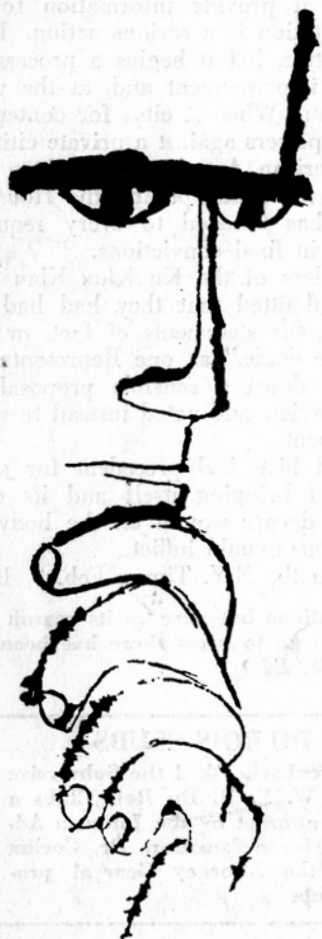


# Rights

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## The Draft

## WHERE DOES THE CONTEMPT LIE?

The House of Representatives votes tomorrow on a resolution to cite three Chicago residents for contempt of Congress for their refusal to testify before the Committee on Un-American Activities.

The committee wishes to cite Dr. Jeremiah R. Stamler, who has won awards for his research as head of the Heart Disease Control Program of the Chicago Board of Health, and two of his associates. They were subpoenaed to appear before the committee last May 25 as part of a series of hearings on "Communism in the Chicago area." The United States District Court refused to enjoin enforcement of the subpoena, but an appeal is now pending. More than 100 law professors have signed a letter stating their opinion that there is a reasonable prospect that the Supreme Court may uphold Dr. Stamler and his associates.

A contempt citation at this time would in no way clarify the important constitutional issues nor would it provide information for a committee of the House. A contempt citation is a serious action. Like a grand jury indictment, it is not definitive, but it begins a process of judicial action that can lead to fine or imprisonment and, at the very least, it damages one's personal reputation. When it cites for contempt, the House is exercising one of its gravest powers against a private citizen.

In the past fifteen years the Un-American Activities Committee has asked the House to cite 129 individuals for contempt and the House—routinely, mechanically, irresponsibly—has acceded to every request. Yet only nine of these citations resulted in final convictions.

Last week's action against seven leaders of the Ku Klux Klan was typical. Members of the House freely admitted that they had had no opportunity "to study all these citations, the statements of fact, or the hearings from which these citations have come," as one Representative expressed it. Yet the members shouted down a sensible proposal to refer the cases to a select committee for review and voted instead to send them on their way to the Justice Department.

There is neither necessity nor sound historical precedent for such conduct. The House runs the danger of bringing itself and its own procedures into contempt. That is a far deeper wound on the body of free government than any recalcitrant witness could inflict.

—From the N.Y. Times, Feb. 8, 1966

(HUAC did not call for the contempt citations but gave as its reason the illness of its Chairman, Rep. Willis. As we go to press there has been no further action and we hope there won't be. *Ed.*)

### KATZENBACH ATTACKS DU BOIS CLUBS

On March 4 Attorney General Katzenbach asked the Subversive Activities Control Board to label the W. E. B. Du Bois Clubs a "Communist front." This is the first attempt by the Johnson Administration to use the McCarran Act for defamation. Dr. Corliss Lamont, Chairman of ECLC wired the Attorney General protesting the attack on the Du Bois Clubs.

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**Editorial**

**IS BIG BROTHER WATCHING (LISTENING,  
BUGGING, INFORMING?)**

"Everybody in law enforcement does something about wiretapping, but nobody talks about it," according to a UPI dispatch about testimony of a retired U.S. Bureau of Narcotics agent before a Senate subcommittee investigating wiretapping and other governmental snooping. "I would tell anybody, 'God, no,' if they asked me about it—even if I was tapping a wire at the time they asked," he told the subcommittee headed by Sen. Edward V. Long (D-Mo.).

At the same hearing an electronics manufacturer described a conversation transmitter the size of a thin wristwatch, and a San Francisco housewife told about using one to obtain evidence against suspected book-makers for the Internal Revenue Service. For her services she got \$80 to \$100 a week plus the rent for her (bugged) apartment. Fred J. Cook summarizes a number of case histories presented to the Long Subcommittee, involving Internal Revenue, the Post Office Department (including 34 admitted cases of opening first class mail), electronic manufacturers, private eyes, the FBI, the Bell Telephone Company—and even the Bureau of Roads and the Food and Drug Administration ("Snoopers and Tappers," *The Nation*, December 20, 1965).

**GEORGIA VIOLATES CONSTITUTION  
IN DENYING JULIAN BOND SEAT  
IN LEGISLATURE**

Because they didn't like Julian Bond's support of the SNCC statement against the war in Vietnam (see p. 16) the Georgia House of Representatives denied this duly elected representative his seat in the legislature. Nothing could more clearly demonstrate to the rest of the world the views which SNCC had stated. The Georgia House denied a Negro his seat for political reasons. The only precedent was the exclusion 100 years ago of some ex-Confederates as traitors.

A 3-judge Constitutional Court to which Bond's attorneys appealed decided 2 to 1 against Bond. The case before that court was handled by the American Civil Liberties Union, but in appealing the decision to the U.S. Supreme Court Mr. Bond has retained the services of Victor Rabinowitz and Leonard B. Boudin.

In the meantime a special election called by the Governor to fill Mr. Bond's seat was turned into a triumph for him when he was unopposed. He will, however, have to run again in the Democratic primary in September and in the election in November as his term is only for one year.

# THE DRAFT

by Daniel S. Gillmor

Member of ECLC Executive Committee

Never in American history has the question of compulsory military service aroused such controversy as it does today. Unlike the issues that civil libertarians have often debated, the nature and dimensions of the debate surrounding the draft and the right to object to enforced service in the armed forces are far more complex than traditional questions involving the rights conferred by the Bill of Rights.

This issue of RIGHTS is largely devoted to that debate. It attempts to portray the range of beliefs and persuasions of those opposed to compulsory military service at this juncture in history. It does not attempt to simplify an enormously complicated legal and moral question, but rather to delineate the underlying legal problems involved. In doing so, RIGHTS carries forward the directive of the National Council of the ECLC when it declared that it "recognizes the existence of serious Constitutional problems arising from the current compulsory induction of young men into the armed forces. Many people feel that ethical considerations should be a legitimate basis for exemption from the draft. These considerations were not covered by the recent Supreme Court decision holding that lack of belief in a Supreme Being was no bar to exemption as a conscientious objector.

