizing the conversion within a month of his conversion. This is a suggestion which will have the support of every thinking person.

The feature in the report which appeals to us most is to invite non-Christians to be self-introspective in the matter. Since conversions to Christianity are mainly due to extreme poverty, illiteracy and ignorance of the Scheduled Castes and Tribes, from whom the converts are generally drawn, the committee observes that there must be a thorough heart-searching in the non-Christian communities, and particularly among Hindus who suffer from the curse of untouchability. They must adopt measures for improving their social and economic conditions. The committee says:

With the petrified ideas of castes and the attitude of caste Hindus towards the Harijans, who are looked down upon as no better than lepers, benefits by way of social status and betterment of economic conditions naturally provide an allurements for conversion.

The immediate need is for the spread of literacy and upgrading of the social and economic status of the classes from which converts are mainly drawn, so that they may act in future with full consciousness of what they do.

While congratulating the Government for taking legal and economic measures for the betterment of these classes, the committee expresses a doubt whether the full benefit goes to those for whom it is intended. "There is need for greater vigilance on the work done by Government agencies and for a greater sense of duty on

the part of the workers, so that the goal may be reached soon." The committee says :

Mere Government help would be of little avail unless society was alive to its own duties in this regard. Efforts in this direction must be intensified not by mere platform speeches and platitudes but by a direct contact with the millions of neglected people of the villages in the true spirit of religion, sympathy and love and strong effort directed to the removal of the inferiority complex ingrained in them by centuries of servitude.

This is the only way in which the problem can be solved. The inhibitory measures which the Madhya Pradesh committee recommends would be not only unjust to Christian missionaries but ruinous to those among whom they work.

#### Quit Order Served on a Bishop

How local Governments are apt to proceed against foreign missionaries from unjust suspicion is well described in the following news item from Calcutta regarding a quit order served on a United States Bishop :

The Government of India has withdrawn an order directing a 64 year-old American Catholic Bishop, who has spent 17 years in India, to leave the country on a charge of publishing a book alleged to be offensive to Hindus and Muslims.

It is now ascertained that the book actually was published 58 years ago.

The Bishop is the Most Rev. Louis L. R. Morrow with his See at Krishnagar in Naid District, West Bengal. He received a letter from the West Bengal Government stating that his residential permit was not to be extended after its expiry on July 17 and requesting him to arrange his departure.

No accusations were made in this letter. It was only when the bewildered Bishop went to Calcutta that he discovered a list of five charges including publication of the book entitled *Satya Dharma Nirupan* which was issued in Jessore, now in East Pakistan, in 1898, without the name of the author mentioned in the book.

When the Bishop pleaded innocence on this score and requested an extension of his residential permit, his appeal was granted and later the Government of India rescinded the quit notice.

The second charge related to a Bengali drama entitled *Rakshak Dut* which was staged in a village. It was stated that the play wounded the feelings of some spectators.

According to the Bishop, who returned to Krishnagar from leave only a day before the play was presented, the drama was staged by 17 Hindus and 10 Christians on their own and without his knowledge.

The third charge related to a book in Bengali published 11 years ago, alleged to contain historical facts objectionable to other faiths. The Bishop was held responsible because the dedication on the first page of the book read : "Homage to the Most Reverend Louis L. R. Morrow, Bishop of Krishnagar." It was published while he was away in Europe and without acknowledgment by him.

Two other charges related to copies of a circular by the Bishops of America against the secularism of the Government of India. According to the Most Rev. Morrow, the circular is a century-old statement on Catholic doctrine. The Bishop denied that he tried to influence the people against the Government of India's secularism and said he never distributed a single copy of the circular.

Bishop Morrow is a popular figure in Krishnagar and was twice elected Municipal Commissioner of the town.

## INTERNATIONAL GUARANTEE OF HUMAN RIGHTS UNDER THE CONVENTION OF THE COUNCIL OF EUROPE

Comparing the provisions in the Council of Europe's Convention for the *Protection of Human Rights* with those in the U. N. Covenant of Human Rights, we pointed out at p. 316 how the content of the human rights guaranteed by the European Convention was larger than that of such rights guaranteed by the Covenant, and at p. iii : 259 how the agency provided by the former for enforcing these rights was more effective than that provided by the latter. The Secretary General of the United Nations has now submitted a memorandum on the European Convention (which, being ratified by ten States members of the Council of Europe, became operative on 3rd September 1953), giving in detail the procedure under which the rights guaranteed by the Convention are proposed to be implemented. We summarize this memorandum below.

First, it should be noted that the European Convention grants to individuals a right of appeal to an international organ, while the U. N. Covenant denies private persons such right of petition, inasmuch as the latter takes into consideration only complaints of a breach of human rights made by one member State of the U. N. against another member State. The lack of this private right of petition in the Covenant makes this instrument almost valueless for all practical purposes. But let us for the moment confine our attention to the manner in which inter-State complaints about violations of human rights are dealt with under the Convention.

Any High Contracting Party may lodge a complaint of breach of the Convention by another High Contracting Party. This complaint is then referred to the European Commission of Human Rights, consisting of a number of

members equal to that of the State members the Council of Europe ( no two members being nationals of the same State ) and elected by the Committee of Ministers of the Council of Europe. The Commission then examines the complaint, ascertains the facts and, if necessary, makes an investigation. The first approach of the Commission is by way of an attempt to secure a friendly settlement of the matter. This does not mean that some kind of opportunist compromise is sought. The settlement must be " on the basis of respect for Human Rights as defined in the Convention. " This attempt at settlement is made through a sub-commission, which is empowered to hear witnesses and experts that the parties may produce. If the attempt for a friendly settlement fails the sub-commission presents a report containing a brief statement of the facts and of the solution reached, after which nothing further requires to be done. If, however, the attempt at reconciliation is unavailing, the Commission submits a report to the Committee of Ministers, in which the facts are stated and its own opinion is recorded as to whether the facts found disclose a breach of the Convention by the State concerned.

