AMERICAN CIVIL LIBERTIES UNION

TO: Affiliates
FROM: ACLU National Office
DATE: November 9, 1955

TILL MURDER CASE

This intra-organizational memorandum is in response to inquiries from several affiliates asking about the opinion of the national office on the Till case, and particularly about the issuance of an ACLU public statement.

Our note to you of September 29 indicated that national has been in close touch with the case from its beginning. Murray Kempton, of the national board, attended the trial; on his return to New York he reported to the Board. From the start, we have actively consulted with the legal staff of the National Association for the Advancement of Colored People and other attorneys including Miss Nanette Dembitz, a civil rights expert. The possibility of federal intervention was thoroughly canvassed by the NAACP with the Department of Justice. Pet Malin has, within the past week, reviewed the entire situation with Thurgood Marshall, NAACP special counsel.

Two possible courses of action have been considered: 1- a request for federal intervention under the existing federal civil rights laws, and 2- the issuing of a general statement.

Federal Intervention.

1. A civil rights prosecution might rest on the theory that someone, under color of law, had a part in the murder. But there is no fact to support such a theory in this case.

2. A civil rights prosecution might rest on the theory that Till (or his mother), after the murder, had a right to have the state authorities diligently investigate the murder, and that it was a violation of his civil rights if such diligence was lacking for reasons of racial discrimination. Such a prosecution does not appear feasible for two reasons: first, there is no precedent for this theory; second, a showing of wilful intent to violate a constitutional right would have to be made beyond a reasonable doubt. In the Till case, it would be impossible to make the indubitable showing which would be necessary to support a prosecution for violation of a frankly problematical right.

General Statement.

The NAACP, religious groups, and other interested parties can and have expressed indignation, condemnation, and exhortation which directs itself to the injustice and the social pathology of the Till case. We applaud and support these expressions, as individuals. But our organizational function is to be vigilant for civil liberties — and in terms of action this should mean focussed, specific intervention relating to liberties guaranteed by the Bill of Rights.
Everyone in this office is shocked and outraged by this case. Our sense of justice has been violated. But, difficult as the choice may be, we are driven to the conclusion that we should not dissipate our fire power by a general blast not based on specific action in defense of civil liberties.

Note 1. The ACLU could not, of course, as a civil liberties organization, in any way comment on the verdict of the jury.

Note 2. Murray Kempton, our observer, is of the opinion that the trial procedures, as conducted by Judge Swango and the prosecution, were beyond reproach.

Note 3. It would be unwise to raise, in connection with the Till case, the denial of jury service to Mississippi Negroes. It is right and proper for us to raise this point when a conviction has been obtained. But to raise it in the face of an acquittal would permit the inference that we believe Negro representation would have yielded a verdict of guilty, an inference dishonoring to Negroes and violative of our principles.

Conclusion.

Reluctantly, we therefore have concluded that there is no basis for a request for federal action which could be reasonably made, and that a general statement would be unsatisfactory in terms of ACLU function.

However, we have not written off the Till case. On the kidnapping charge, the ACLU asked the NAACP to make certain that the witnesses were brought before the La Flore county grand jury. The failure of that grand jury to indict, announced today, has brought out a public statement by the ACLU (enclosed with this memorandum), noting: 1- that the function of a grand jury is to indict upon probable cause, 2- that probable cause existed in this instance because of the sheriff's statement that a confession of kidnapping had been made to him, and 3- that the failure to indict therefore requires the inference that the grand jury discriminated in this case against the victim and for the persons charged.

Nor shall we forget the murders of the Rev. George Lee in Belzoni and Lamar Smith in Brookhaven, Mississippi. In the Lee case, involving the right to vote, we have already vigorously protested to the Department of Justice.

One of our jobs is continuing to attack discriminatory treatment of Negroes with respect to their voting rights and jury service (the Lee case). Another job is to recommend the strengthening of the federal civil rights laws. Any success we may have in these areas will, we believe, diminish the practice of discrimination and make less likely brutal and heart-rending tragedies like the Till murder.