"Many disapprove of United States actions in Vietnam which they consider to be crimes against humanity and violations of international law," the Council resolution continues. "They honestly feel that their participation in the war, even under military orders, would be unlawful under the Nuremberg Judgement.

"The Emergency Civil Liberties Committee, which is neither a political nor a religious organization, does not take an organizational position on these issues. But it does recognize that these arguments may be made in good conscience, and that they deserve to be presented to the courts with the utmost diligence . . ."

The arguments to which the Council referred are manifold and complex, but fundamentally they relate to two issues: Is the Selective Service System, as presently administered, Constitutional? Is American intervention in Vietnam a breach of international law?

The Constitutionality of the draft has long been debated in this country. Addressing the House of Representatives in December, 1814, Daniel Webster said that the Constitution limits Federal power to seek "the aid of the militia" solely to the purpose of "repelling invasion, suppressing insurrection, or executing the laws."

"The administration asserts the right to fill the ranks of the regular army by compulsion . . ." he said, referring to the pending draft bill, which failed of passage. "Persons thus taken by force and put into an army may be compelled to serve there during the war, or for life. They may be put on any service, at home or abroad, for defence or for invasion, according to the will and pleasure of the Government. This power does not grow out of any invasion of the country, or even out of a state of war. It belongs to government at all times, in peace as well

as in war, and it is to be exercised under all circumstances, according to its mere discretion . . .

"Is this, sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our Constitution? No, sir, indeed it is not . . ."

Although the draft was opposed as unconstitutional as recently as 1944, only echoes of Webster's contentions are heard today, and even they pre-suppose the Constitutionality of the draft law. Within its presumed legality, efforts are currently directed to modifying the Selective Service System's administration either by legislation, by court action, or by appeals to its director, General Lewis B. Hershey.

In Congress, Alaska's Senator Ernest Gruening has offered amendments to bills authorizing additional military and economic programs for Vietnam. The identical amendments would prohibit the assignment to Southeast Asia of any "person . . . serving on active duty by virtue of involuntary induction under the Universal Military Training and Service Act" unless he volunteers for such service or unless Congress authorizes such assignment at a later date. Originally, Senator Gruening had intended to introduce such an amendment in August 1965 to the Defense Appropriation bill then pending. He was dissuaded from doing so by President Johnson who promised him that no draftees would be sent to Vietnam before January. On January 25, 1966, the Senator offered his new amendments to pending legislation. At that time, he advanced repeatedly the argument that only by specific act of Congress should draftees be compelled to serve in Vietnam.

Court actions involving the selective service law are now primarily directed at two issues: the right to classification as a conscientious objector of persons who, while not opposing war generally, are conscientiously opposed to participation in any manner in the Vietnamese conflict; and the right to dissent without reprisal by reclassification. The former issue is closely connected with the questions as to the legality of U.S. intervention in Vietnam and will be discussed later.

The use of reclassification as a sanction against dissenters has been protested by distinguished professors at several major law schools. They condemned "the use of the draft to stifle constitutionally protected expression of views," and they challenged the right of General Hershey and other Selective Service officials to deny deferment to students who commit allegedly "unlawful" actions. If the actions were in fact unlawful, they pointed out, the proper punishment is to be found in the law allegedly violated.

Joining in the law professors' protest was Representative Emanuel Celler, a New York Democrat, who wrote General Hershey urging him not to permit such abuse of the Selective Service System. General Hershey replied that the "delinquent" registrant has traditionally been given "an opportunity to enter the armed forces rather than to be prosecuted for his violation of the law . . ."

"A careful reading of [Hershey's] letter confirms the allegation that the Selective Service law is being used to punish and as a sort of club to discourage and prevent political dissent," Congressman Celler said. He condemned the practice unreservedly.

So does the Commission on Law and Social Action of the American Jewish Congress. Its chairman, Howard M. Squadron, wrote General Hershey urging him to inform state Selective Service officials publicly "that they may not exercise their powers on the basis of political expression." In language identical to that used in his reply to Congressman Celler, General Hershey referred to the right of local boards to determine a registrant's availability for military service.

"To my knowledge, registrants have not been declared delinquent, with the resulting accelerated processing, because of participation in legal demonstrations of political views, nor has any such action been proposed by selective service officials," General Hershey said.

Contradicting him, Mr. Squadron cited a statement by Delaware's Selective Service Director, General Henry M. Gross, authorizing the induction of students who engage in "excessive" demonstrations regarded as being "against the national interest." He also cited the cancellation of deferments of four Michigan University students because of their participation in demonstrations at Selective Service offices.

"If these news reports are accurate, it appears obvious that—in Michigan, at least—induction into the military service is being used as a punishment for political dissent," Mr. Squadron telegraphed General Hershey. "We are particularly distressed by press reports quoting Colonel Holmes, Michigan Selective Service Director, as saying he had discussed the situation with you and other officials at Washington headquarters of the Selective Service System."

The AJC called for "a prompt and forthright statement . . . serving notice on all local draft boards that they are prohibited from using the draft law to punish opposition to the present foreign policy of our government."

General Hershey did not oblige. Instead he replied curtly: "My letter to you of November 30, 1965 expresses my views. The action taken by Selective Service local boards relative to the students who interfered with the operation of the local board has been in accordance with the law . . ."

There, at this writing, the matter stands. Presumably the reclassification of at least some students whose deferments have been cancelled will be the subject of court review. In that connection, the National Council of ECLC has declared: "In accordance with its policy of undertaking test cases upon Constitutional issues of importance affecting the well-being of Americans generally, The Emergency Civil Liberties Committee through its National Council has agreed to participate in appropriate test cases which raise these vital questions."

Beyond a doubt one of the issues that will be tested in these cases concerns the legality of U.S. intervention in Vietnam, and the degree to which Constitutional and international law confer protection upon those who dissent from U.S. policy and actions in Vietnam. Such dissent against official foreign policy and acts is not new in American history, as Amherst's Professor of American History, Henry Steele Commager, has pointed out in a brilliant article in *Saturday Review*, December 18, 1965.

