

“Balancing Doctrine” vs. Peaceful Picketing

by Southern Conference Education Fund

COLUMBIA, S.C.—The South Carolina Supreme Court has confirmed the contention that civil rights will never be obtained until civil liberties are secure. The court, sitting in Columbia, applied the “balancing doctrine,” developed by U.S. Supreme Court Justice Felix Frankfurter, to peaceful picketing by four young Negroes. They had been arrested for picketing for integration at Darlington, S.C., allegedly without a permit. They were Arthur W. Stanley, Jr., 16, Jerry Wingate, 16, John Nettles, 17, and Willie Lee Johnson, 20. Each was sentenced to pay \$55 fine or serve 30 days in jail; they appealed to State Supreme Court.

The youths contended that the Darlington city ordinance set no standard for denying or granting a parade permit and is therefore unconstitutional. They said this deprived them of the right of freedom of speech and assembly, which are guaranteed by the First Amendment to the U.S. Constitution.

First Amendment Rights Are “Balanced” Out

The State Supreme Court ruled that the exercise of constitutional rights must be consistent “with peace and good order.” The justices agreed that “these rights are fundamental” but added that “they are not in their nature absolute.” The unanimous opinion, written by Justice G. Dewey Oxner of Greenville, declared that constitutional rights “must be exercised in subordination to the general peace and good order... and are subject to reasonable and non-discriminatory regulation and limitations.”

This decision follows the line laid down in several recent decisions by the U.S. Supreme Court in cases involving defiance of federal and state investigating committees.

Supreme Court "Balances" Away More First Amendment Rights

"Balancing" away more of the citizen's rights, particularly those guaranteed by the First Amendment, was the chief offense of the U.S. Supreme Court in the term that ended on June 12. Freedom of speech, assembly, and religion were short-weighted in the balance against "national security" and "public decency." Although the author of the balancing doctrine, Justice Frankfurter, supports it with lofty intellectualizing, the majority of the Court—usually a 5-4 majority—obviously has felt the pressure of the military-minded and the bigoted.

Evidence of the Court's surrender to pressure is seen both in the language of the balancing decisions and in the reversal of the libertarianism of the 1959-60 term, as Leo Pfeffer makes clear in an article in *The Nation* for September 23. (Mr. Pfeffer is the Director of the Commission on Law and Social Action of the American Jewish Congress.) Following is his balance sheet on the civil liberties decisions of the 1960-61 term: