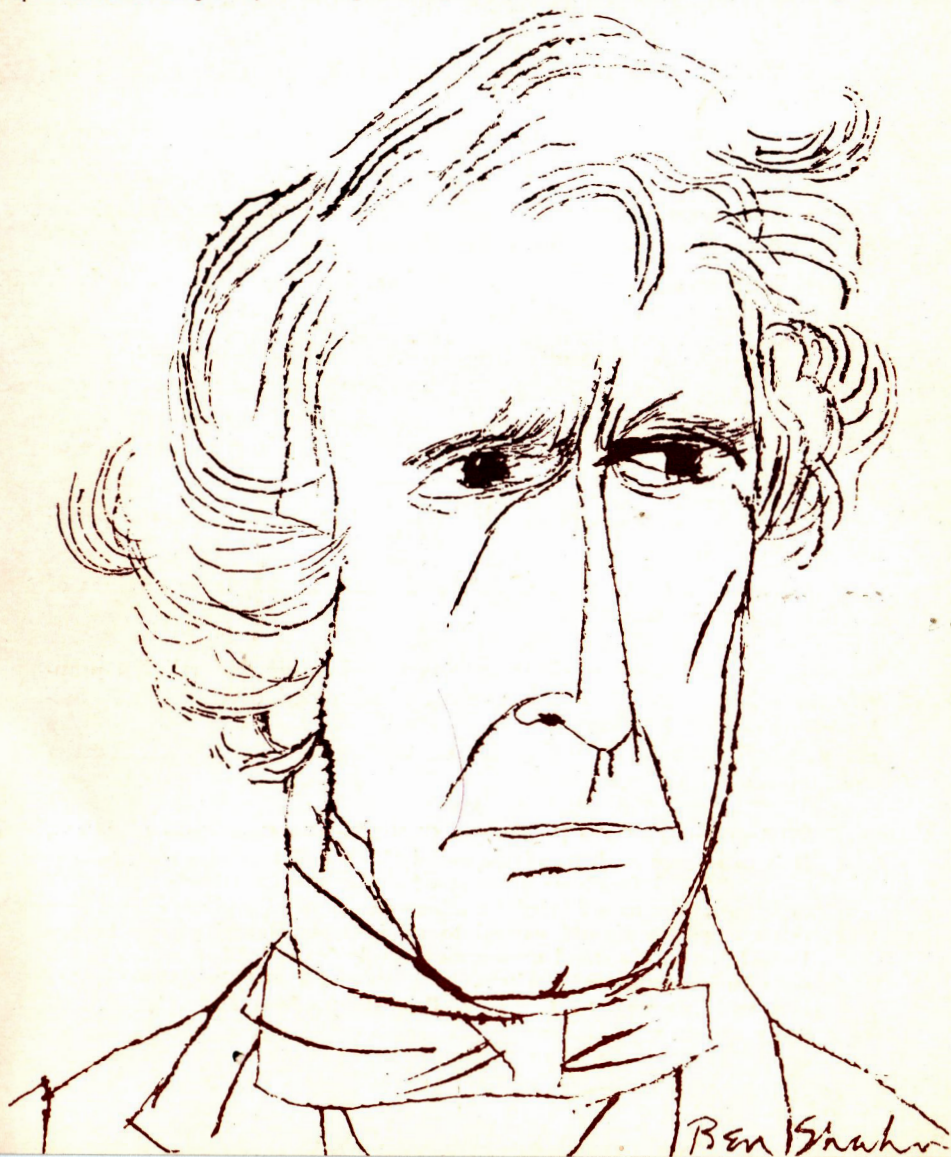


Rights

DECEMBER, 1966

Rep. John Armor Bingham (1815-1900) of Ohio, Author of the Fourteenth Amendment, by Ben Shahn.



EXCERPT FROM THE STATEMENT OF PRINCIPLES ADOPTED BY THE CIVIL LIBERTIES COMMITTEE IN 1954.