The tradition goes back to the time "when George III resolved on war against rebellious colonies," Professor Commager writes. We quote him here with permission: "Nineteen lords signed a solemn protest

### *Conklin's Challenge to Conscription*

ECLC's first case testing the validity of the present conscription is that of Geoffrey Reed Conklin of Purchase, N. Y. Mr. Conklin in refusing to seek exemption has challenged the draft as involuntary servitude, a violation of the freedom of religion and the right not to be forced to testify against one's self. He also holds the American actions in Vietnam as violations of international law and contrary to the Nuremberg Charter and judgment.

Mr. Conklin was arrested on February 10th by the F.B.I. despite the fact that he had notified the District Attorney's office of his willingness to appear when summoned. He was released on \$1500 bail. As we go to press he has not yet been indicted.

against the war; the commander-in-chief of the Army, Lord Jeffery Amherst, refused to serve; the highest commanding naval officer, Admiral Keppel, refused to serve; Lieutenant General Frederick Cavendish resigned his commission."

Professor Commager recalls that Abraham Lincoln opposed President Polk's war against Mexico as unjust. Henry David Thoreau preferred jail to paying taxes to support the war, advocated civil disobedience and was supported by Ralph Waldo Emerson and James Russell Lowell, who had his character, "Hosea Biglow," say:

They may talk o' Freedom's array,  
"Tell they're pupple in the face;  
It's a gran' great cemetery  
Fer the barthrights of our race

Ez fer war, I call it murder;  
There you hev it plain and flat;  
I don't want to go no furdur  
Then my testyment fer that.

Call me coward, call me traitor  
Jest ez suits your mean idees;  
Here I stand a tyrant-hater  
An' the friend o' God an' Peace.

The Spanish-American war evoked similar dissent, Professor Commager says. "The philosopher William James charges that 'we are now engaged in crushing out the sacredest thing in this great human world . . . Why do we go on? First, the war fever, and then the pride which always refuses to back down under fire.'"

The poet William Vaughn Moody wrote "just such an ode as might be written for a soldier fallen in Vietnam," Dr. Commager recalls:

"A flag for the soldier's bier  
Who dies that his land may live;  
O banners, banners here  
That he doubt not, nor misgive . . .  
Let him never dream that his bullet's scream  
Went wide of its island mark  
Home to the heart of his darling land  
Where she stumbled and sinned in the dark."

Among those who uttered "their passionate outcry against what they thought an unjust war," Dr. Commager wrote, were Carl Schurz, Mark Twain, Samuel Gompers, E. L. Godkin of the *Nation*, Felix Adler of the Ethical Culture Society, Jane Addams of Hull House, President Jordan of Stanford University, and Andrew Carnegie.

Dr. Commager concludes by quoting Franklin D. Roosevelt's remark that "the only thing we have to fear is fear itself."

"That is as true in the intellectual and the moral realm as in the political and the economic," the historian writes. "We do not need to fear ideas, but the censorship of ideas. We do not need to fear criticism, but the silencing of criticism. We do not need to fear excitement or agitation in the academic community, but timidity and apathy. We do not need to fear resistance to political leaders, but unquestioning acquiescence in whatever policies those leaders adopt. We do not even need to fear those who take too literally the anguished pleas of a Pope Paul VI or the moral lessons of the Sermon on the Mount, but those who reject the notion that morality has any place in politics. For that, indeed, is to stumble and sin in the dark."

One source of the moral principles to which Dr. Commager has referred is the Nuremberg agreement to which the United States, with other major powers, subscribed. Reporting to President Truman on the U.S. legal position in respect to the war crimes trials, prosecutor Robert H. Jackson said: "The legal position which the United States will maintain, being thus based on the common sense of justice, is relatively simple and non-technical. We must not permit it to be complicated or obscured by sterile legalisms developed in the age of imperialism to make war respectable." He described the trials as a "reversion to earlier and sounder doctrines of International Law" as taught by Grotius "that there is a distinction between the just and the unjust war—the war of defense and the war of aggression."

"It is high time that we act on the juridical principle that aggressive war-making is illegal and criminal," he told the President. Tracing the re-establishment of this principle of unjustifiable war through the Briand-Kellogg Pact, the Geneva Protocol of 1924, the Eighth Assembly of the League of Nations, the Sixth Pan-American Conference's declaration that "war of aggression constitutes an international crime against the human species," the late Mr. Jackson, later a Justice of the U.S. Supreme Court, concluded that "an attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community. . . . We therefore propose to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace."

Of individual responsibility for such violations of International Law, Mr. Jackson had this to say: "The persons to be reached by these charges will be determined by the rule of liability, common to all legal systems, that all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other. All are liable who have incited, ordered, procured, or counselled the commission of such acts, or



who have taken what the Moscow Declaration describes as 'a consenting part' therein."

Other international agreements that have legal bearing upon the situation are the United Nations Charter, the Geneva accords of 1954, and the Southeast Asia Treaty Organization treaty. In a memorandum of law, the Lawyers Committee on American Policy Toward Vietnam concludes that the U.S. has observed neither the letter nor spirit of its treaty obligations. They note also that Presidential expediency has over-ridden the constitutional requirement that war be declared by Congress.

"Even a declaration of war by the Congress would not negate the violations of our obligations assumed under the United Nations Charter or negate the violations of international law in United States intervention in Vietnam," the memorandum declares.

The lawyers quote Harvard professor Roger Fisher: "Bluntly, all the rules about intervention are meaningless if every nation can decide for itself which governments are legitimate and how to characterize particular limited conflict. Unless we are prepared to continue a situation in which the legality of intervention will often depend upon which side of the fence you are on, and in which, therefore, our policy becomes one of countering force with force, we must be willing to refer questions of recognition (i.e., legitimacy of the government involved) and characterization of a disorder (i.e., whether an armed attack from abroad or a civil war) to some authority other than ourselves. The United Nations is the most likely candidate for the role."

#### PERSONAL NOTE FROM THE EDITOR

As editor, I have been troubled by many of the statements that follow. Their fundamental radicalism is a shock, but that is not all. They have, for the most part, an air of unreality, especially when contrasted against the hardheaded analysis of Dan Gillmor's preceding essay. Some of the statements, indeed, were characterized by a respected colleague of mine—a writer and dedicated civil libertarian—as irrelevant or even frivolous.

There are several reasons, in my view, for such reactions to these statements. The most obvious is the supercharged emotional atmosphere surrounding our national crisis over the Vietnam issue. Another reason is that the question of conscription, especially in its present context, goes far beyond the usual dimensions of civil liberty, as Dan Gillmor makes clear. Finally I believe that many of the following statements cannot be taken literally—not at least in the moral, legal, and political world in which we live—and yet contain a poetic or prophetic truth.

