

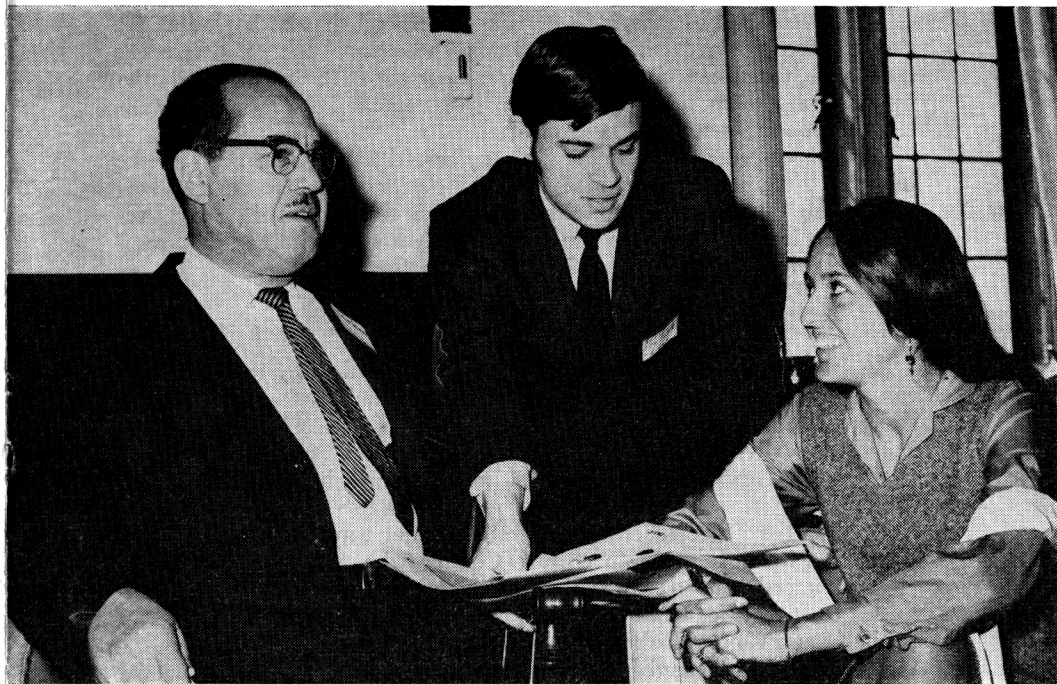
Rights

Vol. XII No. 4

Price 25¢

June, 1965

Report from Alabama:
THE AFFAIR ON HIGHWAY 80
by Clifford J. Durr



Judge Hubert T. Delany, Russell D. Stetler, Jr., and Joan Baez at the Student Conference sponsored by ECLC. (Photo by the *Sunday Bulletin*, Philadelphia)

CRITERIA FOR A DEMOCRATIC CAMPUS

Editorial

First Amendment Firsts

On May 24 the U.S. Supreme Court struck down as unconstitutional the law passed in 1962 which required the Postmaster General to hold for written permission from the addressee, any foreign mail which censors considered "Communist political propaganda."

For the first time the Court struck down a law because it violated the First Amendment. Justice William O. Douglas in the unanimous decision said, "The regime of this act is at war with the 'uninhibited, robust, and wide-open' debate and discussion that are contemplated by the First Amendment."

Justice Douglas also quoted an earlier opinion of the late Justice Oliver Wendell Holmes: "The United States may give up the post office when it sees fit, but while it carries it on, the use of the mails is almost as much a part of free speech as the right to use our tongues."

Fortunately Dr. Corliss Lamont, the Chairman of the Emergency Civil Liberties Committee, acting in his capacity as the publisher of Basic Pamphlets, sued the Postmaster for holding up his mail. In San Francisco Mr. Lief Heilberg did the same thing with the help of the American Civil Liberties Union.

Although the Postmaster General has now said that he is glad to get shed of the whole affair and to put his attention back on delivering the mail, the Government in both cases tried to avoid the suits by declaring them moot because the Government had been automatically notified that the mail was desired.

The three-judge court in New York decided 2-1 against Dr. Lamont but the three-judge court in California decided against the Government. The Supreme Court, in holding with the California court, removed an incubus from the American people and an end to the harassment was decreed at once by the Postmaster General.

O'Connor Victory

A First Amendment challenge of the right of the House Un-American Activities Committee to harass citizens by subpoenas was made by Harvey O'Connor in 1958. Mr. O'Connor was then Chairman of the Emergency Civil Liberties Committee and presiding over a meeting in Newark, New Jersey, to protest hearings which had been called there.

Just as the ECLC meeting was getting under way a Federal marshal came in with a subpoena for Mr. O'Connor who refused to accept it. He announced instead, "It is time to challenge the power of this committee to spread fear and confusion among us. By declining to respond to the House Committee's subpoena, I make that challenge."

He was indicted and ECLC took the defense as a test case. Leonard B. Boudin, the General Counsel, was assisted by Morton Stavis of Newark, a member of ECLC's Executive Committee. The attorneys re-

quested that HUAC produce the papers which justified subpoenaing O'Connor and the judge ruled that they should be produced. They never were, and in May of 1965 the Government attorneys, without notifying the defense attorneys, asked that the indictment be dismissed.

Other Recent Court Decisions

The Courts have checked but not abolished the McCarran Act. In deciding that the evidence on which the Subversive Activities Control Board had required registration by the Veterans of the Abraham Lincoln Brigade and the American Committee for the Protection of Foreign Born was "stale," the Supreme Court reversed the finding by the Circuit Court and left undecided whether the part of the Act dealing with "fronts" was constitutional.