The threat to civil liberties in the United States today is the most serious in the history of our country. Combining to create this crisis of freedom are the following:

- Repressive administrative orders and loyalty purges on the part of the Federal, State and City Governments;
- A number of laws which undermine the Bill of Rights such as the Smith Act, The Internal Security Act and the Walter-McCarran Immigration Act;
- The veritable inquisition established by the Congressional investigating committees;
- The activity of private vigilante groups in setting up blacklists and acting to repress freedom of speech, assembly and press;
- The spread of censorship and purges to education, the arts, science and cultural enterprise in general;
- The use of arbitrary lists of "subversive" organizations by both governmental authorities and private institutions;
- The imposition of loyalty oaths by private organizations;
- Current procedures and proposed legislation interfering with free elections in trade unions, and the denial of the right to work, to engage in business and to practice professions on the basis of political beliefs or associations;
- The continuation of racial discrimination, segregation and persecution;
- The widespread state of fear and alarm among large sections of the population.

All persons of whatever views, race, national origin and religion properly share in our constitutional liberties, whether as individuals or as collectively grouped in organizations of one kind or another. Those who make exceptions to the Bill of Rights undermine democracy. Civil liberties are indivisible.

THE program of the Emergency Civil Liberties Committee is simple. It is to reverse such trends as noted above and to re-establish in full the traditional freedoms guaranteed under the Constitution and Bill of Rights. The meaning of American democracy has always been that these freedoms should extend to all individuals and groups in the United States. We stand uncompromisingly for civil liberties for everyone: businessmen and workers, Socialists and Trotskyites, Communists and anti-Communists, Catholics, Protestants, Jews and atheists, and every variety of dissenter.

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EMERGENCY CIVIL LIBERTIES COMMITTEE

First 15 Years – 1951-1966

June 4, 1951, may well go down as the darkest day in the history of civil liberty in our country. On that day the United States Supreme Court, by a vote of 6 to 2, upheld the constitutionality of the only sedition law enacted in peacetime since 1798. President Jefferson nullified that first Alien and Sedition Act in 1801; he opened the prison doors and refunded the fines which had been imposed on political heretics. Alas, few Presidents since Jefferson have been such staunch defenders of the Bill of Rights and in the meantime the courts have taken the power to rule on constitutionality. Lovers of civil liberty since Justice John Marshall's day have looked to the Supreme Court to enforce the ground rule for democracy: free expression of opinion. But in 1951 only Justices Black and Douglas responded.

The sedition law, popularly known as the *Smith Act*, was spawned by Congressman Howard W. Smith of Virginia on the eve of World War II. It purportedly was aimed at fascists and the Communist Party but the first victims as is often the case with such laws were not members of the Communist Party but, rather, three leaders of the Teamsters Union in Minneapolis. True, the Dunne brothers were members of a dissident sect known as Trotskyists, and some radicals took pleasure in seeing their rivals imprisoned.

By 1951, another war, in Korea, cast black shadows, as do all wars, across the pure light of Liberty. Once again, as in previous times of physical crises, many eminent persons were willing to forget the unequivocal words of the First Amendment: "Congress shall make no law" abridging freedom of expression. Under the slogan, "Heresy: Yes, Conspiracy: No," these sometime libertarians applauded the Supreme Court's assault on the Bill of Rights.

In 1950 Congress passed the revised Mundt-Nixon Bill (under the title of The Internal Security Act) over a strong veto by President Truman. It is generally called "The McCarran Act" after its Nevada sponsor. It has been characterized by I. F. Stone, one of the founders of the Emergency Civil Liberties Committee, (ECLC), as an act which "... for the first time in American history, sets up a regulatory body, the Subversive Activities Control Board, to determine and label dangerous ideas and associations."

The House Un-American Activities Committee (HUAC) had refused to recognize the First Amendment as a defense against its political interrogation, and the Supreme Court had declined to review the case of the Hollywood Ten, who had stood on the First Amendment in defiance of HUAC's questioning.

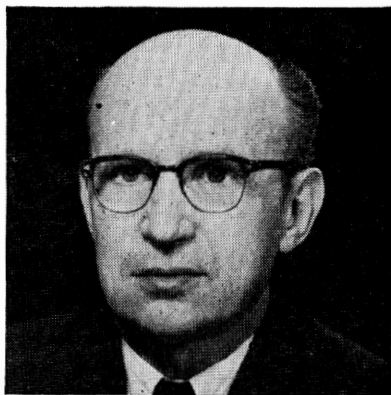
Hollywood, television, radio and the stage were being terrorized by HUAC hearings. Although President Truman in 1948 called HUAC "more un-American than the activities it is investigating" he had himself instituted the Attorney General's list of politically undesirable organizations. Civil servants were being dismissed without hearings. The State Department under Dean Acheson was denying passports, and snatching some it had issued, justifying such actions as being "in the spirit of the McCarran Act."