When Father Berrigan suggests that war itself may be illegal, he is invoking a higher law or international law as he thinks it should be. Rabbi Goldberg's reference to defense of California presumably should be extended to Alaska and Hawaii, most likely to Guam and Japan (whose disarmament is premised on U.S. bases). I doubt that Mr. Kenny regards the draft as a conspiracy of the old against the young in the strict sense, but his aphorism points up the perennial irresponsibility of every generation toward its successors. All the statements, I think, should be read in this spirit.

## PLEA FOR A HUMANE VIEW

by Mildred Scott Olmsted

According to our Declaration of Independence all men are entitled to life, liberty and the pursuit of happiness. In due time, we came to see that this made chattel slavery impossible. Now we begin to perceive that military conscription, like other forms of forced labor, is also inconsistent with our tradition and that we must support those who resist it as our forefathers aided and abetted those who were runaway slaves.

I have often wondered why it is that a family which would make a great protest if the government took away their automobile, or even their dog, says nothing when the government takes away their sons.

Those who do object on strictly religious grounds, because war is so clearly contrary to the teachings of almost every religion, have now won their point. Religious conscientious objectors are now recognized. But those who resist being forced to become a part of this peculiarly cruel war against the Vietnamese on just plain moral or human grounds should also be recognized.

To claim that drafting all young men is the democratic way to fight a war is only to lay the groundwork for drafting all citizens, men and women, young and old, for government service, and the end of a free society.

*Mrs. Olmsted is Executive Director, Women's International League for Peace and Freedom*

## THE RIGHT TO RESIST THE MILITARY DRAFT

by THE REV. PHILIP BERRIGAN, S.S.J.

Both reason and realism tell us that war in a nuclear age is obsolete as a remedy for international differences. Today war is politically stupid, grossly immoral, and in the opinion of many, illegal as well. It has become very clear that armed conflict engenders and disseminates such depths of suspicion, hatred and raw violence that nuclear genocide becomes more possible, and more probable. Vietnam is a case in point—it is duly recognized as the greatest test of peace, the greatest check upon disarmament, the greatest spur to nuclear proliferation.

To every human right is attached a corresponding human duty. Rights are secure only when one secures them for others also. It seems, therefore, that no man has a right today to contribute to war or the preparation for war; just as no man can escape the duty of peacemaking, of creating the alternatives to war.

If this be the case, the draft might well be illegal, while submission to it could be immoral—an act essentially connected with conditions favorable to war, or with war itself. In face of this, not only may young men refuse military conscription, they may have a moral duty to do so, presupposing a frame of conscience that sees war as the curse of an age and a civilization which is agonizingly trying to live with itself, and which must succeed.

*Father Berrigan is Pastor, St. Peter Claver Catholic Church, Baltimore*

## YOUTH AND VIETNAM

by RABBI ROBERT E. GOLDBURG

There is little, if anything, that I can add to the many articles written by young people themselves about the draft and fighting in Vietnam. Most of those who have spoken with me regard war itself as an anachronism. The word "pacifist" has little meaning for them because pacifism is an ideology, and if I may generalize, my young friends are not ideologically inclined. If the shores of California were invaded, these same young people, I suspect, would take up arms in defense of their country. The point is, however, that as they view the war, they are being asked to invade Vietnam. They find this morally repugnant; they do not think that they would be fighting in a just cause; they resent being called cowards because many have risked their lives in Mississippi; they believe the real struggle to be here and not there.

Above all, they seem to have a moral repugnance to kill, a loathing and revulsion at the thought of killing, even at the orders of their government. Some have said to me that they would rather suffer imprisonment or die themselves before they will commit murder, and they ask me how the religious teachers and leaders can remain silent now. The Nuremberg Trials have had an important impact on the thinking of these young people. There is a point, they tell me, where they must refuse to obey orders of superiors, even their own government. But above all, the summary of the feelings expressed to me seems to be this: All war is probably morally evil, but the war in Vietnam certainly is. This may be treason to some and a higher patriotism to others. I have never seen a greater dedication to peace than among these young people who have thus expressed themselves to me.

*Rabbi Goldberg leads Congregation Mishkan Israel, New Haven, Conn.*

Churches that support their young men who object to military service on the basis of deep religious conviction are confronted today by a new phenomenon: the presence outside their doors of objectors not to all war and not necessarily on the basis of religious faith, but to the Vietnam conflict specifically, and on the basis of the "just war" concept. Shall they resent the intrusion as likely to make the path their own objectors must tread more difficult, or shall they extend their support to the "new breed"? John M. Swomley, Jr., discusses the quandary from the perspective of eight years (1944-52) as director of the National Council Against Conscription, of four years (1960-64) as a member of the Methodist General Conference commission to study the relation of nuclear war to the Christian faith, and (currently) of service on the National Council of Churches' commission on religious liberty and on its committee to study the rights of conscience.

From *Christian Century*  
(December 15, 1965)

# THE 'LIMITED' OBJECTORS

by JOHN M. SWOMLEY, JR.

Conscientious objection to war has again become a national issue. This time it is the objectors to the war in Vietnam rather than those who oppose all war who have precipitated public discussion. Intrigued by the technique of nonviolent resistance as a result of their participation in civil rights activity, they have led antiwar demonstrations, sat up all night at teach-ins, announced that they are willing to join the Peace Corps or to help southern Negroes register to vote or to serve their country in other constructive ways—but not to fight in Vietnam. They are not necessarily opposed to conscription as a means of filling the armed services' needs, nor are they unpatriotic.

This new breed of objector is recognized by neither government nor church as conscientious or deserving of Selective Service deferment. Most Americans see him as simply a draft evader; some consider him subversive, equating refusal to fight in Vietnam with sympathy for the Vietcong.

The Central Committee for Conscientious Objectors reports that in recent months over 80 men in the armed forces or the reserves have asked it to help them obtain discharges as conscientious objectors or to explain what will happen should they refuse orders to proceed to Vietnam. Many other men now in the armed forces have asked for information about conscientious objection in relation to the war in Vietnam.