Both organizations have been in the courts for a long time defending their right to function without the false labeling required by the McCarran Act. The Supreme Court so far has not upheld the S.A.C.B. on any of its findings of "Communist-fronts." But the Board has lots of money and can penalize an organization, and perhaps exterminate it, just by a "finding." Until the Act is repealed no organization which criticizes the Administration—from the left—can be safe. The Veterans of the Brigade were represented by Leonard B. Boudin for the Emergency Civil Liberties Committee. The American Committee was represented by Joseph Forer of Washington.

The Circuit Court of Appeals, in holding that the Senate Internal Security Subcommittee acted improperly in subpoenaing Herman Live-right and William Price in 1956, brought to an end two more cases which have cost the two men much pain and cash. Both had been to the Supreme Court before and had been tried a second time. Mr. Live-right was defended by Harry Rand, who volunteered his assistance as a member of the Executive Committee of E.C.L.C.. Mr. Price was represented by David Rein of Washington.

The Supreme Court made an outstanding decision in the case of *Dombrowski v. Louisiana officials*, ruling unconstitutional the major provisions of the Louisiana Communist-control act. The Louisiana authorities had raided, seized, and published material from the offices of the Southern Conference Educational Fund and its lawyers Benjamin E. Smith and Bruce Waltzer. To prevent recovery by the injured parties, the material had been taken into Mississippi and turned over to Senator Eastland's Senate Internal Security Subcommittee.

Court actions against Senator Eastland's Subcommittee are pending. The attorney for S.C.E.F. and the two attorneys in their significant victory was Arthur Kinoy of New York City.

In the field of passports and travel the Supreme Court made a most regrettable decision in the case of Louis Zemel, who sued for validation of his passport for travel to Cuba. The Court by a 6-3 vote held that the Constitution permitted Congress to limit travel and that Congress had authorized the State Department to do so.

The decision specifically left open the question as to whether

it is a crime to leave the United States for Cuba without a valid passport. That question will probably be taken to the Supreme Court in the cases of the students who went to Cuba without validation in 1963. The Department of Justice has announced that the cases of three of the students will be tried soon. Leonard Boudin will represent Levi Laub and Steven Martinot as he did Mr. Zemel. Both cases have been supported by the Emergency Civil Liberties Committee as important tests.

Guest Editorial

The Forbidden Island

The "Cuban Wall" which the United States Government has erected between this country and Fidel Castro's island seems as solid in its way as the Berlin Wall. Washington made this clear when Abba Schwartz, the State Department's Administrator of Security and Consular Affairs, refused to validate the passports of a group of editors of thirteen college newspapers—including those of Columbia, Harvard, Princeton and Yale—who wanted to go to Cuba on behalf of their publications. The excuse was that they were not "legitimate newspapermen" seeking to keep the United States public informed.

This was simply an excuse to keep some American students out of Cuba. Even if Mr. Schwartz's characterization of the editors were granted—and it certainly is doubtful—the policy of keeping American students, scholars, professors and scientists out of Cuba is a clear case of obscurantism.

Cuba is undergoing a thorough and significant social revolution. That it is a bad revolution in American eyes is beside the point. Cuba has been transformed from a variation of capitalism to a variation of socialism. The old political, social and economic structures have been overturned. The historic connections between Cuba and the United States have been broken. The cold war has been brought into the Western Hemisphere for the first time.

The right to know and the right to travel—except in wartime—ought to be sacred. For political scientists, for historians, for economists, for teachers wanting to study how an educational system is adapted to a Communist regime, Cuba is a unique opportunity. Americans should be swarming over the island with magnifying glasses and reporting what they find, not just for today's newspapers but for posterity. The American public in general has a right to know what is going on in Cuba; and so—obviously—does every segment of our society, including the residents of college campuses and the readers of college newspapers.

"As student editors in a free and democratic society," the rejected group wrote, "we consider the freedom to travel a necessary condition for the freedom to learn." So it is. Their passports should have been validated as a matter of course.

—*The New York Times*, April 15

ECLC's National Council Meeting

Seven new members to the National Council were elected at the annual meeting which was held on May first at Walden-on-Hudson, the country place of Dr. Corliss Lamont, ECLC Chairman. All the current officers were re-elected, and Prof. H. H. Wilson and I. Philip Sipser were added to the Executive Committee. The new Council members are:

ERNEST CHANES—mechanical engineer of New York City

EDWARD LAMB—attorney and business man of Toledo, Ohio

LAWRENCE PINKHAM—Assistant Professor Journalism at Columbia University

MARY MOTHERSILL—Professor of Philosophy at Barnard College

STANLEY SWERDLOW—businessman of New York City

MOE TANDLER—attorney of St. Albans, N. Y.

Following reports from the Treasurer, Director and General Counsel, the Council had lively discussions. The following resolution concerning the Un-American Activities Committee was adopted:

Resolution on HUAC Investigation of the Klan

1. The Emergency Civil Liberties Committee deplores the fact that the President of the United States has recommended that the House Un-American Activities Committee investigate the Ku Klux Klan's acts of violence and its interference with civil rights and liberties in the South.

2. Since in our view, as frequently expressed in the past, the resolution creating the HUAC violates the First Amendment's guarantee of freedom of speech and association, that committee is not a constitutional and lawful vehicle for any investigation.

In addition, the Committee's long history of lawlessness makes it a most doubtful instrument for any investigation of violations of civil rights. Its history and composition suggest further that while the investigation may purport to be a study of the Ku Klux Klan, it will in fact soon turn into a weapon against civil rights workers and organizations under the familiar cry against communism.