President Truman had in 1950 issued another declaration of emergency. The country had been in an unterminated state of emergency since 1940, but on the basis of the undeclared war in Korea, Truman extended it, thus limiting the constitutional rights of the individual. This was despite the fact that there is nothing in the Constitution authorizing such declarations of emergency. The Post Office was engaging in censorship contrary to law, and the Department of Justice was tapping wires in defiance of law.

Many civil libertarians believed that the American Civil Liberties Union (ACLU) had compromised on basic First Amendment issues, beginning in 1940 when a test oath was set up for officers and later extended even to members. One member of the ACLU board was expelled, while several resigned in protest against a civil liberties organization itself setting up a kind of loyalty oath as a test for membership. ACLU affiliates in Chicago, California, and elsewhere protested vigorously.

It was at this juncture, in 1951, that five men who believed the Bill of Rights meant what it said issued an anguished call to others to rally around the flickering torch of liberty. They quoted from the *St. Louis Post-Dispatch*, one of the few newspapers to denounce the Court's decision on the Smith Act: "Never before has such a restriction been placed on the right to hold opinions and to express them in the United States. . . . Six men have amended the U.S. Constitution without submitting their amendment to the states."

FOUNDERS OF E.C.L.C.



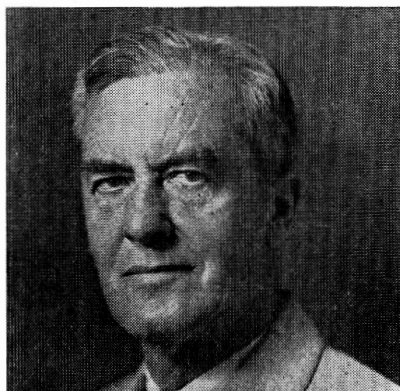
Dr. Paul Lehmann



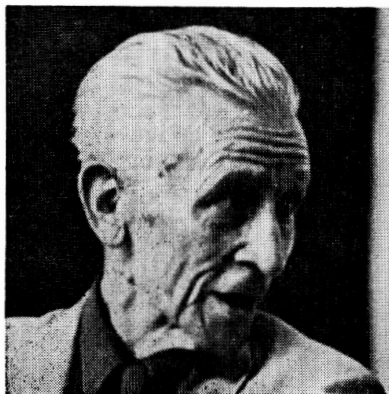
I. F. Stone



E. Franklin Frazier



Henry Pratt Fairchild



James Imbrie



Prof. H. H. Wilson

Many people over the country were distressed at the wild-fire of terrorism that was being fanned by the government in Washington, and the five who organized the voluntary fire brigade were plain citizens who felt that they must do something to maintain the Constitution. The initiator was James Imbrie, a retired Wall Street banker living in Lawrenceville, N.J. He recounts the circumstances in a chapter of his forthcoming autobiography. He tells of a meeting of liberals in the New York apartment of T. O. Thackrey, then editor of the *New York Compass*, in late summer of 1951: "On this night, our discussion of the American scene turned on whether the American Civil Liberties Union was adequate for the defense of civil liberties, now under such bitter attack. The question was whether a new organization was needed to augment the American Civil Liberties Union, but with guts enough to fight the evils of McCarthyism without fear of being sullied by the label of 'pro-Communist.' Most of those present thought the time unfavorable to start anything new in this field, as it would probably fail for lack of financial support. A few of us, however, argued that the need was immediate, and that time was of the essence. I expressed the fact that all of us had respect for the ACLU as our oldest and most powerful civil liberties organization. But I said that I considered my friend, Hube Wilson, Professor of Politics at Princeton University, to be one of the most courageous proponents of academic freedom in the academic world. He was a member of the Academic Freedom Committee of the ACLU, and he was critical of this organization for its lack of courage at this time. I, too, questioned their willingness, at this time, to protect people accused of pro-Communist activity.