## I

What accounts for the appearance of this new type of objector? For one thing, the undeclared war in Vietnam is widely unpopular. Many see it as an expression of American imperialism. There has been widespread revulsion against the indiscriminate bombing and maiming of helpless villagers which American photographers and reporters have so graphically put before us. For another thing, the churches are, as in the past, concentrating on defense only of those objectors who are pacifists, whose objection is based on religious scruples. The sacrificial witness of pacifist objectors during World War I, coupled with the churches' feelings of guilt for supporting that war, led to a campaign that resulted in official recognition of the rights of conscientious objectors to all war. To most churchmen it has never occurred that objectors to a *specific* war might be conscientious.

Yet the churches have for centuries been prone to talk in terms of the "just war" theory as propounded by Augustine, Thomas Aquinas and others. The "just war," declared so by lawful authority, presupposed gross injustice on the part of one, and only one, of the contending parties; it was to be conducted, moreover, "rightly," within the limits of justice and love. Presumably this has meant avoidance of indiscriminate slaughter of noncombatants.

While accepting the pacifist position as a witness on the part of the few, the churches have tended to accept the "just war" approach as an

alternative to both pacifism and unquestioning militarism—and as normative for most Christians. No one, however, chose to use it as justification for opposition to World War II or to the war in Korea.

Now the churches must squarely face up to the fact that there are in our midst conscientious men who object to the war in Vietnam because they believe it is not a just war. They cannot be legally recognized as conscientious objectors, for the Selective Service act of 1940 and all subsequent revisions provide for alternate service only by those adjudged conscientious objectors to all wars.

## II

Can government be expected to grant legal recognition to a man who is prepared to go to war under some circumstances but not under others? From the standpoint of the state, a soldier is no asset if he is unwilling to fight in a given situation, even if he simply feels strongly enough about the particular war at hand to be vocal in opposing it. In principal, a man's conscience should be respected for objecting to a specific act quite as much as for objecting to a whole range of specific acts. If this principle is accepted, there would have to be some agency within the military set-up assigned to give objective consideration to those men so moved by conscience, and some means of handling those who have announced their reservations before being called up.

If it is determined that conscience should be tested by some objective classification of wars, a scale might be devised listing, for instance, civil wars in other countries, imperialist wars, warfare involving indiscriminate destruction of noncombatants. The difficulty with such a plan is that governments may be unwilling to acknowledge that they are interfering in an essentially civil war, or are acting out of imperialistic ambitions or are destroying noncombatants; the United States would certainly deny such intent in respect to Vietnam. On the other hand, the various categories of the traditional "just war" position should be a sufficient basis for conscientious objection to a specific war.

If the church is prepared to take the "just war" theory seriously enough to defend the rights of objectors to an unjust war, then it must decide whether only Christians and other religious objectors can take such a position. As a matter of fact, the "just war" theory is so formulated that it is devoid of biblical phraseology and traditional theological language. It is a theological formulation based on moral judgments which are as readily acceptable to those who do not believe in God as to those who do.

There are two reasons in particular why the church should recognize nonreligious conscientious objectors: (1) It should not seek special privileges for its own or for those whose conviction is grounded on some other religious faith; those who on apparently secular grounds witness against unjust wars may be making a basically religious witness. (2) The church should try to keep the state from granting preferential treatment to citizens who profess religious faith—or to those who do not.

Just now the war in Vietnam shows signs of escalating rather than abating. More men are being drafted, more men are being sent to the battle areas. The issue of conscientious objection is crucial; the church dare not wait to make up its mind until the war is over or until the "just war" objectors are in prison. They are already being vilified by certain politicians and by some segments of the press. If the church does not speak out for them now they will receive harsh sentences in the law courts and in the court of public opinion.

Are they aliens that we should stand in doubt? No, they are our own sons whose conscience on warfare was sensitized by our teaching and preaching. Some of us may wish that they had gone so far as to oppose all war; others may hold that they should support all war. But they have chosen another ground. Many of us who take a different position will nevertheless stand with them, will pray that the whole church may do likewise.

Mr. Swom'ey teaches social ethics and the philosophy of religion at Saint Paul School of Theology (Methodist) in Kansas City, Missouri.

## A PROPOSAL ON CONSCRIPTION

by *W. H. Ferry*

Nations fall into bad habits. Conscription is an example. It is fruitless to try to eliminate this particular bad habit at this time, as it is fruitless to take the bottle away from the alcoholic before he becomes aware of its destructive qualities and decides himself to do something about it.

But it is not fruitless to seek to alter this bad habit, the draft, in ways that will bring home a sense of its ultimate bearing on human beings and on the proper aims of the nation. The draft levies men for war. War in turn is said to be aimed at peace and justice. The Orwellian content of this argument is not relevant here. Conscription rests on the proposition that a certain amount of disagreeable killing has to be done by a country in pursuit of the goals aforesaid. Fingers are needed on the triggers; not enough voluntary fingers can be found; hence the draft.

Peace and justice are undebatable objects. All are for them. Can our bad habit, the draft, be brought more firmly into the service of peace and justice? I believe it can, and with the slightest of modifications to the present legislation. All that is required is a change from the statutory draft ages of 18½ to 26 years to 45 to 52½ years.

It requires no great imagination to foresee the prompt effectiveness of such a change. It is manifestly as just to ask one man as another to serve his country. It is manifestly more just to require a man who has lived two-thirds of his allotted span to take up the dangerous trade of arms than to ask a youngster with two-thirds of his life stretching before him. It is also more just for civilization, for the brutalizing effects of engagement in modern war can likely be better withstood by a ripe adult than by the young. The nation would not need to take chances,

under this scheme, of losing its budding Beethovens, Salks, and Einsteins.

The possibility of peace would be just as promptly enhanced if we should choose to make up our non-volunteer forces from those *in medias res*. A main assumption about this bad habit, conscription, is that training for murder is not too great a hardship, and that it also results in an agreeable stiffening of character and widening of outlook. The same assumption may be made about conscription of the middle-aged. Who is to say that one hardship is more difficult to bear than the other? And the development of character and outlook is demonstrably necessary to an adult population which has put the entire planet in peril of thermo-nuclear war.

It is appropriately argued against this plan that even if it should be adopted by the U.S., our middle-aged men would soon rebel against its discomforts and would see to it that these discomforts were moved back again onto the youthful population. There is no doubt either that a middle-aged fighting force would lack the efficiency at murder displayed by firm-muscled 21-year-olds.

This argument is not insuperable, and is powerful chiefly because the proposal affects conscription only in the United States. Accordingly, the scheme should be made multilateral, probably through agreement in the United Nations that involuntary servitude before age 45 shall be banned in the armed forces of all countries.