3. There are very serious problems today of interference with civil rights by the Ku Klux Klan and by other para-military organizations whose objectives and methods include the destruction of such rights. It is clear that governmental action in this area is long overdue.

But such action should have been and should now be undertaken by the executive branch of the government in the form of vigorous investigation and enforcement of the many laws on the subject. The Department of Justice and the Civil Rights Commission are appropriate agencies for this work. If they require further personnel and appropriations, these should be sought and secured. If they would

be helped by public support, if state officials are obstructive, the President has the duty to speak out publicly and to support his subordinates in demanding such additional assistance.

4. In short, it is our view that a congressional investigation to determine the need for legislation is far less to the point than the enforcement of the laws we now have. Indeed a congressional investigation—particularly one drawn out and diverted into an investigation of “subversive” civil rights workers—may become the excuse for continued non-enforcement of the laws.

5. However, if a congressional investigation is to be held, let this be by a committee whose legislative mandate is clear, not of doubtful constitutionality, by a committee whose history is itself not one of lawlessness and of interference with civil liberties, by a committee whose membership is not led by persons elected by and sympathetic to segregationists. Instead, such an investigation should be made by the House Judiciary Committee, whose mandate is clear and lawful, or by the Subcommittee on Constitutional Liberties (the former Hennings Committee) of the Senate Judiciary Committee, which since its inception under the late Senator Hennings has been investigating official lawlessness and governmental interference with basic liberties. This is precisely the problem raised by the Ku Klux Klan situation—the cooperation extended by state officials to organized citizen groups who lawlessly fight integration and the indifference of federal officials and grand juries to such violation of law.

If the problem is thus articulated, the solution is equally clear.

HUAC Skids in Chicago

Obtaining no evidence from any witness except the two paid employees of the F.B.I., who presumably had testified to their employer well in advance of the hearing, the first venture of HUAC outside Washington in 1965 was a complete loss for the committee, but the public on the other hand may have gained. The hearings were on May 25, 26 and 27. Public protests rivaled those of San Francisco and Puerto Rico.

Dr. Jeremiah Stamler, noted heart specialist, his assistant, Mrs. Yolanda Hall, and Mr. Milton Cohen, all of whom had been subpoenaed, brought suit to quash the subpoenas, challenging the validity of the committee itself. The suit was lost in the lower courts and is now on appeal to the U.S. Supreme Court.

The three witnesses appeared at the hearings and identified themselves and then refused to participate pending the final outcome of their suit. Nine other witnesses refused to testify, asserting the Fifth Amendment.

The Chicago Board of Health which employs both Dr. Stamler and Mrs. Hall, unanimously upheld their right to refuse to testify and asserted that there was “no valid reason” to dismiss them.

The Affair on Highway 80

by Clifford J. Durr

Alabama is in a state of confusion following the most massive invasion it has experienced since Wilson's Raiders swept through the scattered remnants of Forrest's Cavalry almost exactly a hundred years before. This time there are no reports of skies black with the smoke of burning cotton bales or, so far, of family silver looted from white-pillared ancestral homes, but the lack is more than made up by delectably shocking stories of drunken debauchery and sex orgies in public along the streets and highways; of innocent victims of rape carried sobbing and bleeding to local hospitals and of priests and nuns, as well as rabbis and clerical-collared Protestants, joining gleefully in the revelry.

In the absence of an applicable table of measure, how many individual incidents make an "orgy" remains a matter of opinion. There were young people among the invading forces. Some of them looked quite healthy and it was spring. But there were heavy showers of rain, the ground was wet and soggy, and a 54-mile march can be rather exhausting even for the young. For reasons not clearly explained, the eagerly awaited films depicting the shameful events have not yet been released for public inspection, neither the persons nor the hospital records of a rape victim have been produced, and the police records throw little light on the sexual aspects of the affair. A Southern newspaper reporter who stalked the quarry, sex, with camera and notebook, day and night, throughout "The March," reported extremely poor hunting. No one has ever come up with a wholly satisfactory answer to the question of whether the sweet, but still anonymous, young lady who was raped exactly 47 times, could not have better served the cause of saving her virtue by screaming for help rather than counting. But stories of this kind seem to thrive quite well on repetition without the hindering need of specificity or supporting evidence.

Notwithstanding the lurid stories, to the mere observer, the march along Highway 80 and the events that preceded and surrounded it seemed more in the spirit of an old fashioned Southern revival meeting, with all day singing and dinner on the ground, than of a Bacchanalian orgy, though there was mixed in with it some of the frighteningly innocent zeal of a Children's Crusade, which was not entirely of youthful origin.

Certainly the march had its quota of beatniks and kids seeking kicks, and older people seeking to feed their own starved emotions at the common repast. But it also had its full share of thoughtful, responsible, and deeply concerned people, white and Negro: doctors,

lawyers, university professors, union officials, laborers, teachers, businessmen, and housewives, as well as students and members of the clergy.

Considering the number of people involved who poured in, unscheduled, from every part of the nation, the confusion and uncertainties surrounding the organization of the march, and the demonstrated hostility of the state and county police, the fact that the march came off at all is rather convincing evidence of the competence and sense of responsibility of its organizers and the self-discipline of its participants.

Altogether the march was a remarkable combination of good humor, good will, and enthusiasm, an impressive demonstration of nationwide insistence that old and obvious injustices be corrected *now*. It almost made one feel that the long dormant national conscience has at last been awakened and that the glow of righteous indignation will soon lighten the dark places throughout the land.

