

CIVIL LIBERTIES AND FREE SPEECH AS ESSENTIAL
WEAPONS IN THE STRUGGLE FOR CIVIL RIGHTS

(A discussion paper for consideration by the Civil Liberties Workshop at Conference of Student Nonviolent Coordinating Committee in Atlanta, Ga., April 27-29, 1962. Prepared by Anne and Carl Braden, Louisville, Ky., field secretaries, Southern Conference Educational Fund; editors, The Southern Patriot.)

The basic propositions that we would like to submit for the consideration of this workshop and of the student movement generally are these:

(1) That those of us concerned with establishing civil rights in the United States must also concern ourselves with establishing civil liberties and (2) that a civil libertarian atmosphere is an absolutely necessary prerequisite for the achievement of full civil rights.

In order to discuss this question intelligently, we must define some terms. The terms civil rights and civil liberties are sometimes used interchangeably. Actually, although they are very much related, they involve different concepts.

Webster's Dictionary says the term civil rights is "used chiefly of the rights secured to citizens of the U.S. by the 13th and 14th amendments to the Constitution and by certain acts...to secure to all citizens equal civil rights by abolishing the civil incidents of involuntary servitude." Webster's defines a civil liberty as an "exemption from arbitrary governmental interference with person, opinion, and property."

Considering present usage in America, we can be a little more specific than this. When the term civil rights is used, most of us think immediately of the struggle for desegregation and integration, of the rights of minority groups, most specifically of the rights that have been denied to Negroes. When the term civil liberties is used we are most likely to think of denials of the right of free speech; in the more recent period, we are most likely to think of the denials of the rights of many people by what has become known as McCarthyism.

So let us propose the following definitions: Civil rights are rights which belong to every human being just by virtue of the fact that he is a human being, and which sometimes must be guaranteed to him by positive action of the government, assuming it is a good government. Thus the right to vote is a civil right; it should belong to every human being, but we all know that to secure it to every person in the United States the government has to step in and take action in the form of laws, court decisions, etc. In the same manner, the right of all citizens to access to all public places is a civil right; everyone should have it, but in actuality the government must step in and make sure that everyone does.

On the other hand, civil liberties are also rights which belong to every human being just by virtue of the fact that he is a human being, but which involve an area which believers in democracy say the government must stay out of.

This is the area of thought, belief, speech, petition, and association. Those who believe in civil liberties maintain that these are matters which should not be subject to control or supervision by government at any level; that they are matters for a man and his own conscience to decide.

Or to put it another way: civil rights involve an area in which believers in democracy insist that government must act to protect one citizen or group of citizens from abuse (discrimination) by another citizen or group.

Civil liberties involve an area in which democracy sets up certain ground rules to protect each citizen from his government; to insure his right to privacy. In addition to such areas as thought, belief, speech, petition, and association, this includes protection against excessive bail; police brutality; illegal search of one's person or home, and self-incrimination.

All of these liberties are guaranteed in the first ten amendments to the U.S. Constitution, known as the Bill of Rights. All involve protection of the citizen from the government; they are civil liberties. Thomas Jefferson said that a Bill of Rights is what citizens need as a protection from any government on earth, no matter how good a government it is.

There is little need for further discussion of the concept of civil rights in this paper. All attending this conference agree on the importance of civil rights, else they would not be here. But do we also believe in civil liberties?

If we believe in civil liberties we believe in the Bill of Rights. All of the Bill of Rights is important, but the rock bottom of it is encouched in the First Amendment. This says: "Congress (and today we should add the state legislatures) shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

This means that the government can't tell a man what his religious beliefs shall be, what he can or can't say or print, whom he can assemble with, what he can or can't join, or what he can or can't do by way of peaceful protest to his government.

Do we really believe that? At first snap, most of us would say we do. Freedom is something almost everyone thinks he is for; it's a little like being against sin. But when we get down to specific sins, many people back off and aren't really against them at all.

Likewise, when you get down to cases and specific situations, not everyone is for free speech. It involves some knotty questions.