"As the meeting broke up, I stopped to speak with Henry Pratt Fairchild, Professor Emeritus of New York University, and I. F. Stone, columnist for the *Compass*. The three of us apparently comprised the minority that wanted immediate action. When I told them that I intended to attempt to work out a new organization upon my return to Lawrenceville, they agreed to cooperate in every way possible. Within a few days I talked over our plans with Dr. Paul Lehmann, a valued friend of mine, who was then Professor of Applied Christianity at Princeton Theological Seminary. He agreed to act as chairman of our new organization if I would act as secretary-treasurer, and to sign a letter, along with Fairchild, Stone and me, to be sent to a list of non-Communist liberals around the country, asking them to become members. As we wanted our Negro friends to join, we asked E. Franklin Frazier, Chairman of the Sociology Department at Howard University, to become a charter member and also to sign the letter asking for membership, which he did. In about two months Paul Lehmann and I were able to issue a public announcement of the formation of the *Emergency Civil Liberties Committee*, with more than 150 members from 39 states, including over 50 members of the clergy and many educators and professionals."

By December of 1951 the new committee felt strong enough to organize on a permanent basis and to retain as director Dr. Clark Foreman. Previously, Dr. Foreman, a native of Georgia, had served in the Roosevelt Administration for 10 years, was Secretary of the National Citizens Political Action Committee, and had been President of the Southern

Conference for Human Welfare. In February, 1952, the present office of ECLC was opened at 421 Seventh Avenue in New York City.

The Policy Guide proposed by the five sponsors contained six points, stressing the innate unconstitutionality of the Smith Act, calling on the Supreme Court to reverse its decision, urging the government to stop prosecutions and arrests under the act, upholding the right of defendants to counsel of their choice and to release on reasonable bail. In this the sponsors charted the subsequent course of the Committee by concentrating on the essential feature of the Bill of Rights—the preservation of the First Amendment right of freedom of expression. By leaving broader aspects of the struggle for civil liberties to other organizations, the sponsors hoped to bring enlightened public opinion to bear on the crucial problem through meetings, conferences, and publications and, unlike the ACLU customary approach, to provide legal counsel from the lowest court to the highest. The policy statement was published as an ad in the *Nation* and drew new support.

The original five on the Executive Committee were joined by Professor Thomas I. Emerson of the Yale Law School, Carey McWilliams, Editor of *The Nation* and two young ministers who have since distinguished themselves in civil rights work: the Rev. Milton Galamison and the Rev. Malcolm R. Evans. Others were invited to be Associates.

There was more courage than money. The organization had to be formed against the tide, and many people who were sympathetic were fearful. One of the first stands of the Committee was the decision to enter an *amicus brief* on behalf of Paul Robeson's suit against the State Department for a passport. It was indicative of the temper of the times that the attorney who had been serving as a volunteer counsel for the Committee felt that he could not go along with that decision and resigned. The Committee then appealed to Leonard B. Boudin to act as volunteer counsel and he accepted.

Mr. Boudin submitted the brief for Robeson, but the court did not accept it. The same fate met a brief on behalf of the Baltimore citizens who were tried under the Smith Act. The Communist Party carried on a vigorous defense of the victims of the Government's Smith Act drive, and in the end the Supreme Court circumscribed its previous decision with enough qualifications so that the Department of Justice stopped using the Act, but not until many people had suffered long jail sentences. ECLC with Boudin as counsel began a seven year fight for freedom of travel which finally resulted in victory over the State Department's political tests for passports. (see page 19)

In the year 1952 the Committee issued statements about the continuing infringements of civilian rights by the government, organized a New York Forum for discussing ways of combatting these infringements and held other meetings. ECLC statements ranged from opposition to President Truman's seizure of the steel companies to statements of support for the numerous professors who were dismissed for political reasons.

The largest meeting of that year was at Carnegie Hall in support of the teachers of New York who were being illegally treated under the state Feinberg law. At year's end the Committee resolved to sponsor a conference on the Bill of Rights in January of 1953.