Henry Ford once said that the way to prevent war was to take the profit out of it. This, at the moment, appears to be an object beyond reach. Simple modification of draft acts should be easier. The major appeal of this more modest and perhaps equally efficacious approach is that it would finally compel the warrior class of all nations—those who by custom stay home and utter the cries of battle—to bear the costs of their own decisions for carnage, mutilation, and death.

*Mr. Ferry is vice president, Center for Study of Democratic Institutions*

## **DEFENSE OF DEPARTMENT OF JUSTICE POSITION**

*by CHARLES J. TURCK*

The view of the United States Department of Justice that students who demonstrate illegally (as by the use of violence) must be punished under the general laws dealing with such acts, and not by being reclassified under the draft law, is one that should be followed by all local boards. On the other hand, if the act committed by the student is designed to obstruct the administration of the draft law (as by burning a draft card, failing to report for induction, and failure to give notice of a change of address), then a reclassification would be appropriate.

This position, made public on January 11, 1966, by Fred M. Vinson, Jr., Assistant U.S. Attorney General in charge of the Criminal Division, may not be acceptable to all draft boards. These local boards have a large measure of discretion. However, it would seem that an appeal to the federal court of jurisdiction would result in a decision favorable to the student and against his reclassification. It is not likely that a

federal court would hold, in the face of the constitutional guarantees of free speech, freedom to assemble peaceably, and the right of petition, that a student, demonstrating even for an immediate peace, was thereby interfering with the draft law and subject to the penalties contained in that law.

The resulting situation would seem to be fair to all. Those who deliberately disobey a law, for any reason whatsoever, must anticipate that that law must exact a penalty. Any other result would be anarchy.

*Dr. Turck is a consultant to the Protestant Council of New York City, former president of Macalester and Centre Colleges, former dean of the University of Kentucky Law School, former professor of law at Tulane and Vanderbilt Universities.*

## **STUDENT NON-VIOLENT COORDINATING COMMITTEE POSITION**

*(Excerpt from statement of Jan. 6, 1966)*

We are in sympathy with and support the men in this country who are unwilling to respond to the military draft which would compel them to contribute their lives to U.S. aggression in the name of the "freedom" we find so false in this country. We recoil with horror at the inconsistency of this supposedly free society where responsibility to freedom is equated with responsibility to lend oneself to military aggression. We take note of the fact that 16 per cent of the draftees from this country are Negro, called on to stifle the liberation of Vietnam, to preserve a "democracy" which does not exist for them at home.

We ask: Where is the draft for the freedom fight in the United States?

We therefore encourage those Americans who prefer to use their energy in building democratic forms within the country. We believe that work in the civil rights movement and other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them their lives, as painfully as in Vietnam.

## **BRIEF FOR PERSONAL RESPONSIBILITY**

*by Stanley K. Sheinbaum*

Seldom has a President of the United States sent draftees into combat without seeking a declaration of war from Congress. President Johnson has engaged in an arbitrary usurpation of power directly jeopardizing the lives of many who have been involuntarily and unwillingly impressed into a military action.

His deed is further compounded by his inability to clarify to the American people why he has so heavily involved the United States and what his goals are.

Every individual, not only the draftee, must be his own counsel when his government so ignores democratic processes is an engagement that many consider unjustified.



On the one hand, no individual has the right to suggest, encourage or persuade any other to go against the government. On the other hand, all of us have the obligation to alert each of the others to the nature of the policies and acts of which they are a part. We are of a generation that witnessed the Nazis. The individual German in the thirties had not yet been witness. We have no such excuse. We have learned—or should have learned—that all is lost or won only by the individual's acceptance of his responsibility to act, to defy at the ultimate moment.

*Mr. Sheinbaum is a staff member, Center for the Study of Democratic Institutions*

## STATEMENT OF YOUNG SOCIALIST ALLIANCE

The Young Socialist Alliance is opposed to the present draft by the United States government to provide troops for the war against Vietnam, and feels that those who refuse to serve, like David Mitchell and David Miller, should receive full financial and legal support. It is particularly important that we defend and provide civilian counsel for men already drafted into the armed forces, like Lt. Henry Howe Jr., Sgt. George Smith, and SP/5 Claude McClure, who face court martials with severe penalties for voicing their opposition to the war.

The government and press have attacked the anti-war movement on the issue of "draft-dodging" precisely because they think this is the most effective way to isolate the anti-war movement from the troops and from other large sections of the American population which are directly concerned with the war, and naturally more sympathetic to anti-Vietnam war sentiment than to individual acts of defiance to the draft.

The best defense of those under attack by the government for their opposition to serving in the armed forces is to place the question of the draft in the context of the war as a whole. The U.S. government refuses to allow Vietnam the right of self-determination, and this, rather than the question of the draft, is the issue on which we should constantly focus attention. Once people understand the unjust nature of the war in Vietnam, they will be more willing to defend the rights of those who refuse to fight the war in Vietnam.

*I consider the draft a conspiracy by the old against the young.*

**ROBERT W. KENNY**

*Former Attorney General of California*

### *Mitchell's Challenge of Conscription*

David Mitchell's conviction for refusal to report for induction was reversed by the Circuit Court of Appeals. The Court suggested another judge hear the retrial. On March 15th he will appear in Hartford for trial before a different judge.

Mitchell challenges the participation of the U.S. in the Vietnam war as a violation of international law and the findings of the Nuremberg Tribunal.



Corliss Lamont, Chairman.



John H. Scudder, Treasurer.



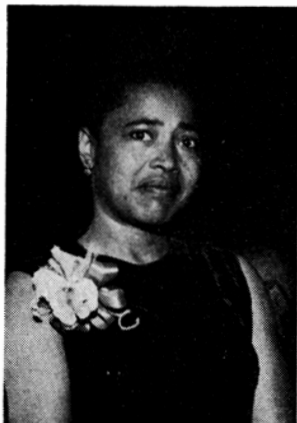
Leonard B. Boudin, General Counsel.

## BILL OF RIGHTS DINNER

Senator Ernest Gruening of Alaska and Mrs. Victoria Gray of Mississippi were the chief speakers at the 174th anniversary celebration of the ratification of the Bill of Rights. The celebration was at the Americana Hotel in New York where each year ECLC holds a dinner in commemoration of the charter of American freedom.