All of us are for free speech for ourselves and the people who agree with us, of course. But what about the people we disagree with? Do we also believe in free speech for members of the Communist Party? Do we believe in free speech for Lincoln Rockwell, the head of the American Nazi Party? Do we believe in free speech for the White Citizens Council? Bear in mind that we are not talking about illegal acts that may be committed by any person or group but about their right to speak.

These questions may sound highly academic. We submit that they are not. They are very real and burning issues in the United States today. There is a real question at this moment as to whether our country will continue to hold its Bill of Rights as a fixed star in its heaven, or whether it will move more and more in the direction of control by the government over what citizens can say and think and join. There is serious question as to whether we shall keep our right to privacy.

We further submit that civil rights advocates and the civil rights movement cannot remain aloof from this question. We contend that the ultimate success of the movement depends on which way the U.S.A. goes in regard to civil liberties. We also submit that the civil rights movement has already been profoundly damaged by denials of civil liberties.

Let us spell this out. In the past 15 years in our country, there have been major inroads against civil liberties and severe limitations have been placed upon the First Amendment. This has not been done by Congress or the state legislatures' passing laws that limit free speech; it has been done by the process of legislative investigation. The chief investigators have been the House Un-American Activities Committee, Senator James Eastland's Internal Security Subcommittee, the committee headed by Senator McCarthy in the early 1950's, and by committees of various state legislatures modeled after those in Congress.

The rationale of the investigations made by these committees has been that they are attempting to root out "subversion." Ostensibly, such investigations have been a search for communists, or so-called "fellow travelers." Because of the tense international situation, in which communism constitutes a major force in the world, this rationale has convinced many Americans that such investigations are necessary if the United States is to preserve itself.

But actually, in assessing what these investigations have done to our country, it must be seen that communism is only a small part of what these committees have investigated. As a matter of fact, the word "communism" has merely served as a smokescreen or a pretext for attacks on liberalism and democratic ideas.

To understand this, one must know the history of these committees and the men who have headed them. Almost invariably they have been headed by people who consider all liberal ideas and moves toward social change as "communistic." Generally they have been led by men who want to keep things as they are. Of course, a person who believes that society is all right as it is has the right to try to preserve the status quo. But where these men went wrong was to try to do this under the guise of fighting subversion.

The granddaddy of all such committees is the House Un-American Activities Committee. It was organized in 1938 under the leadership of Rep. Martin Dies of Texas, an old-line Southerner opposed to change. The committee was conceived essentially as a weapon against the New Deal headed by President Franklin D. Roosevelt.

The New Deal represented an effort to meet changing times with new solutions; it was essentially liberal; it was certainly not communistic. Nevertheless, it frightened businessmen and politicians who wanted things to remain as they had been. So they attacked it. One of their major weapons of attack was the charge that the New Deal and the New Dealers were "subversive." It was primarily the House Un-American Activities Committee that fed these charges to the press and the public. (For the most comprehensive history of this committee see "The Un-Americans" by Frank Donner; Ballantine Books, 101 Fifth Avenue, New York 3, N.Y. 60¢.)

The charges by this committee did not have much impact in its early years. But after World War II, with the beginning of the Cold War, many Americans became more nervous when told that there might be a Communist under every bed. They were more willing to listen; and because of their fear they found it difficult to distinguish truth from falsehood. So the Un-American Activities Committee became more powerful; it became a standing committee of the house at the insistence of Rep. John Rankin, notorious Mississippi racist.

Later Senator Joseph McCarthy saw the political possibilities of such a committee, so he took up the techniques and the cries of the House Committee. He talked about "20 years of treason" under the Democratic Party. He made the front pages, which was his real objective, and frightened many people.

Senator Eastland of Mississippi, as chairman of a similar Senate committee, took the same tack in his efforts to stop integration; to him all who did not support segregation were communists. Or so he said.

To many people it is ludicrous that a man like Senator Eastland, who has without shame opposed the American ideal of equality for all, should pose as a defender of Americanism. But it is important to know that not only Senator Eastland but all of the politicians associated with these committees have been aligned with and supported by people and organizations who fall short of supporting the American ideal.