Certainly the march gave a tremendous lift to the spirit of the Southern Negroes in showing them that they are not alone in their struggle for the rights which the Constitution of the United States has so long said are theirs. Undoubtedly it will result in increased voter registration, thereby removing a major source of the Negro's helplessness to help himself. But it is difficult for a white Southerner who was in Washington, D. C. during the rise and ascendancy of "McCarthyism" and who has lived back in the South during the turmoil that has followed the decision of the United States Supreme Court in *Brown vs. Board of Education* (1954) to feel wholly convinced that we have finally arrived at the dawn of a bright new day.

Like it or not, the South and the rest of the country are "members one of another" and so are Southern Negroes and Southern whites. We must advance together or not at all. "The *Southern Problem*" is not just a regional one; nor is it just a problem of the Negro or even of "Civil Rights." We Southern whites are a big part of that problem; so are the North and the East and the West. Righteous zeal has an unfortunate way of consuming itself in a few dazzling bursts and righteous indignation of focusing too narrowly on a safely distant wrong. There is too much of the kind of courage that fades away when there is no immediate excitement to stimulate the adrenal glands or when the like-minded have disbanded and gone their separate ways and there is no group courage from which to recharge itself. Making a living for one's self and family is an absorbing business and does not leave much time or energy for good works. In dealing with problems there is too much of a tendency to shout "Let's pass a law" and, when the law is passed, to relax and assume that all is well and nothing more need be done. Legislatively the country has just about caught up with where it was 90 years ago. The 13th, 14th, and 15th Amendments to the U.S. Constitution have all been on the books for nearly a century, and the Civil Rights Act of 1964 is little, if any, advance over the Civil Rights Act of 1875. Had only the 15th Amendment's guarantees against the denial of the right to vote because of race, color, or previous condition of servitude been observed and enforced there

would have been no Civil Rights Act of 1964 and no march on Highway 80, for there would have been no occasion for them. From the adoption of the original Constitution all officials of government, state and federal, have been required to take an oath to support that Constitution and all amendments thereto, but it seems to be an oath easily forgotten in the absence of constant and sharp reminders. As important as they are, laws do not seem to hold up without a base of accepted morality, and keeping that base sound is a constant, not always exciting, and sometimes even a dangerous job.

The last battle of the Civil War was fought at Selma and a few days later Montgomery, the first capital of the Confederacy, surrendered without a shot being fired. But comforting historical parallels cannot be safely drawn from isolated historical events. The Civil War was followed by 12 years of Reconstruction and that in turn was brought to an end by the Tilden-Hays Compromise of 1877, in which the industrial North bartered away the newly gained rights of the Negro for a free hand in exploitation of the resources of the South. The zeal of the Abolitionist had spent itself and, abandoned by their former friends, the freedmen were left helpless in a state of economic bondage not too different from their former condition of slavery. The Confederate flag still flies above Alabama's Capitol dome.

As illustrated by the stories earlier mentioned, the march left in its wake in the white community a residue of increased resentment and frustration and anxiety; the old but even more intense sense of being ringed by outside enemies and infiltrated by subversive conspirators; a feeling of affront to its own self-image and of even loss of faith in its own professions, with no new faith to take its place—no sense of destiny or even direction; a lot of ugly rumor and gossip and hate; and perhaps even a lingering remnant of the blood-lust of frontier days. It would be dangerous to dismiss these feelings as the mere products of irrationality. Irrational or not, they exist and they are the elements that could go into the making of further violence. Perhaps the sense of defeat that runs through it all will dampen the fuse between the match of the demagogue and the explosive. Perhaps, again, the mood is a reflection of the death struggle of old ideas and patterns of behavior; but there must be new ones to take their place, and little but silence is coming from our colleges and universities, while our churches, too often, are serving as little more than the glue that holds the status quo together.

It is encouraging that some of our Chambers of Commerce, and even individual business men who are wealthy enough to feel secure, are beginning to speak out, not just in terms of profits and losses or the impairment of the "image" of the state as a happy home for industry, but, at long last, in the language of right and wrong. How effective, or lasting, leadership from this source will be is yet to be seen.

As in the period following Reconstruction, the South is seeking its redemption in "outside" industry. Industry does seem to be coming in at an increasing rate. That which came in following Reconstruction soon found that cheap labor was a most profitable Southern

resource and it sought to preserve that resource, and to prevent the formation of labor unions, by playing off the Negro laborer against the white. The heritage of this technique is the source of much of the present bitterness and fear and most of the violence. There is no assurance as yet that "new" industry will not be tempted to follow the same practice.

As effective as it has been as a rallying cry in the struggle of the Negroes for their rights as citizens, the term "Civil Rights" is an unfortunate one, for it tends to set apart the Constitutional guarantees against discrimination on account of race, color, or religion from the bundle of "Civil Liberties" of which they are an inseparable part. How can any minority group gain or long retain its rights without freedom to talk and think and write and assemble together, and to protect that freedom when the occasion requires? This freedom, together with the right to vote, are the very heart of the form of government and way of life we call American. Moreover, equality in subjection to an enforced conformity is hardly worth the battle.

The problem of the South is basically one of Civil Liberties. In the white community dissent has been silenced by the pressure of conformity. Those with the responsibilities of leadership feared to speak out, and the white Citizens Councils and Kluxers moved into the resulting intellectual and moral vacuum with their slogans and violence. Not only did communications between Negroes and whites break down, but whites stopped talking to each other about the problems that mattered most, for fear that they might be "misunderstood" or their credentials as Southerners brought into question. The great Southern myth that we Southern whites know the Negro began to come into play. "Knowing" him we "knew" that he was satisfied with his lot. The increasing indications that he was not could be explained only in terms of sinister "outside" influences. The sense of being threatened by unidentified, but powerful and clever conspirators, began to take over, and the South began to move more and more into the pattern of the days of McCarthy.