The Tom Paine Award, given annually to the person who has been outstanding in the tradition of Paine, was presented to Carey McWilliams, the editor of the *Nation*. The award in the form of a portrait of the great patriot by the noted artist, Antonio Frasconi, was presented by Mrs. Eleanor Brussel, ECLC's Vice-Chairman. Mrs. Brussel recalled that Senator Gruening had earlier in his career been editor of the *Nation*.

Dr. Corliss Lamont was the Chairman of the dinner and Leonard B. Boudin was toastmaster. John H. Scudder, ECLC Treasurer, called for financial support and received a most generous response.



Mrs. Victoria Gray of  
the Mississippi Freedom  
Democratic Party.



Carey McWilliams receives Tom Paine award from Mrs. Eleanor Brussel as  
Senator Ernest Gruening applauds.

## CONGRESS VOTES \$425,000 FOR HUAC

In a week which Congressmen had been assured that no legislative business would be brought up and "certainly no controversial issues," the largest appropriation ever given to HUAC, \$425,000.00, was voted. No public hearing had been held. In fact, the House Administration Committee completed its consideration of the appropriation (without the usual notice in the *Congressional Record*) on January 19th, two days after the resolution calling for the appropriation had been introduced by HUAC Chairman Willis. In 1965 the appropriation was made in March.

Thirty Congressmen voted against the appropriation—24 in person and 6 by pairing. The comparable figure for 1965 was 34. The loss was mainly in the Pennsylvania delegation, where all four who voted against the appropriation in 1965 failed to do so this year. Multer of N. Y. and Mink of Hawaii voted against the appropriation in '65, but not this year. The gain was in Illinois, where four voted against the appropriation as compared with one last year. Otherwise the state totals remained the same: N. Y. 9, California 7, Michigan 6, Oregon 2, Minnesota 1, Wisconsin 1.

## BOOK REVIEWS

### Reform of the Bail System

*Ransom.* By R. Goldfarb. 264 pp. Harper Rowe. \$5.95.

*Reviewed by Conrad Lynn, member of the National Council of ECLC*

Ronald Goldfarb, a young prosecutor, has written an account of the American bail system which should stir deep concern about the entire administration of criminal justice. Like most reformers he sees the terrible inequities wrought by a particularly scabrous instrument of government and hopes by altering it in a humane manner to move another step towards the great society. Hence, the enthusiastic reviews of this book! For a few moments we are permitted to discern the dreadful workings of the nether-world of the prisons. Then, we are assured, a few relatively modest changes will bring these horrors to an end and we will be able to sleep peacefully at night again.

But how does the requirement of bail appear to a defense lawyer? If he serves the ghetto of any Northern city and the restless disadvantaged of the South, he knows that bail is only one tool of a complicated and comprehensive system of oppression. The categories Goldfarb employs are deceptive. "The American bail system discriminates against and punishes the poor. The rich can afford to buy their freedom, and do . . ." Certainly, there can be no quarrel with that insight as far as it goes. But the author fails to pinpoint that the poor are the black people in Chicago, New Haven, Springfield, Massachusetts, Philadelphia, Baltimore, and Washington and the Negroes and Puerto Ricans in New York, Cleveland, Newark, and Waterbury, Connecticut.

In all these cities the budgets for the Police Departments are increased each year. As the conditions of the ghetto worsen, the police become more repressive. The sullen residents of these areas have come to realize that they are in perpetual, undeclared war with "the forces of law and order." Bail is used to keep a potential or actual "enemy of society"

behind bars to face real or trumped-up charges. Not only does a member of these minorities lack the cash for a bail premium. Usually he cannot furnish the security which a baleful bondsman requires to feel safe in servicing these kinds.

The author speaks admiringly of the operation of Vera—an experiment in releasing defendants before trial on their word of honor. He does not point out that for a considerable period no black prisoners were deemed deserving of this treatment. And even now they are afforded rare, token benefit of this trust. This is understandable when we learn that law students from New York University administer Vera. In all the United States there are now only 710 Negro students in Law School. It is highly unlikely that many of them are involved in the working of such a program. White law students share the general vague aversion toward the denizens of the ghetto. The more black people in jail, the safer the society. The fantastically disproportionate number of black people in jail as compared to whites is not solely due to their relatively greater poverty.

It may be that Goldfarb is entirely unconscious that he is comitted to bolstering the prevailing social structure. But his premises are revealed not on in his reluctance in identifying the poor but also in his éceptionalism regarding political offenses. Although he feels that people charged with most types of crimes can be safely left at large, without bail, before trial, the maverick charged with advocating the overthrow of the government must not only be incarcerated before trial, he should be denied all possibility of bail. True, at one place he qualifies this position by limiting imprisonment before trial to subversion cases "where violence, sabotage or treason are involved." But he fails to note that in the South any demonstration by Negroes seeking freedom in the here and now is classified as subversion. As with many American liberals the influence of the Cold War has made it impossible for Goldfarb to be consistent in showing how the necessity for bail destroys, in effect, the presumption of innocence, one of the chief theoretical glories of the common law.

Nevertheless, this book is must reading for all of us unafraid to face the seething cauldrons of Watts, Harlem, and the Southside of Chicago. The American colossus presents to the world glittering wealth and the lightning of its atomic arsenal, but in the murky depths of its ghettos are to be found its feet of clay.

### **Was Justice Done in the Rosenberg-Sobell Case?**

*Invitation to an Inquest.* By Walter and Miriam Schneir, 462 pp. New York. Doubleday & Co. \$5.95.

*Reviewed by Harry I. Rand, member of the Executive Committee of E.C.L.C.*

It has been more than fifteen years since the Rosenberg-Sobell trial and more than twelve since the Rosenbergs were executed, the only Americans ever to be put to death for espionage in our country by judgment of a Civil Court. The Schneirs now present us with an ably researched and extremely well written re-examination and reappraisal of the case. It is unquestionably the best work of the several which have been published.

The purpose of the authors is "to provide an unequivocal and final answer to the lingering question: . . . Were the Rosenbergs guilty and, . . . if so, guilty of what?" I fear that their achievement, as it has for me, will for many other readers fall short of their purpose.

There seems little doubt, in light of the record of the case the Schneirs so carefully analyze and the most significant and often startling facts outside the record which they have so diligently unearthed, that the Rosenbergs—and, even more, their convicted co-conspirator, Morton Sobell—did not receive the fair trial our Constitution guarantees to every defendant. In this sense, they may have been "unjustly convicted," as the Schneirs conclude. But too many questions still remain unanswered, it seems to me, to permit their further judgment that "they were punished for a crime that never occurred."