These groups have often included openly racist organizations. (For further information about the links between HUAC and such groups see "Hate Groups and the House Un-American Activities Committee," a pamphlet by David Wesley, an editor of the York, Pa., Gazette and Daily. It was published by the Emergency Civil Liberties Committee, 421 Seventh Ave., New York 1, N.Y. 25¢ a single copy; lower prices for quantity orders.)

One technique of this committee is to call before them people with nonconformist ideas--people who do not adhere to the particular concepts of Americanism espoused by the committees. The subpoena itself is a major weapon. Once a person is summoned by subpoena it does not matter much thereafter; an atmosphere has been created in

which any person so summoned is immediately suspect in the public mind. Thus many lives have been ruined, many careers wrecked.

Another technique of these committees is to issue reports and lists. They quote each other's reports in order to give them more of a ring of authority. In these reports and lists they name people and organizations whom they regard as "subversive." In this way they cripple many persons and organizations who are never summoned to a hearing.

By such techniques these committees have set themselves up as the arbiters of what is subversive and what is not subversive in the United States, of what is American and what is not. In a very real sense they have established a position from which they have told the American people what it is all right to think and what it is not all right to think, what they may join and what they may not. Thus they operate as censors.

It is in this manner that they limit the First Amendment. The First Amendment means that government can't set standards of thought and speech and association. But here are governmental agencies doing just that. Public opinion and economic necessity often force people to accept this censorship of their speech and the restraints on their peaceful action.

Thus, although no law may be passed telling a man he can't join this or go to that meeting, he is scarcely free to follow his own conscience in these matters. For if he does he runs the risk of a subpoena that may cost him his job or a listing in a committee file that may sometime be used to wreck his life. Without ever enacting a law, a committee of the government has stepped in and told him what he can and can't do.

Through 15 years of intensive activity of this kind, these committees have had a profound effect on the atmosphere in the United States. The greatest damage they have done--even greater than the harm done to the individuals attacked--is that they have led many people to believe there is something subversive about working for social change.

All through what is known as the McCarthy period great numbers of people simply stopped going to meetings, quit signing petitions, ceased joining organizations. McCarthy died in 1957, but it is a truism now to state that McCarthyism did not die with him; the House Un-American Activities Committee and its fellow travelers have continued; fear once started is difficult to halt. Thousands and thousands of Americans still conclude without thinking that there is something a bit dangerous about action on social issues; sometimes they do not even spell out in their own minds just what it is that they fear--they simply feel in their bones that it is safer to stay at home and be quiet.

This sort of atmosphere, if long continued, can be absolutely fatal to democracy; for the very lifeblood of a democracy is active participation by its citizens in the affairs of society and the government. In order for democracy to flourish, people must feel free to explore new ideas, to criticize what they think is wrong with their society, and to organize and work for social change.

Let us now examine more closely the effect of all this on the South. In squelching citizen activity for peaceful social, McCarthyism and its aftermath have debilitated the whole nation. The result has been especially tragic in the South--for in this part of the country society is in the throes of a great social change, the throwing off of segregation and the winning of equal rights for all. If such changes are to reach deep and be brought about peacefully, it is an absolute necessity that we have an atmosphere where democracy can flourish--where citizens can explore new ideas and organize to promote them and publicize them.

The South has always been limited in that kind of atmosphere. It has been even more limited in the last 15 years because of the curbs placed on civil liberties nationally. Senator McCarthy himself never came South and HUAC only rarely, but the nationwide atmosphere they created and the techniques they used were seized upon by the Southern segregationists for their own use.

Senator Eastland and his committee harassed Southern integrationists, and there developed in the South a rash of state un-American activities committees. These committees draw on the files of the House Committee and the Eastland Committee to label people working for social change as "subversive."

Even more important, the private organizations seeking to preserve segregation in the South have been able to take up the cry that derives essentially from the national witchhunt, and to attack advocates of integration as subversives and traitors. These private groups have been able to draw upon the files of the state and federal committees for material to use against persons favoring desegregation and integration.