"Black" has become "red" and the weapons of McCarthyism are becoming increasingly the weapons of the Wallaces, the Barnetts, and the Eastlands. It is disturbing that the ammunition for these weapons is still being manufactured and packaged in Washington, D. C. in the House Committee on Un-American Activities and Jim Eastland's old Senate Sub-Committee on Internal Security, with little effective protest from the crusading "Civil Rights" Congressmen and Senators.

The news that the House Committee on Un-American Activities has been assigned the job of investigating the Ku Klux Klan is hardly reassuring. A Congressional Committee finding that the Klan, though given to violence on occasion, is strictly American in its allegiance is hardly a satisfactory substitute for a few convictions for murder.

McCarthyism did not begin with the rise to power of the Senator from Wisconsin nor did it end with his death. It is now built into the structure of government itself. Whether its seeming abatement is due to a return of the people to the old American faiths or that it had so

well accomplished its purpose is hard to say. The fact remains that we are still lagging dangerously behind in the production of new and unorthodox ideas necessary to deal with the new and unorthodox problems with which science continues to confront us.

Perhaps it is further evidence of the "backwardness" of the South that McCarthyism was so slow in reaching it. But it is now there and is in full flourish. If, as the result of too narrow a concentration on "Civil Rights" it is permitted to enter the Civil Rights Movement, it can tear that movement apart as it did the labor movement in the 1940's and 50's. The fighting in Vietnam and Santo Domingo provides a climate favorable to its growth, as did the war in Korea. Unless our Civil Liberties are kept strong and pre-eminent McCarthyism may re-infect the entire country.

Presumption of Innocence — Can New York Restore It?

by Gene Condon

If we are to examine what we think we have—as well as what we have—it is essential to forget slogans and platitudes with which we reassure ourselves and take a look at the actual workings of our criminal courts. I speak only of the lower Criminal Courts of New York City, but I have been told by colleagues from other jurisdictions, namely, Delaware and Alabama, that the conditions I describe in New York also prevail in their states.

Although the axiom that every defendant is presumed innocent until proven guilty beyond a reasonable doubt is comfortably accepted in principle, the reverse is true in practice. In the lower criminal courts, where issues of fact and law are decided by one judge or three judges sitting without a jury, it is a rare judge indeed who will choose to take the word of a defendant over the word of a police officer. If the defendant has a prior conviction, it is often advisable to forget going to trial altogether if the defendant's own testimony is essential to lay the basis for acquittal.

If there has been police malfeasance, such as threats or assaults, in connection with the arrest, it is poor policy to bring this out on trial because the judge will, in order to protect the Police Department, choose to disbelieve that the police acted improperly and will therefore have to discredit the defendant as a liar with relation to all of his testimony.

If a defendant has been badly (and obviously) roughed up by the arresting officer, there are two possible results. The defendant may be charged with an assault in addition to the underlying charge in order to justify the force used by the police. If the defendant presses the story of his beating by the police, he will probably be convicted. On the other hand, the court may acquit if it is first assured by defense

counsel, off the record, that the defendant will not press civil suit against the City or the policeman involved. Following acquittal, counsel, true to his word, puts such a stipulation on the record. This particular by-play, I strongly suspect, has more than a little to do with the Police Commissioner's being able to point with pride at the extremely low number of complaints filed against his department each year.

Another popular device is the multiple charge complaint. In one case, a defendant was arrested and charged with assault upon and interfering with an officer; he was guilty on neither count. The facts are that when a companion of the defendant was arrested on a disorderly conduct charge, the defendant told the officer that his friend was innocent and should not be taken in. The officer assaulted the defendant and the defendant struck back to protect himself. The incident took place at 125th Street and Lenox Avenue on a Saturday night. There were many witnesses. One might consider this a winning case, but there are a few catches. First, the fellow who was arrested originally, had a prior conviction, so his testimony was automatically discounted. Second, the other witnesses, wise in the ways of survival in the ghetto, disappeared and would not come forward. Thirdly, the defendant would have to tell the facts concerning police conduct if he were to take the stand and would thus be on very shaky ground. The judicial theory—if it were only true!—is that police officers do not make arrests unless clearly necessary and have no interest in securing convictions once they are in court.

In the case outlined above, the defendant has two charges against him—assault and interfering with an officer. The District Attorney offered to drop one charge if the defendant would plead guilty to the other, thus making it appear that he was doing the defendant a favor. Defense counsel had little alternative but to advise the defendant to take the plea. He, of course, was upset and felt "railroaded," but there was so little chance of any judge believing the defendant, or choosing to disbelieve the officer, that all finally agreed that one conviction was better than two. This is a classic example of the kind of "Catch 22" justice that results from a timid judiciary.

I for one do not believe that the judges who act so protectively of the Police Department are evil or dishonest men. I believe that for the most part they want to do a good job, but that they are so fearful of public pressure to convict so-called "punks" (that is, anyone who is arrested) and so responsive to pressure from law-enforcement agencies, that they have abdicated their responsibility to the defendants who appear before them.

There is, in addition, complete chaos and interminable delay in the calendar conditions in the criminal courts. This leads to many inequities and hardships, not among the least of which is unduly high counsel fees. In the vast majority of cases in the criminal courts, fees are low for the simple reason that is what the client can afford. If our courts were administered properly the modest fees would not be a deterrent to practice because the trials are usually short—less than half

a day in duration. However, under the prevailing conditions forty or more cases may be marked ready for trial in one day. It is obvious to even the most uninitiated that one judge cannot try more than six cases in one day, in addition to the handling of a calendar of 100 or more cases, taking pleas, imposing sentences and hearing motions. And so defense counsel, defendants and witnesses may spend as much as—or more than—five separate days in court waiting for a trial. This time element makes it economically unfeasible to handle cases for the fees clients can afford. Thus, more and more practitioners are driven into other fields of specialty.