Within two months from the transmission of the Commission's proposals, the Commission itself or any of the State members of the Council of Europe may refer the question to the European Court of Human Rights. However, this provision is not yet effective; for the Convention provides that election to the Court will take place only after eight States have declared that they recognize as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the application of the Convention, whereas at present only five States have made such a declaration accepting the Court's compulsory jurisdiction. Accordingly, the only body which is at present competent to act upon the Commission's report is the Committee of Ministers, which is the executive body of the Council of Europe. The Committee is required under the Convention to decide whether there has been a violation of the Convention. The decision may be taken in this matter by a majority of two-thirds, while unanimity is necessary for any other important function exercised by the body. If the Committee comes to the conclusion that a State is guilty of a breach of the Convention, it decides what measures the State should take to redress the wrong and prescribes a period during which the measures ought to be taken. If, on the expiry of this period, the Committee finds that the necessary measures have not been taken, it decides in what manner effect should be given to its original decision, i. e., it decides what sanctions should be adopted to make the State concerned comply with the Convention. The decisions of the Committee are binding. ( There is no such provision in the U. N. Covenant. )

Now, to return to the other category of complaints which the Commission is empowered to deal with, viz., complaints by private individuals about breach of human

rights enumerated in the Convention. The Commission can receive petitions from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights by any State which has declared that it accepts the Commission's competence in the matter of individual petitions. The admissibility of the petitions is then tested. The first rule of admissibility is ( and it applies to complaints made both by States and individuals ) that all domestic remedies have been exhausted. But in the matter of individual petitions admissibility is subject to a number of additional conditions, which are fairly strict, one such being that no petitions will be admitted which are manifestly ill-founded or an abuse of the right of petition. This was done in order to avert a possible danger of the Commission being flooded with a number of futile and pointless petitions. The Commission thus acts as a " filtering " body; it screens all individual petitions received, in order that the right of individual appeal which the Convention grants but the Covenant denies does not give rise to abuses. The individual petitions that come to be admitted are then dealt with precisely in the same manner as petitions received from States, the Committee of Ministers being the final authority in the matter.

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## Right to Counsel

### Indiscretion of Head of Internal Security Division

Every accused person has a constitutional right to counsel and there is a correlative duty on the part of the Bar to see that every accused, no matter how unpopular, is represented competently.  
—*The late Justice Jackson.*

This statement made by a renowned Justice of the Supreme Court in the American Bar Association Journal emphasizes not merely the right of defendants in criminal prosecutions to counsel which is spelled out in the Sixth Amendment to the United States Constitution but also the corresponding duty of the Bar to make the right effective by furnishing legal advice to those who need it, irrespective of the crime with which a defendant is charged or the unpopularity of his political views. But this latter part of the statement concerning the duty of the Bar was brought into question by Mr. Tompkins, head of the Internal Security Division of the Justice Department, in a press interview given by him in early March, and the interview created much furore throughout the United States. The statement said to have been made at the interview was subsequently denied by Mr. Tompkins, and the matter may be regarded as closed. But the very attacks that the statement provoked in the press and in the world of lawyers demonstrate what importance is attached to the constitutional protections afforded to all those charged with crime.

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Ten second-string Communist leaders in Cleveland were being prosecuted under the Smith Act, but unlike the top-ranking Communist leaders who were convicted under this Act in *Dennis v. United States*, 341 U. S. 494 (1951), the accused in this prosecution did not appoint counsel of their own choice to plead for them. The Judge, therefore, finding that the defendants were indigent, appointed seven attorneys for them in order that they may be adequately defended. In the ordinary federal trials an attorney can serve by court appointment without compensation since such trials usually last for only a week or two, but most Smith Act trials have taken from seven to nine months, and to serve for that long without compensation would be difficult for most attorneys. The Cleveland Bar Association therefore made arrangements for providing financial assistance to the court-appointed attorneys. Eventually, six of the ten accused were convicted and four were acquitted.

After the trial was over, Mr. Tompkins gave a press interview in which he said that the bar associations which volunteered to defend the accused were themselves "dupes" of the Communist Party, which was by its new strategy of not retaining counsel trying to discredit the Smith Act and remove it from the statute book. This was a direct attack on the Cleveland Bar Association which made a collection to finance the defence of the accused. The Association explained in what circumstances it raised the funds. It said it had no dealings with the Communist Party and intervened only when the Judge in the case "sought and obtained our aid in furnishing counsel because the Constitution of the U. S. provides that in every criminal case the defendant is entitled to be represented. . . . The defence of an unpopular cause is not an easy task and those who perform such tasks are acting in the highest and best American tradition."

Mr. Tompkins, however, later issued a statement denying that he had characterized the bar associations as "dupes" or that he had criticized the activities of the Cleveland Bar Association. He said:

I have never directly or indirectly challenged the right of any defendant—no matter how unpopular a cause he may espouse—to be represented by competent counsel. Those of us charged with the duty of safeguarding national security have a responsibility to keep the public informed of change of policy and tactics on the part of the Communist Party. In the interview I discussed such recent shifts in the internal policy of the Communist Party.