It should be noted that the tendency to identify integration with "subversion" is to a certain extent indigenous to the South. Southern segregationists have always labeled those who opposed segregation as "communists"--long before the days of McCarthy.

However, there is a vast difference between the situation when this cry is raised by individual private citizens and the effect of having it endorsed by what sound like official government agencies. When just plain John Doe down the street calls you a subversive, he is simply exercising his right of free speech and expressing his opinion. You may not like it, you may know he is mistaken, but if you have your free speech you can answer him in the marketplace of public opinion and state what your beliefs really are. You may even win the argument.

But when the same charge is made in an official report of a committee of the state legislature or of Congress, the odds are quite different. The power of government has been injected into what should be, in a free society, an exchange of opinion among citizens. Or to put it another way: if plain Jim Eastland of Mississippi says the integration movement is all a communist plot, that's one man's opinion. Everybody knows that Jim Eastland owns a vast plantation from which he makes much money because the people who work for him are segregated. Naturally he's against integration.

But when Senator James Eastland comes South with all the prestige of the U.S. Senate behind him, it is a different story. When he issues a pronouncement, in the name of the Senate Internal Security Subcommittee, that certain people and organizations are subversive, the power of government is being used to deprive these people of their First Amendment rights to speak, organize and petition their government.

Here is one example of how this works: Several years ago a committee of the Florida Legislature, set up in the pattern of HUAC to ferret out "subversives," investigated the NAACP. One of its methods of "investigation" was to get from the files of HUAC in Washington all the "subversive listings" for leaders of the NAACP. These were numerous, since tens of thousands of socially concerned Americans are listed in HUAC files. These people got into HUAC's files because they supported causes or groups working for social change or for other liberal objectives.

The Florida committee then issued a report in which it cited pages of "subversive citations" of national NAACP leaders. Shortly thereafter, the attorney general of Georgia, Eugene Cook, made a speech in which he quoted this report of the Florida committee. His speech was then published in a pamphlet called "The Ugly Truth About the NAACP." This was distributed by the ton throughout the South as well as the rest of the country.

It was all based on rumor and hearsay and on a completely twisted idea of what is subversive, but because it quoted records of a committee of the U.S. House of Representatives it was taken by many as official documentation that the NAACP is subversive. Such charges can be denied, but it's like trying to gather up all the feathers from a broken pillow; the truth never quite catches up. There is no doubt that this little document frightened many well-meaning citizens away from the NAACP and the integration movement generally--as have numerous such reports by similar committees.

Essentially, the national hunt for subversives by legislative committees has enabled the Southern segregationist to tie his regional kite to the nationwide concern for national security. It has enabled him to pose as a guardian of the national interest while actually defending a decadent Southern way of life. This has given the segregationist in the South a respectability and power that he otherwise would not have had in this late hour of 1962.

His use of this power has been especially effective in keeping white Southerners out of the integration movement. The official cry of subversion has been leveled at both white and Negro people, but has been more potent against whites. Perhaps this is because fewer whites are willing to act for integration and they are therefore more isolated and open to attack; perhaps it is because people generally find it easier to understand why a Negro works for civil rights but can explain the white integrationist only by accepting the charge that he or she is a "communist. Whatever the reason, it is the whites who have borne the brunt of the South's particular brand of McCarthyism.

The net result of this is that many, many white Southerners who might otherwise have been active for integration have remained silent.

They might have risked ostracism by their neighbors, and even economic pressure. But the likelihood of being labeled as traitors in an atmosphere of national hysteria was a little too much to cope with. They had seen it happen to others, so they stayed home and remained quiet.

Also, in many cases white integrationists were the victims of a corollary effect of the red scare: They found that many Negroes in the civil rights movement were affected by the red cry and began to shun them too. Building trust between Negro and white integrationists in the South is a tedious task at best, one which must overcome 300 years of history. But in the minds of many of us, it is an absolute necessity if we are to build a new society. We in the South have been tragically hampered in this task when the segregationists have been able to use the red cry to further divide us.