This leaves the field open for the Legal Aid Society, which is a whole story within itself. Suffice it to say that the representatives of the Legal Aid Society are probably among the most overworked, underpaid laborers in our society. The greatest devotion and the finest skill cannot overcome the handicaps under which they labor. They just do not have the time to devote to their cases—and representation of a defendant in a criminal case is a time-consuming job.

If it is so—and the Supreme Court has held that it is—that the states have an obligation to provide counsel for indigent defendants, then it is high time that the State undertake to do so as a *State function*. The Legal Aid Society in New York City is a private organization, supported by private philanthropy. Thus, the number of lawyers on the staff is determined by private charity, and it is obvious that these funds are not sufficient to do the job.

The broad-stroked outline I draw above is not one that will draw young lawyers into the criminal field. It is not a picture of a society that is offering equal justice for all or putting into practice the preachment that every man is innocent until proven guilty beyond a reasonable doubt.

If the outline were to be filled in in detail, it would become even more obvious that the present system is one that is inappropriate to the standards of a free society.

We need many things. Bail reform. Many, many more judges. More Assistant District Attorneys. More of everything, but especially more justice.

The first step in effecting reform that is reform in substance and not merely on paper—as New York's recent Criminal Court reorganization was—is woefully overdue.

The conditions must be seen to be believed and I, therefore, suggest an in-depth study by an objective body. The ultimate object of the study should be a full exposure of the facts to the public and recommendations that would rock the status quo from New York all the way back to the Magna Carta.

MORSE QUOTE

“We are now entering the stage of war propaganda—watch for it and insist on doing your own thinking.”

—Senator Wayne Morse

Address to students—Stanford University, March 3, 1965

Campus Conference Drafts

“Students’ Bill of Rights”

by *Clark Foreman*

Agitation for better education in our colleges is now nation-wide. The conference on “Democracy on the Campus,” reported in the March issue of RIGHTS, brought together about 200 men and women from 38 colleges and two preparatory schools. They heard speakers from several colleges, and they drew up a tentative “Students’ Bill of Rights” which they sent out to those who attended the conference. As the result of many comments, a revised version has now been written and is printed in this issue of RIGHTS.

The Emergency Civil Liberties Committee has taken no stand on the students’ document. We did what we could to make it possible for the students to meet, and Judge Hubert Delany of our Executive Committee acted as the Chairman of a Coordinating Committee to support the students. But the planning and the conclusions were made by the students themselves.

Whether the proposals of the students will gain acceptance remains to be seen. The Emergency Civil Liberties Committee feels it is most wholesome for the students to be striving for criteria that they feel will improve the quality of college education in this country.

The efforts of the student conference in Philadelphia has attracted a wide variety of comment. The *Washington Star* on April 5th editorialized a criticism heard in several places. In effect, it was that since the students don’t own the colleges they should not complain. And if they don’t like what has been provided for them, they should do their studying in “the nearest library.”

It is just such supercilious thinking that has aroused the students. They have a right to agitate for better college conditions, and we of ECLC feel they should be encouraged to do so. The students’ “Criteria for a Democratic Campus” appears below along with articles supporting it. RIGHTS will welcome other articles either in support of, or in opposition to, the student criteria.

Criteria for a Democratic Campus

1. Access to a college education must be given to all those who desire it. All those desirous of a college education must be granted admission without regard to race, color, creed, national origin, political beliefs, criminal record, or economic status. Stipends must be awarded to those who need them for living and other expenses without regard to race, color, etc. Admissions criteria must be decided on by faculty

and students. They must establish the basis for admission. Tuition must be abolished in public institutions.

2. The necessity for free inquiry at institutions of higher learning has long been recognized. Both teachers and students should be free of all restriction on their thinking, questioning, and expression. It is under such circumstances that knowledge can best be pursued. Faculty must help to insure freedom of expression to students with divergent ideas; they should refrain from harmful disclosure of statements made in the course of conversations without prior knowledge and consent of the individuals concerned.

3. Students must be free to join or organize any organization on or off campus. Such organizations must be granted unfettered freedom of inquiry, speech, and action.

A. They may invite any speakers, audience, and participants they choose.

B. They may discuss any subject matter they choose.

C. They may promote causes they support by distributing literature, passing petitions, picketing, or taking action they believe desirable on or off campus.

D. They need not have a faculty adviser; but if one is desired, he or she must be selected by the organization itself.

E. They must not be required to submit membership lists to the university.

F. Members or advisers must not as a group or as individuals suffer any discrimination because of their affiliations.

G. There must be no discrimination in the use of physical or recreation facilities.

H. Any organization or individual in the university community must have the right to distribute literature and use university facilities for meetings. They may co-sponsor off-campus speakers.

I. Students must not be required to join or attend any religious or non-curricular activities.

4. Students must be free to publish and distribute both subsidized and unsubsidized publications without university censorship of editorial policy. Selection of staff should be on the basis of interest and activity and must be done by the organization itself. Staff must be protected from punishment or suppression for any views expressed. Right to remove staff members must be reserved to the organization. Campus radio and television stations must only be subject to the censorship and control of FCC regulations.