The Cleveland Bar Association, which had raised funds to pay for the services of the Communists' court-appointed lawyers, accepted the explanation, and the matter rests there.

However, the strong denunciation instantly aroused by Mr. Tompkins' interview, as originally reported, as an attack on the right of fair trial is a matter of great signifi-

ficance. It cannot of course be that the Justice Department resented the Cleveland Bar Association helping to defend the accused. For the present Attorney General, in a speech he made in 1953, contrasted the American system of justice with the Soviet system and emphasized the right to counsel and the other protections afforded to defendants in criminal prosecutions by the Sixth Amendment. Civil Liberties bodies were quick to protest against Mr. Tompkins' statement. The American Civil Liberties Union, describing itself as "firmly opposed to Communist tyranny," said: "Our civil liberties will become a sham if this principle (that is, the principle enunciated by the late Justice Jackson) is not staunchly defended." The Ohio Civil Liberties Union said: "It (the Cleveland Bar Association) helped only to shoulder the burden of assuring the right to counsel. If the Smith Act is undermined by the right to counsel then its foundation must be weak. Certainly American freedom cannot be advanced by undermining the rights of fair trial." The press was also unanimous in condemnation. The Cleveland "Plain Dealer" said:

(Tompkins') statement not only assailed our bar groups for complying with the recognized ethics of their profession and for acting according to requirements of Arts. V to VII of the Constitution's Bill of Rights. He was directly impugning the federal bench here, for it was the court which made the request for the furnishing of adequate counsel for the Red defendants. If the accusation of "dupes" was made against the bar members and lawyers who represented the Communists, then the inference can be taken that Federal Judge McNamee (who tried the case) was a dupe in making the request. This comes perilously close to contempt.

The "Cleveland Press" made the following remarks in an editorial:

Cleveland can give (Tompkins) in charge of internal security cases a lesson in the American way. He needs it. Apparently irritated because his outfit lost some of the recent Smith Act cases here, this man yesterday indulged in some vicious and thoroughly un-American name-calling.

The lawyers served at great personal sacrifice. They lost time and they lost money. And the bar associations acted courageously in an unpopular cause, which is the ultimate test of courage. They remembered this great document (the Bill of Rights) extends the wonderful right of fair trial to everybody. Not just to people you happen to agree with.

## South Africa's Ghetto Act

A large-scale population reshuffle is being enforced in Johannesburg as a result of the application of the Group Areas Act adopted by the Strydom Government in 1950. More than 1,00,000 non-whites have been ordered to leave their homes and resettle in other areas in order to make

room for whites within one year in the case of some areas and within two years in other. This Ghetto Act has for its object the achievement of the African Nationalists' ideal of a society compartmented according to the colour of the skin.

Typical of the groups affected are 22,000 Indians who have been told to leave their homes which they have occupied for many years and move to a barren and undeveloped site some twenty miles from the centre of the city. The Union Government lays the unction to its soul by pleading that since the properties will be bought out at "fair valuation," no injustice will be done to anyone. Under the Group Areas Development Act of 1955 a Development Board has been created, and it has been given power to expropriate property in all proclaimed areas. It appoints valuers to determine the "basic value" of such property. After expropriation, the Board invites the owner of property to state his price. If the agreed price exceeds the basic value, then 50 per cent. of the excess price must be paid to the Board and if the price is below the basic value, then the Board must make good 80 per cent. of the loss. Any dispute between the owner and the Board is settled by three arbitrators appointed by the Board.

The compensation that an owner could thus hope to obtain would be but a fraction of the value of the ground that has to be abandoned. The Indians who are to be uprooted from their homes own property in the city worth about £10 million, and they will get very little by way of compensation. However they lose not only their homes, but their businesses also. They are of course free to transfer their businesses too to Lenasia, which is to be their new home, but their present customers are mostly Africans, Coloureds and Europeans, and this clientele they will lose. And if they sell their shops and businesses also within the prescribed time, naturally they will suffer substantial losses.

This compulsory removal of whole populations has been condemned by many whites. A Johannesburg city counsellor, Mr. Cutten, said: "The recent proclamations must have brought shivers of horror and distaste to all tolerant people, not only in South Africa, but to enlightened public opinion all over the world. . . . It is one of the most callous acts even in the history of this Government" The "Star" reported that it had received telephone calls from several people asking: "Is this inhumanity going to be allowed?" "Has this master race complex not gone far enough?" Mr. Miller, leader of the controlling United Party in the Johannesburg city council, said that the implementation of the Group Areas Act "threatens to plunge the country into what will become the most serious racial cleavage this country has known." Elsewhere, of course, this South African effort to impose a new variety of white supremacy and a new era of segregation has evoked strong disapproval. The "New York Times," for instance, says: "The policy of enforced segregation in South Africa is not

only political and economic madness, but may well be the sowing of future whirlwind whose consequences tomorrow may be dire indeed."

The Indians are planning to boycott Lenasia and have called upon all South Africans, white and non-white, to prevent the Government from carrying out the Group Areas Act, "the pivot of apartheid calculated to uproot and ruin the non-white peoples and force them into ghettos."