The white Southern liberal is not really too different from people all over the United States, mentioned above, who in the last fifteen years quit joining anything and quit going to meetings. What is wrong with the South is about what is wrong with the rest of the country--except perhaps in exaggerated form; we have been living in an era when social action is suspect, conformity is the rule, and people tend to retire to their gardens.

We can all document this by listing people whom we know personally to have done this. Multiply the ones you know by thousands and you get the social picture. If you want an interesting mental exercise in sociology, just stop to consider for a moment what might be the situation in the South today if the 1954 Supreme Court decision against school segregation had come at a point in history when the nation had not been in the throes of a witch hunt for at least seven years.

Those who have known the forces operating in the South for the last 20 years can tell you that there was a big potential in the region for a meaningful and outspoken movement, white along with Negro, to support the Supreme Court decision. In all logic, there should have been organizations springing up in every community, interracial organizations, to speak up for compliance. This doesn't mean that there would not, under any circumstances, have been rabid opposition too; we'd have had the White Citizens Councils in any event.

But if democracy and the Bill of Rights had been in a healthy state in our nation as a whole we'd have had a meaningful movement on our side in the South too. It didn't happen--and one of the main reasons it didn't happen was that it was the 1950's, a time when people weren't joining liberal organizations anywhere in the U.S.A.; when people were being quiet.

So the segregationists grabbed the initiative; they presumed to speak for the entire white South. Today, over the South, moderates are seeking to gain control and in some places they have. But in the meantime, the Negroes in the South have moved militantly ahead and the gap between them and the potentially militant whites has widened. Thus we often get the impression that the militant integration movement is an all-Negro movement.

However, if it is to effect truly profound changes in the South--if it is to be a change of substance as well as form--it must not be

a completely Negro movement. It must be a movement of white and Negro working together--building the essence of a new society within their own movement as they work for change. Potentially there are many white Southerners who can be a part of the movement in this way. But, in our opinion, this is not going to take place on any big scale until the national atmosphere changes in regard to civil liberties. The strands of McCarthyism must be swept aside; Americans must be able to explore again; citizens must feel that they can join and speak and petition and assemble and print without fear of being called subversive by a governmental committee.

It is for this reason that the Southern civil rights movement cannot ignore the national civil liberties situation. We cannot establish true free speech in our region unless and until it exists in the nation as a whole. We cannot restore social action to respectability in the South until the whole nation moves away from the idea that there is something subversive about working for social change.

This brings us back to the knotty questions raised in the beginning of this paper. Do we really believe in civil liberties? Do we believe in freedom for all ideas to be expressed? The argument of those who do not so believe is that it's too dangerous--that because communism poses such a danger in the world we may have to choose between national security and freedom, we may have to give up some of the First Amendment in order to preserve the country. Those who argue in this manner say that such things as our Bill of Rights, such things as free speech, are luxuries that a nation can afford only when it is completely safe.

We hold differently. We don't think the American people face any such horrifying decision as a choice between freedom and national security. We think we can be secure only if we are free. Can a free society really preserve itself by adopting the totalitarian methods it claims to oppose? Can we defeat any idea by suppressing it? We don't think so. Rather, we maintain that the only way this nation can preserve its national security is to live up to the ideal of personal freedom on which it was founded.

Justice Hugo Black of the U.S. Supreme Court has said this more eloquently. Recently the Supreme Court has been split 5 to 4 over this issue of freedom of the individual vs. national security. The majority of the court has taken the position that some of our traditions of free speech must be surrendered in the interest of protecting the country. This has become known as the Frankfurter balancing doctrine, for Justice Felix Frankfurter, the leader of the five-man majority. However, Justice Black said in one of his dissents to the majority opinion:

"I cannot agree with the Court's notion that First Amendment freedoms must be abridged in order to 'preserve' our country. That notion rests on the unarticulated premise that this Nation's security hangs upon its power to punish people because of what they think, speak or write about, or because of those with whom they associate for political purposes...I challenge this premise, and deny that ideas can be proscribed under our Constitution. I agree that despotic government cannot exist without stifling to voice of opposition to their oppressive practices. The First Amendment means to

me, however, that the only constitutional way our Government can preserve itself is to leave its people the fullest possible freedom to praise, criticize or discuss, as they see fit, all governmental policies and to suggest, if they desire, that even its most fundamental postulates are bad and should be changed; 'Therein lies the security of the Republic, the very foundation of constitutional government.' On that premise this land was created, and on that premise it has grown to greatness..."