5. Students must be free to establish a democratic student government, elected by the entire student body and free from censorship. This student government must serve as the students' representative on all levels of decision-making. This participation must be on an equal footing with representatives of the faculty in determining both social and academic aspects of university life. The student government alone must decide on non-curricular matters which affect students only.

6. Students and faculty must have control over curriculum.

7. There must be no compulsory ROTC.
8. There must be no loyalty oaths.
9. All misdemeanors on campus must be tried by a student-faculty hearing board, in accordance with due process.

A. There must be a code of proscriptions and penalties referring to any possible conduct subject to regulation in the university community.

B. Preliminary investigation must not include pressure or harassment attempting to elicit confessions of guilt.

C. Searching should only be done in the presence of the accused in accordance with protections regarding search and seizure contained in the Fourth Amendment to the Constitution of the United States.

D. Notice of charges must be given in writing well ahead of the hearing. The accused must be given a full statement of rights and recourse.

E. The status of the student on campus must not be altered pending the conclusion of the hearing.

F. The accused must be allowed right to counsel, right to testify and cross-examine, and right to confront his accusers.

G. A transcript should be made of the hearing and must be made available to the student. All information which the university possesses pertaining to the student must be available to him.

H. The hearing may be open or closed according to the preference of the accused.

I. The accused must have the right to appeal the decision to a faculty-student body constituted to hear and pass on such appeals.

J. Decisions of the hearing board must be made solely on the basis of evidence presented at the hearing.

10. There must be no campus police who are not under student-faculty jurisdiction. No other law enforcement agents may be allowed on campus, unless by invitation of the student-faculty government.

11. The university must not give institutional penalties or punishment for political, social, or civil "misconduct" off campus.

For the "Students' Bill of Rights"

by Debbie Rand

We recognize the controversial elements of the Bill we propose. Given the situation on the campuses the suggestions and criteria here set forth will not be wholeheartedly accepted by administrators or students. In order to understand why there is this reluctance we must study some important aspects of the present university system.

Most universities—both private and public—have Boards of Re-

gents or Trustees which determine university policy. They generally are responsible for electing the president and the other administrative heads of the university who carry out the financial, educational, and other policies determined by the Board. Thus it is more important to know the make-up of this Board than the character of the individual president; only rarely does the man in the president's chair really lead the university without pressure of the Board as the real decision-making force.

The Boards of Trustees of our American universities are composed largely of businessmen, corporation lawyers, and academic administrators who are oriented to the industrial world and whose decisions are tempered by that world's needs. To take a well-known example, the University of California Board of Regents is a 24-man body. Sixteen of its members are supposed to represent the people of the State of California and eight the State Government itself; however, thirteen of these men serve as directors, chairmen, or in similar capacities for such varied business concerns as the Bank of America, Hearst Publications, and Western Fruit Growers Sales Corporation. The other eleven members are lawyers, advertising executives, politicians, educational administrators (the arch conservative Max Rafferty and President Clark Kerr), and a labor leader. Such a Board, representative of and responsible to the business and governmental interests in the state, is likely to be concerned with making the university useful to these interests; thus, chemical industries subsidize research by university agricultural chemists to prove that insecticides are not really harmful. Also, the Board does not encourage critical research. When the Berkeley report on the Bracero problem was censored by the Chairman of the Labor Committee of the State Board of Agriculture so as to make its conclusions seem the opposite of what they really were, the Board made no protest.

Lest the reader feel that such narrowly representative Boards are restricted to public universities, he should glance at the Board of Trustees of such a liberal small college as Minnesota's Carleton College. The 1963 catalogue of that school records a Board of 36 active members of which 19 are businessmen, 5 are lawyers, and the only two teachers are professors of business. At Carleton too the nature of the Board has significant effects on the policy of the college. Until last year Carleton had a strict religious requirement; it has only in the last year put money into non-western studies; the college has spent a tremendous amount of money on its gymnastic equipment and science departments but has not significantly enlarged the overloaded history department.

Although it is not possible to determine just how large a part each trustee has in the policies of the university, I think it is safe to say that their biases are important factors in the formulation of university policy. This kind of power structure has led to the limitation of freedom of research and expression and of the goals of the university. The trustees have pressured the administrators who have in turn pressured the students and faculty toward conformity to certain

values. Thus the college has not played its most important role, that of serving as a center of critical thought on political and scholarly issues. It is rare that professors and, until recently, students have been able to break away from the confines of the system and speak out about foreign policy issues. It is even rarer to hear the academic community discussing and advocating radical social change or offering any creative solutions to such problems as poverty or unemployment. It is this sort of thinking and speaking which the university must turn toward. In order to do this, the academic community must escape the constraining influence of their business-oriented Boards of Trustees; it must turn to its members—students and faculty—for leadership.

A good recent example of the disparity between trustee approach to education and that of faculty, was at George Washington University in Washington, D. C. There the board ignored completely the advice of all 13 deans, 32 department chairmen and the executive faculty of the medical school, with respect to a new president for the institution.

The trustees are for the most part big business men or government officials in Washington. Among them is J. Edgar Hoover of the F.B.I. and Benjamin McKelway of the *Washington Evening Star* which editorialized against the Student Bill of Rights to the effect that if the student didn't like what they were offered they could lump it.

Professor Reuben E. Wood was elected chairman of a new faculty committee to investigate all cases in which the board of trustees "does not see fit" to follow faculty recommendations.

Professor Wood commenting rather dolefully on the most recent "case" said, "the Faculty Advisory Committee should have carried weight with the trustees." He added, according to the N. Y. Times of June 9th, "This was the main motivation for widespread professorial chagrin."