### South Africa's Race Laws

Dr. Alan Paton, Chairman of the Liberal Party of South Africa, thus describes the recent anti-African legislation of the Union Government:

The Natives (Urban Areas) Consolidation Act radically restricts the right of "natives" to acquire land in urban areas and rural townships; it radically restricts the right of Africans to enter or remain in an urban area for more than seventy-two hours without a permit; it permits the Minister of Native Affairs to order the removal of any African whom he considers redundant; it empowers an urban local authority to order an African to depart from its area if, in its opinion, the presence of that African is detrimental to the maintenance of peace and order in that area—this opinion not being required to be formed after the trial of the issue according to the procedures of the law, but in the exercise of a discretion by an official. This is the effect of the latest amendment—the Natives (Prohibition of Interdicts) Act, 1956,—and in terms of the amendment the African can no longer appeal to the courts for a stay of execution of such removal order on the grounds of error, invalidity or any good reason at all. He must obey first and only thereafter may he bring the order in review before the courts.

### Violation of Human Rights in Kenya

The International League for the Rights of Man, of which the All-India Civil Liberties Council is an affiliate, has in a letter to the Secretary General of the United Nations protested against "wholesale violations of human rights by the Kenya Government in suppressing the Mau Mau trouble." The letter says that the Kenya Administration has violated six Articles of the Declaration of Human Rights and that the violations include —

the exaction of forced labour, the use of torture to obtain confessions, discriminations before the law, the arbitrary arrest and detention of thousands of Africans of the Kikuyu, Embu and Meru tribes without any form of trial, the institution of a pass system, the institution of enforced villagisation and the deprivation of the property of political detainees and suspects.

Conceding that the suppression of the Mau Mau revolt would unavoidably involve the violation of some rights, the League said: "The evidence available demonstrates that the violation of human rights in Kenya has passed far beyond what might conceivably be termed unavoidable limits."

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## COMMENTS

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### Pre-Censorship in the Punjab

The district magistrate of Jullunder enforced on 14th June an order under sec. 144, Cr. P. C., directing two Urdu dailies — *Partap* and *Hind Samachar* — to submit for prior scrutiny all news items, articles, comments and photographs relating to the anti-regional formula, the language question and the Hoshiarpur incidents, the order to be in force for two months. Although under the order the newspapers were prohibited from publishing any news or comment without showing it to the district magistrate and obtaining his approval, the order was claimed not to be an order of pre-censorship. It was sought to be justified on the ground that the newspapers contained articles calculated to influence the minds of the reader against the police, magistracy and other officers of the Government so as to lead to acts of violence. The order was challenged in the Punjab High Court as unconstitutional. It was contended that sec. 144 could not be utilized for imposing pre-censorship on the press, and that if it could be so utilized, it at any rate infringed Art. 19 (1) (a) of the Constitution which guaranteed freedom of the press.

As a sequel to this order, the legislature of the Punjab on 5th September passed unanimously (1) the Special Powers (Press) Bill, giving power to the authorities to control the "irresponsible activities" of the press indulging in and fostering communal disharmony, dissemination of "violent" news and pernicious propaganda of a communal nature. The Bill, the first of its kind in India, empowers the Government to impose pre-scrutiny on any newspaper if in its opinion news is published in a manner prejudicial to the maintenance of communal harmony in the State. No restriction will, however, be imposed on any press for more than two months at a time and persons affected by the prohibitory order have been given the right to represent to the Government to modify or rescind the order.

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### Separate Constitution of Kashmir

The Kashmir Government formed by the National Conference Party has announced that the Constituent Assembly appointed by the Government has finalised the draft of the Kashmir Constitution and that the Constitution will soon be adopted (while most of the

Oppositionists are held in detention). The Praja Parishad of Jammu protests against the Kashmir State being at all allowed to have a separate Constitution when no other State in India has been given the right to frame its own Constitution, and it insists that if Kashmir is to enjoy this privileged position, Jammu should have a separate Constitution because the Kashmir Government is not representative of nor responsive to the people of Jammu.

This demand may seem unreasonable, but it at any rate brings pointedly to one's notice how discrimination is being made between Kashmir and other parts of India. The Indian Union is a federal union, and it should have left the drafting and adoption of the Constitutions of its component units to these units, as was the case in all federal Governments like the United States, the Australian Commonwealth or the Dominion of Canada, where the states or provinces were given authority to have their own frameworks of government. In all federations the National Constitution deals only with those subjects which are under the jurisdiction of the National Government and leaves the units which go to form the federation free to have the Constitutions of States or Provinces of their own choice.

The Indian Union is the only exception to this: it does not merely demarcate matters of provincial and national concern and decides how the latter should be managed; it also prescribes how matters of local concern should be managed by the States. Having taken this unprecedented line in the case of every other unit, it however gives to Kashmir State the power to frame its own Constitution. Not only this, but even the National Constitution in its application to Kashmir is modified in several respects in accordance with the wishes of the Kashmir Government. We do not believe there is any example in history in which this kind of discrimination is allowed.