1953—Hard Going for the Committee

A distinguished list of prominent people agreed to sponsor the conference. Hardly had the call for the conference been issued when an organization called the American Committee for Cultural Freedom (ACCF) attacked. Formed apparently to police organizations which it considered insufficiently anti-Soviet, ACCF wrote to the sponsors urging them to withdraw.*

The officers and most of the sponsors withstood the calumny and the conference was held as scheduled. Forums were held in several churches and a large gathering at Carnegie Hall. The highlight was the appearance of the new head of the Judiciary Committee, Senator William



At E.C.L.C. first conference in 1952. From left to right: Prof. Thomas I. Emerson, Judge Hubert T. Delany and Leonard B. Boudin.

Langer, who announced that he was creating a sub-committee on civil liberties—the first step in the Senate to halt the savage rampage of Senator Joseph McCarthy. Joining in the panel discussions were Leonard B. Boudin, later to be ECLC general counsel, Scott Buchanan, Dean of St. John's College, Judge Hubert T. Delany of the New York Domestic Relations Court, Ephraim London, New York attorney, Carey McWilliams, Editor of *The Nation*, Alexander Meiklejohn, the revered philosopher of civil liberties, and Ben Shahn, the artist.

The year that started off with this important conference was marked also by the establishment of the Committee's publication, *Rights*, under the joint editorship of Edgar Stillman, Jr. and Franklin Reeve. In the

*Recently it has been revealed that the ACCF received large subsidies from a foundation serving as a conduit for the CIA.

succeeding years *Rights* has proven to be a valuable medium for the transmission of civil liberties information.

Another step in 1953 was the establishment of a National Council. Thirty-two of the 56 people who had accepted the invitation of the Executive Committee to form a National Council came together on May 9 at the Statler Hotel in New York. The National Council has governed the organization ever since and by 1966 had grown to over a hundred members in 20 states, the District of Columbia, and Puerto Rico. At the first meeting the National Council adopted unanimously the following policy resolution:

THAT the National Council of the Emergency Civil Liberties Committee believes that the power of Congress to investigate is like its other powers, limited by the Constitution;

THAT the power of investigation is being abused by the McCarthy, Velde (HUAC) and Jenner (SISS) committees to intimidate their critics and to make the expression of radical, liberal or non-conformist views hazardous;

THAT this conversion of the Congressional committees into a public pillory for men who do not agree with McCarthy, Jenner, or Velde represents an attempt to restrict by terrorism the free exercise of the fundamental liberties;

THAT Congress, under the First Amendment, has no right to interfere with freedom of conscience and expression by subjecting clergymen, newspapermen or any other American to ideological or political interrogation;

THAT to allow this abuse to grow unchecked is to permit the cancerous growth in a free society of conceptions of orthodoxy and heresy imported from the darkest ages, and examples of authoritarian regimes, secular and religious.

The attack of the ACCF had hurt. While absolving many of the sponsors of the conference from the charge of Communist membership ("they were dupes"), the cold cultural warriors charged in particular that Dr. Clark Foreman, I. F. Stone, Henry Pratt Fairchild, and Thomas I. Emerson were certainly not anti-communists. But ECLC was jolted to its foundations, which were financially slender. In the spring and summer of 1953 the Committee faced a crisis. Chairman Lehmann and Director Foreman resigned, to give the National Council a chance to clarify its purpose. Not until late in August did the Committee get up a head of steam again. In that month John M. Pickering, a publicist and editor, became Chairman, Clark Foreman was induced to return as Director, Mrs. Elinor Ferry Kirstein became Treasurer, and Franklin Reeve, Secretary. A luncheon was arranged for Professor Emerson so successful that many were turned away.

Flagging spirits had also been revived by the courageous stand of Harvey O'Connor, writer and former labor editor, before the McCarthy Committee. In August 1953 he not only refused to answer the Committee's political questions but also declined Senator McCarthy's persistent

suggestion that he give as his reason for refusing the Fifth Amendment privilege not to testify against one's self.

A new wind was blowing through the halls of Congress. Since the Hollywood Ten back in 1947 had taken their stand on the First Amendment before the House Un-American Activities Committee, and been sent to jail for their temerity, none had "taken the First." Hundreds of witnesses had been haled before Congressional committees, and one and all had taken their stand on the Fifth Amendment, which holds that a witness may not be forced to testify against himself. The "Fifth" is one of the most precious of all bulwarks against despotism, with an honorable history dating far back into English history; its invocation was doubly necessary for those whose testimony might have meant jail for themselves or others under the Smith Act or the growing mountain of oppressive and tyrannical legislation. As it was, invoking the "Fifth" resulted monotonously in loss of jobs, ruined careers, the infamous blacklist, and social ostracism. Cynically the McCarthys invited their victims to invoke it.