So says Justice Black. Those who say that the Bill of Rights is a luxury the nation can afford only when it feels completely safe misunderstand its meaning and ignore history. If the Bill of Rights does not mean anything when people feel their nation is in danger, it does not mean anything at all, since when everyone feels perfectly safe there is no need for constitutional guarantees of free speech. The Bill of Rights was written into our Constitution at the very beginning of our nation--at a time that was probably the most dangerous period in our history, when America was a small young nation in a warring world. The founders of our country had some blind spots; they built America's great moral dilemma into the structure of the country when they compromised with human slavery. But they were groping toward a then-new idea of government--that all social problems can be solved if men are free to speak and to organize.

These men or their forefathers had come from countries where tyranny ruled, where men could be jailed for their ideas and words. They had just come through a bloody revolution which resulted from the fact that men had not been free to organize peacefully to resist tyranny. They had a bold new idea: that if the channels of communication and organization are kept free then social change can come about peacefully. It was a gamble with destiny; it was a dangerous step to take. But all we've had of freedom for the last 200 years has come because they took this step; because they took it, we as a nation have had the right to protest--to protest slavery, to protest economic injustice, to protest today against inequality. Dare we give up this idea now, in frightened pursuit of elusive national security?

Freedom is always dangerous. But those who believe in civil liberties maintain that it is far more dangerous not to have it. A perfect example of this is what has happened in the United States during the McCarthy period; when we began to set up governmental censorship of some ideas, we inevitably discouraged discussion of all ideas; we frightened and discouraged people from engaging in controversy; we took the life blood of citizen participation out of our society. So, as outlined above, when we face a major social change such as the South faces today we come to grips with it with one hand tied behind our back, because the tools of citizen action have been hemmed in and restricted and people have fallen into silence. Allow complete freedom of thought and expression, and you are bound to turn loose upon society some ideas that some people consider bad. But we who believe in civil liberties maintain that democracy can never be destroyed by a bad idea. (For example, Germany was not destroyed by the Nazi idea but by the failure of government to stop the Nazis when they resorted to acts of violence.) What can destroy our democracy is a silence of our citizens and their failure to speak on important social issues. This, and not the threat of dangerous ideas, is the real problem we face in America and especially in the South today.

The present student generation in America is pumping new moral awareness into our national life. Southern students especially are doing this as they rise to challenge the evil of segregation. We ask that they consider whether they should not also bring this same moral force of their idealism and their dedication to the issue of free speech and freedom of association. If they do this, they may truly be the generation that rejuvenates this nation.

There are those in the civil rights movement who say: "Let's take one thing at a time. Let us win the battle against segregation and then we'll take on the free speech fight." We do not doubt the sincerity of these people, but we do question their judgment. They assume that free speech is some end in itself--a luxury that we can strive for when other battles are won.

In a sense, free speech is an end in itself since it is a desirable state of affairs and we all want and enjoy the right to speak freely. But free speech is also a means to an end. It is a weapon in the struggle for higher good, for social justice, for a new society based on brotherhood. We don't need it later as some sort of icing on the cake; we need it now in order that the social change we seek may come about peacefully.

In the South, the integration movement will falter halfway to its goal unless we can wrest from the segregationists the weapons by which they frighten and silence the liberal white South, among them the cry of "subversive." And we can take these weapons from them only if the entire nation rethinks this whole question of "subversion" and returns to the original American idea that the real subversion of democracy is the suppression of ideas.

We believe that those struggling for civil rights must also take their stand for civil liberties now. It may be a large order but it should not be too large for the young--for when was youth ever deterred by the thought that the task ahead was difficult and the road a rocky one?