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### Protection of Linguistic Minorities

The scheme for the reorganization of States, which to a large extent consists of bringing together speakers of one language in one State, has naturally given rise to a demand that the rights of those speaking another language that will in the process be left in a State be adequately safeguarded. Such a plea was made in the Upper House of Parliament the other day in the case of the people whose mother tongue is Urdu. The problem mainly affects the Uttar Pradesh, where quite a large percentage of the population in certain districts speak Urdu at home and in their dealings outside. It is true that the U. P. is the one State which is proposed to be left unchanged in the redistribution of territory that is now taking place, and the plea raised in Parliament is thus unconnected with the reorganization scheme. Yet the plea deserves to be heeded. It was complained that Urdu not being recognized as a regional language in the U. P. in which it is widely pre-



valent, the speakers of that language are in practice subjected to serious disadvantages, from which they ought to be saved. One of the hardships they suffer from is that although the governing practice elsewhere is that all elementary education should be imparted in the mother tongue, the children of Urdu-speaking people in the U. P. receive their education in a language which is not what they speak at home. It was pointed out that this was a grave injustice which ought to be remedied at once. The "step-motherly treatment" which Urdu receives is probably due to a widely current, though erroneous, feeling that Urdu, being fostered by Moslem rulers, was an anti-national language and ought to be discouraged as much as possible, and because several of the Urdu-speaking families are entered as Hindi-speaking in official records, the injustice this involves will become permanent unless it is removed immediately. Among those who put forward a plea for Urdu being recognized as a regional language in the State were not only the Nawab of Chhatari, but Dr. Raj Bahadur Gour, a Hindu member from Hyderabad, and Professor A. R. Wadia, a Parsee member from Bombay. The U. P. Government is introducing in its elementary schools readers from which specifically Urdu words are as far as possible eliminated, thus trying to evolve a common language. But if this results in the suppression of proper Urdu and its place being taken by pure Hindi, it is something which will be deplored by all. The two languages as used in literary works differ widely from each other. Each has a valuable contribution to make to culture and it would be a great national loss to deprive ourselves of it.

### Last Year's Firing in Patna

#### BIHAR GOVERNMENT TAKES DISCIPLINARY ACTION

Exactly a year after police firing took place in Patna on 12th August 1955 has the Bihar Government announced its decision on the findings of the Commission which it set up to inquire into the question whether the firing was excessive. The incidents of that day and the day following are thus described by a correspondent of the "Times of India":

Last year's troubles began, it may be recalled, with a minor quarrel between some students of the B. N. College and a bus conductor over payment of fare. The students, allegedly, tried to manhandle the conductor, who in his turn managed to carry three of them to the Rajya Transport Depot about a furlong west of the College where a number of busmen assaulted them. One of the students fled and informed his fellow students at the B. N. College, about 200 of whom then came in a body and attacked the bus depot.

Events moved rapidly and a regular tug-of-war began between the police, on the one hand, and the students and the general public, on the other. The entire B. N. College area—from the transport depot to the Punjab National Bank building—became a battle-

ground between the guardians of law and order and the students supported by the public. Brickbats were thrown, police vans burnt, then on three occasions the police fired on August 12, killing one student and injuring several.

Next day, according to official testimony before the Das Commission, the police fired 44 rounds. The toll of the two days' firings was five killed and 85 injured, most of whom were non-students. On the evening of August 13, it appears, the administrative machinery had virtually collapsed. The police failed to disperse a mob of about 20,000 in the troubled zone despite the firings.

A judicial inquiry into the firing was held by the Chief Justice, Mr. Das. His findings are thus summarized:

While condemning the students for indulging in acts of indiscipline and lawlessness, which inevitably pitted them against the forces of law and order, Mr. Justice Das held that some police officers, though faced with a difficult situation, had made no attempt to win the co-operation of the public and "some of them fired in a direction or at objects for which there was hardly any justification." He justified the firing ordered by one Deputy Magistrate but held that it was "not directed or controlled, and some policemen showed indiscipline and fired without any orders whatsoever."

He named the officers whose conduct could not be justified as the result of his probe. These included two members of the Indian Police Service, two of the Junior Civil Service, several subordinate police officers and two sepoy "who deliberately fired without orders."

The Bihar Government has now decided to refer the cases of the two I. P. S. officers to the Union Public Service Commission and of the two members of the Junior Civil Service to the State Public Service Commission for advice regarding disciplinary action. Departmental and disciplinary action is proposed in the case of the subordinate police officers.

As for the two sepoy, who deliberately fired without orders causing such serious injury to a student—Narain Singh of Mokameh—that his right arm had to be amputated, action has been deferred because of the case being sub judice. The bus conductor involved in the first day's (August 11) trouble has been dismissed.

The State Government also proposes to withdraw all criminal proceedings launched against students in various parts of the State in connection with the disturbance. Only cases not involving violence are proposed to be withdrawn. Pensions have been sanctioned for the widows of the two students killed in the police firings.



### "Foreign Pockets" Created by Christian Missionaries

Denying that Christian communities have formed "foreign pockets" in the sinister sense in which the phrase has now become current, Mr. Samuel Mathai points out in the Independence Day number of the "Statesman" how Hindus, who are less given to proselytization than any other community in India, created more than a foreign pocket in a neighbouring country, with no evil effects that could be observed then or later. He says:

In the island of Bali in Indonesia the prevailing religion is a form of Hinduism. Hinduism did not drop into that island from the skies: it was carried there by Indians who went there during a period of political and cultural expansion in the history of India. It would be painful to us all if the rest of the Indonesian people (the majority of whom are Muslims) started a campaign against the Balinese on the ground that the latter were Hindus and had their religious and cultural roots in a foreign land, namely India.

He then proceeds to remark:

Religion, like art, literature and scientific thought is supra-national and international. Certain common interests and beliefs will always cut across political boundaries. These things become a threat to national solidarity anywhere. India has many diversities—of race, religion, language, culture and custom. We cannot build the unity of India on any regimented uniformity. It is only to the pusillanimous that such diversities appear to be a source of danger instead of being part of the richness of the nation. Diversities do create problems, but it is in tackling such problems that a nation achieves greatness. That diversities of language, religion and culture can be brought together in a national unity is illustrated by countries like Switzerland, and in different ways, by the United States and the U. S. S. R. What binds people together is a sense of equality and justice and common economic interests. What disrupts national unity is the sense of insecurity in any of its component parts.