O'Connor, "subpoenaed" by a telephone call from Roy Cohn, McCarthy's left-hand man, declined to respond. McCarthy declaimed that he was already "in contempt" but thought twice about it, and issued a real subpoena. O'Connor discovered that many of McCarthy's victims, so overwhelmed by his savagery and so unknowing of their own rights, had responded to telephoned "subpoenas" and then had fled the witness stand without collecting either witness fee or traveling expenses. Nine times O'Connor refused to answer the \$64 question. "Under the First Amendment to the Constitution," he challenged McCarthy, "my writings, my books, and my political opinions are of no legitimate concern to this committee." The citizen, he said, had the right to know McCarthy's opinions and beliefs because he is an office-seeker and public servant. But when the Senator seeks to inquire into the political opinions of a private citizen, he has subverted democracy.

When no other civil liberties organization came to O'Connor's support the Committee took on his defense as its first test case. An educational campaign was begun with respect to his First Amendment rights and the Committee's first pamphlet was commissioned, *MIND OF YOUR OWN Harvey O'Connor's Stand*, by Josephine Herbst which appeared in 1953. Thousands were distributed around the country.

In September of 1953 Dr. Corliss Lamont was subpoenaed by the McCarthy Committee and he also asserted the First Amendment in refusing to answer McCarthy's political questions. Lamont's case was handled by his own counsel, Philip Wittenberg, and ECLC honored him by a testimonial dinner at the McAlpin Hotel.

Bill of Rights Day had become neglected in the postwar hysteria. Even the *New York Times*, although it continued its traditional editorial on the day, ignored it in its Calendar of Events for December in deference to such events as the discovery of chewing gum. In 1952 there had been no observance of the day in New York, as far as the Committee knew, it therefore was decided that in 1953 ECLC would revive the observance by having the dinner for Lamont on Bill of Rights Day. The occasion was a success in every way, and put the Committee in a firm fiscal



John M. Pickering at the 1954 Bill of Rights Day dinner.

position. Each year since then ECLC has celebrated that anniversary. Recently other organizations have begun to take notice of the significance of this day. In 1966, Abraham and Straus, a large department store in New York held a conference on the Bill of Rights during the weekend preceding the 15th, announced by a full page ad in the *New York Times*.

1954—Einstein and O'Connor

The year 1954 began with a meeting on the subject of wiretapping, presided over by Prof. Vern Countryman of the Yale Law School and with I. F. Stone as the chief speaker. Forums, luncheon meetings and another big conference, this on the theme of "The Rebirth of Freedom," marked the spring.

The most widely publicized ECLC event was the celebration of Albert Einstein's 75th birthday at Princeton. In 1953 Einstein had written to a New York teacher, William Frauenglass, that he would refuse any subpoena to testify before one of the Congressional committees of inquiry. To give wider publicity to the position of the great scientist, as well as to honor him for it, the Committee asked him if he would speak at a meeting which the Committee proposed to hold in his honor on his birthday.

With characteristic modesty the great man said that he wasn't much of a speaker but that if the Committee cared to have his opinion on some related questions he would be glad to answer them in writing. Accordingly, the Committee addressed five questions as follows:

- 1) What is the essential nature of academic freedom and why is it necessary for the pursuit of truth?
- 2) What threats to academic freedom do you see at this time?
- 3) What in your view are the particular responsibilities of a citizen at this time in the defense of our traditional freedom as expressed in our Bill of Rights?
- 4) What in your opinion are the special obligations of an intellectual in a democratic society?
- 5) What in your opinion is the best way to help the victims of political inquisitions?

Mr. Clark Foreman, Director
Emergency Civil Liberties Committee
421 Seventh Ave.
New York 1, N. Y.

March 3rd, 1954

Dear Mr. Foreman:

In the following I am going to answer as best I can the questions you have put to me in your letter of February 25th.