Thus, in our *Criteria For a Democratic Campus*, we have placed the governing of the truly democratic university in the hands of the members of the academic community. We have demanded that a democratic student government should serve as the students' representative "in all levels of decision-making" and that this participation should be on "an equal footing with representatives of the faculty." In effect, we have placed the burden of governing the university and of preserving the civil liberties of its members on those members themselves.

The New Demands

by Russell D. Stetler, Jr.

Rights are not given; they are demanded and taken. It is in this light that we must view the STUDENTS' BILL OF RIGHTS. The American student does not try to discover the rights with which he is naturally endowed; he seeks, rather, to procure for himself that which he is denied in the existing circumstances of education in America. He seeks

to establish those principles which are necessary to a more meaningful educational experience and a committed life of social activity. The student is no longer content to be an academic. He provokes for himself a confrontation of the most vital social and political questions of his generation; the question of freedom is no longer academic.

The American student of today formulates new demands because his social experience is quite different from that of past generations. Thousands of students have been drawn off-campus into civil rights activity, both North and South; others have left for a variety of forms of political and social action. But the most significant event has occurred on-campus. The past year has shown that students, on-campus, can become conscious of the political content of their own lives. The discontent which in the past turned students to outside political work or anti-social nonconformity has begun to produce a new and serious class of students. The university itself has become the focus of student concern; its failure to offer a curriculum which corresponds to the problems of the world in which an intellectual must operate, as critic, is articulated in every act of student protest.

What the student demands today is a basic alteration on the context in which he is "educated." In the past, the most serious on-campus issue was that of academic freedom. Students and professors asked merely that their research and publications, lectures and discussion, scholarly argument and debate be carried on in an atmosphere which would be relatively free from blatantly prejudicial restrictions and in which no sanctions would be imposed on those whose political expressions are unpopular. But this approach presumed that all this could occur in the context of the existing university system. Moreover, it left out of account the dangerous possibility that *thinking* might lead to *action*, that full discussion might promote new codes of action, that the limits of a free debate might stretch far beyond the scope of established curriculum.

The Free Speech Movement emerged as an emblem of a new consciousness among American students. These students' demands encompassed academic freedom; but academic freedom, as previously defined, is a necessary but not a sufficient condition for establishing an intellectual community capable of contributing ideas and ideology to a rapidly changing world and to a society which needs certain changes drastically. Such an intellectual community was the goal of the Berkeley activists. They sought something other than the mass-produced, factory-style education which the modern American university has come to offer. They demanded control of the curriculum; and they saw that control of the curriculum was inextricably related to control of the extracurriculum. That management of all university affairs must be in the hands of the scholarly community was clearly discerned.

The STUDENTS' BILL OF RIGHTS represents an attempt to codify the necessary elements of an academic community which will challenge social and philosophical issues in their most dynamic context. It asserts the aspirations and demands of students who have flatly rejected what has been offered to them as "education." They are posing new questions and testing their answers in the crucible of social action.

RIGHTS Notebook

IMPORTANT ECLC TEST CASE . . .

The Immigration Service is attempting to deport Joseph Johnson, a natural-born United States citizen, because he once ran for political office in Canada. This case raises the constitutional question of the validity of revoking citizenship without the concerned party's consent. The defense plans to challenge the 1940 provision of the Immigration and Naturalization Act that voting in foreign elections is a ground for expatriation. The case also calls into question the legality of a two-year draft evasion sentence (which Johnson has already served) when the government holds that the defendant is no longer a citizen.

The hearings are presently being held up while the hearing board decides if certain statements, taken from Mr. Johnson when he was in Immigration Service custody in 1959, are valid evidence. A hearing will be held in Buffalo on May 11 with the supervisor who took the statements present. Douglas Hall of Minneapolis, Johnson's local lawyer, hopes to prove the statements were taken under duress.

1. *New McCarran Act Case*

The first indictment under Section 5 of the McCarran Act was leveled against Gene Robel, a Seattle machinist. This section of the act provides that it is unlawful for any person charged with membership in a communist-action group to seek, accept, or hold jobs in a defense facility. Robel has worked for 12 years for a shipyard which in 1962 was declared a "defense facility" and is now under indictment. His case is being publicized and financially supported by the Robel Defense Committee, P.O. Box 94, Renton, Washington.

2. *Sigwin B. Raska Case*

In 1961 Dr. Raska went to Cuba on the invitation of the Cuban Government to run their diabetes service. He returned to the United States two years later because he was threatened with loss of citizenship. Since that time he has been trying to get his Arizona medical license reissued. He feels that his loss of license, his difficulty in getting it re-issued, and the refusal of local hospitals to admit him to practice are direct consequences of his trip to Cuba and his open expressions of praise for the present government there since his return.

He and his wife are living on welfare checks, and he asks for financial assistance to live and continue fighting his case. Money can be sent to Dr. Raska at 18 Royal Crest Trailer Court, Los Alamos, New Mexico.

EMERGENCY CIVIL LIBERTIES COMMITTEE

421 7th Ave. New York City OXFORD 5-2863

The Emergency Civil Liberties Committee was formed in 1951 to give uncompromising support for the Bill of Rights and the freedom of conscience and expression it guarantees.

The governing body of ECLC is the National Council of 95 members from 18 states, Puerto Rico, and D.C. All who agree with our aims are invited to join as Associates by paying \$5.00 a year. Associates receive RIGHTS and other literature distributed by the Committee.

Chairman: Corliss Lamont
Vice-Chairman: Eleanor Brussel
Treasurer: John Scudder

General Counsel: Leonard B. Boudin
Director: Clark Foreman
Assistant Director: Edith Tiger

Secretary & Editor: John M. Pickering