Another writer, Mr. N. C. Mukerji, observes in the "Leader" that it would be no less unwise to stop the entry into India of foreign Christian personnel and funds than to stop foreign help in men and money which Hinduism has received and is receiving. He says:

The success of Swami Vivekanand's mission in India and abroad was largely the fruit of foreign American money. Swami Vivekanand himself complained bitterly of the absence of support in India. Even now the Ram Krishna Mission in America receives money aid from its foreign disciples. The present revival of Hinduism is largely the result of spade work of foreign scholars, German and English and Anglo-Indian.

The conclusion of this writer is: "While tolerance is entrenched in the Constitution, it has not penetrated into our minds."

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## RESTRICTION ON FREEDOM OF TRADE

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### Control Orders Declared Void

Mr. Amir Chand, a cloth merchant of Ballia, was prosecuted for having sold a sari some twenty days after the temporary license he held for storing cloth had expired. The prosecution's case was that the sale without a license was a contravention of cl. 6 (a) of the cotton textiles (control) order and cl. 4 of the U. P. controlled cotton and yarn dealers' licensing order. The prosecution resulted in Mr. Amir Chand being sentenced to three months in gaol and a fine.

An application in revision was made in the Allahabad High Court challenging the constitutionality of the control orders. It was contended that the provisions of cl. 11 of the cotton textiles (control) order, 1948, had given unrestricted power to the textile commissioner to refuse to grant a license without assigning any reason and it further provided that his decision should be final and the provisions of cl. 9 of the U. P. controlled cloth and yarn dealers' licensing order, 1948, which laid down that the licensing authority might, for reasons to be recorded in writing, refuse to grant a license, were in violation of the provisions of Art. 19 (1) (g) of the Constitution and since these provisions could not be dissociated with the provisions of cl. 6 (a) of the cotton textiles (control) order, 1948, and cl. 4 of the U. P. cotton cloth and yarn dealers' licensing order, 1948, the penalties provided in these sections in violation of the constitutional rights could not be imposed.

In sustaining the contention reliance was placed by the applicant on the Supreme Court's decision in *Dwarka Prasad Laxmi Narayan v. State of U. P.*, A. I. R. 1954 S. C. 224, involving consideration of the provisions of the U. P. coal control order, 1953. In that case His Lordship said that under the U. P. coal control order, 1953, no person could sell coal in the State except under license granted under the control order. The provisions of cl. 4 (3) of the coal control order, 1953, were held by the Supreme Court to be void as imposing unreasonable restrictions upon the freedom of trade and business guaranteed under Art. 19 (1) (g) of the Constitution and not coming within the protection afforded by cl. (6) of the Article. It was observed that the licensing authority had been given absolute power to grant or to refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any license under this order and the only thing he had to do was to record reasons for the action he took; that no rules had been framed and no directions given on those

matters to regulate or guide the discretion of the licensing officer, that practically the order committed to the unrestricted will of a single individual the power to grant, withhold, or cancel a license in any way he chose and that there was nothing in the order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Attention was also drawn to a later decision of the Supreme Court in *Hari Shanker Bagala v. the State of M. P.* (A. I. R. 1954 S. C. 485).

Mr. Justice Roy on 17th July allowed the application, upholding the contention of the applicant. His Lordship said that the provisions of the control orders vested in the licensing authority an unrestricted power to grant or to refuse a license and there was no authority prescribed in the orders which could examine the propriety of the reasons and revise the licensing authority's decision. The reasons which were required to be recorded under one of the control orders were therefore only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the affected persons. Further, the provisions in cl. 6 (a) of the cotton textiles (control) order, 1948, were so interwoven with cl. 11 of that order and likewise the provisions of cl. 4 of the U. P. controlled cotton cloth and yarn dealers' licensing order, 1948, were so interwoven with cl. 11 of that order that the ultra vires character of cl. 11 of both the orders would make the operation of cl. 6 (a) of the cotton textiles (control) order, 1948, and cl. 4 of the U. P. controlled cotton cloth and yarn dealers' licensing order, 1948, practically nugatory. His Lordship said that the provisions which were under consideration in the present case formed an integral part of the entire structure of the two control orders and cl. 6 (a) of the one and cl. 4 of the other could not operate properly unless the provisions of cl. 11 of the two control orders were brought in conformity with the constitutional provisions.

His Lordship therefore ruled that the impugned clauses were void as imposing an unreasonable restriction upon freedom of trade and business guaranteed under Art. 19 (1) (g) of the Constitution and not coming within the protection afforded by cl. (6) of that Article.

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## PAKISTAN'S FOOD ORDINANCE

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### Held Ultra Vires by Dacca High Court

On account of a serious food shortage in East Pakistan, the Governor promulgated an ordinance dealing drastically with hoarders and blackmarketers of grain. Under the ordinance the military took over control of the food administration of the province, and offenders could be punished not merely with terms of imprisonment and fines but whipping. The ordinance has become extremely unpopular because, it is said, it caught not only unscrupulous merchants who had hoarded grain to make huge profits but also poor men who had kept a few extra

seers with them mainly as an insurance against failure or breakdown of supplies.

The constitutionality of the ordinance—East Pakistan Food (Control of Movement and Distribution) Ordinance (which was replaced on 14th August when the military were withdrawn from the food administration)—was challenged in the Dacca High Court. Mr. Abdul Barik Sikdar of Gopalgunj, who had been convicted for holding 220 maunds of paddy, and Mr. Fakiruddin Biswas of Pabna, who had also been sentenced by an Army magistrate for a food offence, moved the High Court on habeas corpus petitions.