1) By academic freedom I understand the right to search for truth and to publish and teach what one holds to be true. This right implies also a duty: one must not conceal any part of what one has recognized to be true. It is evident that any restriction of academic freedom acts in such a way as to hamper the dissemination of knowledge among the people and thereby impedes rational judgment and action.

2) The threat to academic freedom in our time must be seen in the fact that, because of the alleged external danger to our country, freedom of teaching, mutual exchange of opinions, and freedom of press and other media of communication are encroached upon or obstructed. This is done by creating a situation in which people feel their economic positions endangered. Consequently, more and more people avoid expressing their opinion freely, even in their private social life. This is a state of affairs which a democratic government cannot survive in the long run.

3) The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure. Thus, a duty is imposed on everyone which no one must evade, notwithstanding the risks and dangers for him and his family.

4) In principle, everybody is equally involved in defending the constitutional rights. The "intellectuals" in the widest sense of the word are, however, in a special position since they have, thanks to their special training, a particularly strong influence on the formation of public opinion. This is the reason why those who are about to lead us toward an authoritarian government are particularly concerned with intimidating and muzzling that group. It is therefore in the present situation especially important for the intellectuals to do their duty. I see this duty in refusing to cooperate in any undertaking that violates the constitutional rights of the individual. This holds in particular for all inquisitions that are concerned with the private life and the political affiliations of the citizens. Whoever cooperates in such a case becomes an accessory to acts of violence or invalidation of the Constitution.

5) It is important for the defense of civil rights that assistance be given to the victims of this defense who in the abovementioned inquisitions have refused to testify, and beyond that to all those who through these inquisitions have suffered material loss in any way. In particular, it will be necessary to provide legal counsel and to find work for them.

This requires money the collection and use of which should be put into the hands of a small organization under the supervision of persons known to be trustworthy. This organization should be in contact with all groups concerned with the preservation of civil rights. In this way it should be possible to solve this important problem without setting up another expensive fund-raising machinery.

Sincerely yours,

(signed) A. EINSTEIN

The answers were so strong and clear that it was decided that the meeting should be in the form of a discussion of them. They were also published in *Rights* with letters from Nehru, Thomas Mann and Bertrand Russell.

No sooner had the meeting been announced than a furious campaign was begun by the ACCF to discredit it. Many prominent persons attempted to persuade Einstein, and the distinguished writers of the letters of congratulation, to repudiate the meeting.

Einstein had been a sponsor of the 1953 Carnegie Hall conference and was also an old friend of the economist Dr. Otto Nathan, then a member of the National Council. Despite the efforts of many people in high places, including officials of the Institute for Advanced Study, Einstein refused to yield. Nor did the writers of the letters. Bertrand Russell, whose name up to that time had been carried on the letterhead of the ACCF, resigned from it.

The conference in the Princeton Inn attracted nationwide attention owing to the increased publicity caused by the attempts to scuttle it. The discussion of Einstein's answers was lively, and the Committee's position in the country was established. Subsequently the ACCF faded away.

Though the publicity from the Einstein meeting was outstanding, more important for the Committee's future was the national tour of meetings carried on by Harvey O'Connor. The idea of the importance of the First Amendment was revived in remote areas of the country. Even some of the labor unions heard him, and his own union, the Oil Workers, gave him publicity and support.

Toward the end of 1954 O'Connor became Chairman and Lamont, Vice-Chairman, with Edgar Stillman, Jr., as Secretary. The Committee was now able to retain the services as General Counsel of an outstanding authority on constitutional law, Leonard B. Boudin, who had defended O'Connor on behalf of ECLC, and thenceforth he conducted an unending series of forays in the courts which resulted in brilliant victories for the Bill of Rights. A Legal Committee was appointed with Professor David Haber as Chairman. The adopted procedure for test cases called for recommendation by the Legal Committee of cases representative of a general class of violations. When approved by the Executive Committee the cases received the free legal services of the General Counsel and ECLC's staff assisted the defendants in raising the other legal costs.