No matter. The authors amply support the vital necessity for the "inquest" to which they invite us. An impartial and searching study of the case by a responsible tribunal of citizens is imperative. The gnawing doubts as to the guilt of the defendants, prevalent even more in Europe than in the United States, will not be allayed. There is much cogent evidence—and the Schneirs supply more—which suggests that F.B.I. and other government officials may have participated in manufacture of evidence against the Rosenbergs and Sobell. Certainly, Harry Gold and David Greenglass, the principal prosecution witnesses, had every talent to make them most apt students of such expert instructors in the art of "creative recollection."

It is time, too, to state unequivocally and authoritatively what we all now must know—that, even assuming guilt, the "secrets" which the defendants transmitted to the Soviet Union were by no means so extremely secret or important as they were represented to be and could have had little, if any, effect on the development of the atomic bomb by the Soviet Union. Thus, in light of what we have since learned, it is impossible to justify, if ever one could justify, the imposition of the sentence of death on the Rosenbergs. Nor can one condone the continued imposition of the harsh thirty-year sentence of imprisonment on Morton Sobell.

The Schneirs, apparently to justify the publication of their work and the five years of painstaking endeavor they have dedicated to it, quote the following excerpt from Justice Frankfurter's opinion, issued three days after the execution of the Rosenbergs, dissenting (with Justices Black and Douglas) from the ruling of the majority of his brethren vacating the stay of execution earlier granted by Justice Douglas: "To be writing an opinion in a case affecting two lives after the curtain has been rung down upon them has the appearance of pathetic futility. But history also has its claims."

History, however, is not the only justification for this writing. The book is very much a book for our time. We are once again engaged in a war, and the "patriots" are sounding the bugles and beating the drums. The assault on individual liberties and human dignities has already begun. In such a time, "Invitation to an Inquest" becomes required reading, lest we forget the torments of the early '50s and so that we may re-dedicate ourselves to the vigilance and struggle the '60s demand.

# **RIGHTS Notebook**

## **EXPATRIATION**

Joseph Johnson's fight for his American citizenship suffered a set-back in January, when the Immigration Service ordered that this native-born Minnesotan be deported for having participated in Canadian Municipal elections. Mr. Johnson's case is being handled by Leonard B. Boudin, as General Counsel of ECLC, with the assistance of Mr. Douglas Hall as the local attorney in Minneapolis.

Mr. Johnson is about to make a trip around the country explaining his case. Anyone interested in having him speak to a group should write to the Committee sponsoring his trip: P.O. Box 8731, Minneapolis, Minn. 55402.

## **TRAVEL TO CUBA**

Although the final argument in the case of the students who were indicted for going to Cuba in 1964 was made in December, no decision has yet been rendered. In the meantime a number of people have challenged the same law by going to North Vietnam, but have not been indicted. Seven have received letters from the State Dept. asking that their passports be returned.

## **CONVICTION OF TIMES SQUARE DEMONSTRATORS REVERSED**

In the summer of 1964 the N. Y. Police Department had forbidden demonstrations in the Times Square area. (Pro-government demonstrations were allowed). One demonstration against the war in Vietnam was supposed to have taken place in Times Square but the organizers agreed to march to the U.N. instead. On the way many of the demonstrators were arrested. Some were just called out of the line of march by police who had decided which demonstrators they wanted to arrest.

Five of those who were arrested and convicted of disorderly conduct appealed the conviction. On February 4, 1966 the appellate court reversed the conviction stating that the defendants were engaged in "Constitutionally protected activity." The lawyer for the defendants was Mrs. Gene Ann Condon of the firm of Lynn, Spitz and Condon.

## **MEDICARE'S SICKNESS**

The insertion in the questionnaire for old people of a disclaimer affidavit is an insult which apologetic Congressmen say was never really intended. Yet those people who are not covered by Social Security (and who do not have pensions from the Railroad Retirement Act) must swear that they do not, and have not for the last year belonged to an organization ordered to register by the SACB.

Only the Communist Party has been so ordered, and their refusal has gone unpunished because of the Fifth Amendment, but many people are confused by the various hate lists—the Attorney General's list, the HUAC list, the SISS list, etc. All citizens are entitled to the medical care that has been provided, and no political test can stand up. ECLC has indicated its willingness to test in the courts the disclaimer requirement.

## EPTON'S PUNISHMENT

William Epton was convicted by a New York jury for anarchy, conspiracy to commit anarchy, and conspiracy to riot. The three indictments grew out of a march in the summer of 1964 in protest against the slaying of a young Negro boy by a policeman. On January 27th Judge Arthur Markewich sentenced Epton to one year for each charge, the sentences to run concurrently.

For the first time since the conviction of a Communist, Ben Gitlow, in 1919, the criminal anarchy statute was used as the basis for prosecution. Since 1919 the Supreme Court has ruled in the *Nelson* case that the Federal government had preempted the field of subversion, thus ruling invalid such state prosecution.

When Epton was first convicted Judge Markewich refused to grant any bail and Epton has served several months in jail. On March 9th, however, Judge Markewich reconsidered and found that there was reasonable doubt. He then allowed bail if Epton could raise \$25,000.

Epton's defense is being handled by Mrs. Eleanor Jackson Piel and Sanford Katz. The conviction is being appealed.

## BRADENS HEAD SCEF

Mr. and Mrs. Carl Braden have succeeded James A. Dombrowski in heading the Southern Conference Educational Fund, and the headquarters will be moved from New Orleans to Louisville. Dr. Dombrowski had been Director of SCEF since its organization in 1946, and before that was with the parent organization, the Southern Conference for Human Welfare. He was given the Tom Paine Award by ECLC in 1964. Mrs. Braden, who is a member of the National Council of ECLC, will continue to edit the *Southern Patriot*, SCEF's official organ.

## MEIKLEJOHN LIBRARY

In Berkeley, California, a legal research center on civil liberties, civil rights, and due process of law has been established honoring the country's greatest exponent of the First Amendment, the late Alexander Meiklejohn.

The Library contains briefs, memos, reports, articles, and non-legal materials on almost 5,000 cases, most of them filed since 1950. Contributions either of money or materials should be sent to the Meiklejohn Civil Liberties Library, 1715 Francisco Street, Berkeley, Calif.

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## EMERGENCY CIVIL LIBERTIES COMMITTEE

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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.

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