Mr. Justice Ispahani and Mr. Justice Murshed on 15th August held the ordinance to be ultra vires of the Constitution and ordered the petitioners to be set at liberty. The Court held that the impugned ordinance was legislation on the concurrent list at least in so far as it related to price control and the punishment and penal procedure for violations thereof. Its provisions, therefore, had to give way to the Criminal Procedure Code. Since the ordinance sought to make substantial changes in the original Procedure Code, which was an existing law, the prior assent of the President had to be obtained. This had not been done in the case of the ordinance with the result that Arts. 102 and 110 had been violated.

Dealing at length with the trial of Mr. Sikdar, the Court held that he was arrested within an hour of the promulgation of the notification stipulating how much paddy a family man could hold. No attempt was made at the time of the arrest to check on the numerical strength of the prisoner's family which, he said, was 45.

In freeing the prisoners, the Court ordered that the fines paid by them should be returned and the food grains confiscated or their monetary equivalent should be handed back to them.

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## NOTES

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### Informing on Communists

#### BOARD OF EDUCATION'S RESOLUTION OVERRULED

We adverted at p. iii:271 to a resolution adopted last year by the Board of Education of New York City requiring teachers, when directed to do so, to divulge the names of other teachers who "may have been" Communists. The resolution was widely condemned when it was passed. One can understand if a would-be teacher, who is a Communist and tries to indoctrinate his pupils with Communist doctrine, is thought unworthy of being retained in the profession of teaching and, in order to find it out, is interrogated about his own participation in the so-called Communist conspiracy. But the resolution compels teachers to become informers about the past membership of their colleagues, when called upon to do so, if they wish to hold their own jobs.

But this naming of names was put an end to on 8th August this year by Dr. Allen, New York State Education Commissioner, in an appeal preferred to him by some teachers who were under suspension for refusing to name their colleagues. Dr. Allen reversed their suspension, holding that a teacher could not be discharged for refusing to answer questions involving Communist affiliations of his associates. He said:

There is near unanimity on the part of teachers throughout the state that indiscriminate use of this type of interrogation immediately engenders an atmosphere of suspicion and uneasiness in the schools and colleges. Trust which is necessary to keep morale at a high level is undermined... [Compelling teachers to act as informers] would do more harm than good and this type of inquisition has no place in the school system.

Apparently, an appeal will be taken to the courts from this decision by the Commissioner, for the Corporation's counsel expressed the opinion that "if these petitioners are sincere in their denunciation of communism, they should demonstrate their sincerity in a complete way, by cooperating with the Board and giving the board the information it needs to carry out its obligation under the law." This means, as the "New York Times" has put it, "Former Communists who have broken from the party years ago [must] prove their sincerity by lacerating their own conscience." Nor are the names to be given to police authorities under conditions of complete secrecy; but, as Dr. Allen says, "the instant a name is uttered, the public becomes aware of it," with possible lifelong injury to the person named.

### Refusal of Passports to American Reporters

For the first time since the Communists established themselves as a government in China seven years ago, American newspaper men have an opportunity to gather news in that country and tell their countrymen what the true state of things is in Red China. The Chinese Government made an offer to fifteen U. S. newspapers to send their reporters to China for a month-long tour to see with their own eyes what is happening in that country and give publicity to the impressions which they may form. But, strangely enough, the U. S. Government has refused to validate passports for American reporters who, accepting the invitation, would like to visit China. It has declared that it is not "in the best interests of the United States that Americans should travel in Communist China." It points out that the Peiping regime has kept Americans in captivity as "political hostages" and that so long as Red China refuses to release American citizens wrongly imprisoned, it will not issue passports for visits to that country. The press may be willing to take risks of personal harm coming to them in Communist China, but if any of the reporters is locked up, the U. S. Government says it will be bombarded with demands to get him out, and that

may precipitate a crisis, for the Government will be unable to give him the protection traditionally associated with the issuance of passports. The Government's position thus is that it would like free flow of information to be established throughout the world, but it cannot work for such exchanges with countries with which the U. S. has no diplomatic relations, and such countries are Albania, Bulgaria and Red China.

The American press protests against this. It reminds the Government that from the triumph of the Bolshevik Revolution until 1933 the United States had no diplomatic relations with Soviet Russia and crimes of sabotage, infiltration and offensive propaganda were charged and proved against Moscow in the United States, and yet the American press was represented in Russia through a great part of this period. Indeed, the Moscow correspondent of the "New York Times," Mr. Walter Duranty, was awarded a Pulitzer Prize for the integrity of his reports. The "Times" wrote: "We do not believe that bodily or mental harm would come to American correspondents going into China under the present offer... Certainly the country can afford to take this qualified risk. If it is dangerous to do this, is it not a danger that should challenge us instead of frightening us?" The "Christian Science Monitor" wrote: "We must not erect our own bamboo curtain and place ourselves in an intolerable position before the world." Press associations have written to the State Department protesting against its ban on visits to China by American reporters.

## West German Ban on Communism

### Sustained by the Constitutional Court

The Federal Constitutional Court of West Germany upheld the ban imposed by the Bonn Government five years ago on the West German Communist Party and its numerous front organizations in a decision handed down on 17th August. There is an Article in the Constitution of the German Republic which says: "Parties which, by reason of their aims and the behaviour of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany, are illegal." The Communist Party was proscribed when South Korea was being attacked because it was feared that international Communism had embarked on a new and aggressive policy which the Bonn Government felt might affect the integrity of the German Republic.

The Government thereafter brought suit in November 1951 with a view to obtaining judicial confirmation of its order suppressing the Communist Party. It charged that the party was committed to the overthrow of the constitutional government of West Germany and the establishment of a "Socialistic-Communist" society through a proletarian revolution and a dictatorship of the proletariat. The Constitutional Court accepted the Government's thesis and ruled the Communist Party and

its front organizations unconstitutional. The Court ordered the dissolution of the party and its front organizations and the confiscation of all their assets. The ruling also prohibited the party from trying to re-establish itself in other forms or guises. Persons violating the Court's decision will be liable to a minimum of six months' imprisonment. Anticipating the decision, the Communist Party had already removed its membership lists and other confidential information to safety and had emptied every bank account.

To most observers it would appear that whatever justification there might have been for the outlawing of the Communist Party when the action was taken, there was hardly any justification for such action at a time when the influence of the party has undergone a precipitous decline. The total present membership is estimated at 60 to 90 thousand. At no time since World War II has party membership been so low as it is now. This decline in the party's ranks is chiefly due to West Germany's phenomenal post-war economic recovery and expansion. Under the Weimar Republic the party had sent 100 deputies to the Reichstag on the strength of some six million votes. In the 1949 general elections the Communists mustered 1,360,000 votes and elected 14 deputies to the Bundestag. Four years later they polled only 611,000 votes (or about 2 per cent. of the popular votes) and failed to elect a single deputy to the Bundestag. They have now only four members in the city-State Parliament of Bremen and two in the State Parliament of Lower Saxony. Because of their virtual extinction from legislatures, the party had concentrated its efforts on infiltrating factory works councils and trade unions,

Since the Communist Party is already in eclipse, thoughtful people in West Germany were against the Adenauer Government pressing the suit originally filed five years ago. The deputy leader of the Social Democratic Party, which is in opposition in the Republic, said the Court's decision would only result in driving the Communists underground and in placing the halo of martyrdom on their heads. Most independent journalists have taken a similar view; they say that the decision will only help in giving them fighting spirit and make their secret activities harder to combat.

### States' Anti-Subversion Laws

#### HELD INVALID BY THE STATES' COURTS

Following the U. S. Supreme Court's ruling in the Steve Nelson case (vide p. iv:iii), high courts of three states held invalid the states' anti-subversion laws and voided prosecutions launched thereunder. It will be recalled that in the Nelson case the Supreme Court held that the federal government had pre-empted the field of sedition and declared that Pennsylvania's anti-sedition law was invalid. It reasoned that since Congress had passed the Smith Act and had adopted in the Internal Security Act an "all-embracing programme" against subversion it had "treated seditious conduct as a matter of vital national concern (which) is in no sense a local enforcement problem."

Subsequent to the passing of the Internal Security Act several states adopted similar anti-subversive legislation. Massachusetts was the first state to pass such a statute. This statute, passed late in 1951 outlaws the

Communist Party *eo nomino* as a subversive organization and declares any other organization advocating the violent overthrow of the state or federal government to be unlawful. If the court finds any such group subversive, it may order it dissolved and all its assets are turned over to the state. Any person convicted of a violation of the Act cannot hold public office. Under this Act Mr. Otis Hood had been charged with Communist Party membership and Mrs. Margaret Gilbert with conspiracy to overthrow the state and federal governments by force and violence. On the basis of the Supreme Court's Nelson decision, the Massachusetts Supreme Judicial Court quashed the indictments of both of them.

Michigan enacted a similar law in 1952, which is known as the Trucks Act. Besides denying public employment to alleged members of the communist or communist-front organizations, it provides that refusal to testify on constitutional grounds before a duly authorized tribunal shall be *prima facie* evidence that a person is a Communist or member of a front organization. In the Albertson-Communist Party case, the Michigan supreme court, following the lead of the federal Supreme Court, ruled against major provisions of the state's Trucks Act. Voiding the prosecution, the state court said:

When a state assumes to punish sedition against the United States, it is intruding in a matter where the national interest is obviously paramount and where the federal government's control of the field must be exclusive if it is to protect itself effectively and completely.

In Kentucky, the Court of Appeals, the state's highest court, set aside the conviction of Carl Braden. Braden's indictment and conviction grew out of a grand jury investigation of the bombing of the home of Andrew E. Wade, a negro electrical contractor. Braden had purchased the home and transferred ownership to Wade. The evidence against Braden was Communist Party literature discovered in his home. The prosecution had contended that the purchase and bombing of the house in a segregated neighbourhood near Louisville were plotted by white supporters of Wade in order to stir up racial strife and bring about a political revolution. Braden was convicted of sedition. The Court of Appeals upset the conviction, and the judgment was based on the Supreme Court's ruling in the Nelson case that the federal government had exclusive right to prosecute for alleged sedition. The Kentucky high court said, however, that its ruling did not stop the state from prosecuting Braden for the "crime of sedition directed exclusively against the commonwealth of Kentucky." In the Nelson case the Supreme Court said:

It should be said at the outset that the decision in this case does not affect the right of states to enforce their sedition-law at times when the federal government has not occupied the field and is not protecting the entire country from seditious conduct.

From this it would appear that, in the Supreme Court's opinion, sedition can be dealt with more effectively by the federal government than by any state and should therefore be its sole concern.