On December 15th, the 1954 Bill of Rights Dinner honored seven defenders of the First Amendment. They included the University of Michigan mathematician, Dr. H. Chandler Davis, a victim of the House Un-American Activities Committee because he refused to testify against friends and associates; Albert Shadowitz, an engineer fallen afoul of McCarthy in the notorious New Jersey telecommunications witchhunt; Dr. Paul Sweezy, the economist and associate of Leo Huberman as editor of *Monthly Review*, who defended academic freedom when quizzed by a one-man McCarthy committee in New Hampshire about a lecture he had delivered at the state university; Abraham Unger, the New York attorney indicted because McCarthy did not consider his answers adequate; Mrs. Goldie Watson, a Philadelphia teacher, an "uncooperative" witness before HUAC; and Dr. Lamont and O'Connor. The new spirit of defiance of Mc-

Carthyism highlighted the importance of the use of the First Amendment in permitting intended victims to take the offensive in challenging their tormentors and bringing the issue into the limelight. ECLC supporters at the dinner responded with contributions of \$22,500.

The National Council the following day decided to give priority to eliminating thought control from the so-called national security measures enacted in recent years, in line with a resolution adopted by the Congress of Industrial Organizations. "Loyalty oaths" were demanded of hundreds of thousands of workers in armaments plants, and the practice had extended throughout the government. Said the CIO:



Harvey O'Connor presiding at the Philadelphia E.C.L.C. conference on the Re-birth of Freedom, June 11, 1955.

"The presumption of innocence no longer exists in this field. Secret informers run rampant as exhausted employees receive their eighth or ninth trials. Our diplomatic service is demoralized by the program and our scientific community is disheartened."

About this time the New Hampshire Attorney General who had quizzed Dr. Sweezy turned his attention to Dr. Willard Uphaus, the Methodist pacifist who directed the World Fellowship camp in that state. Royal W. France and Leonard B. Boudin argued this case for ECLC as a test case, but unfortunately the Supreme Court by a vote of 6 to 3 turned down the appeal and Dr. Uphaus had to spend a year in jail.

Despite McCarthy's fate, the "Emergency" in the name of ECLC remained as pertinent as ever. In 1955 ECLC was carrying three First Amendment cases; two involving the Fifth Amendment; no fewer than nine in which passports were being denied by the State Department; two "screening" cases involving soldiers accused of improper political associations; a 14th Amendment case involving the discharge of a subway conductor as a "security risk"; a tenants' loyalty oath prosecution; the refusal of teachers to inform on their associates; and the persecution of United Nations personnel.

ECLC, which three years before nearly foundered on the financial rocks because it could not raise a budget of \$10,000, was able to report income in 1955 of \$59,000. The courage of those willing to stand up and fight McCarthyism was contagious; the worst point of governmental tyranny had been passed. The year closed with the annual Bill of Rights Day dinner where more than 1,000 heard an eloquent address by Owen Lattimore, the Far East expert, on "Fear and Foreign Policy."

In tribute to ECLC's growing effectiveness, Senator Eastland of the Internal Security Sub-Committee denounced it early in 1956 as a "communist front organization." Director Foreman was held partly responsible for the Supreme Court's celebrated decision in the school desegregation

case, and it could be inferred from the Mississippian's heat that he held that Court to be, if not a communist front organization, at least a dupe of Dr. Foreman and ECLC. There was, of course, no evidence, nor any opportunity for ECLC to present its position in Eastland's official government report, broadcast in thousands of copies to ultra-rightists across the country, particularly in the South.

In the uphill fight to regain lost civil liberties, the most significant victory of 1956 was the Supreme Court decision outlawing state sedition laws, on the ground that such legislation was an exclusive federal preserve. The case arose on the appeal of Steve Nelson, a Pittsburgh Communist leader, convicted of attempting to overthrow Pennsylvania. He was represented by Herbert Thatcher, one of the AFL's general counsel, and by Victor Rabinowitz, ECLC's associate general counsel. Not only was Nelson freed but all the state sedition laws fell before the Court's ruling. The immediate result was the freeing of Carl Braden, a Louisville newspaperman who had spent eight months in jail while his \$40,000 bail (the highest in Kentucky history) was being raised, and who had been sentenced to 15 years for helping a Negro buy a house that was later bombed. Mr. Andrew Wade, the Negro, and his white friends were charged with seditious conspiracy. ECLC had been active in raising the bonds and in publicizing this fantastic case. Attorney Louis Redding of the ECLC board made a first-hand inquiry into the facts in Louisville, which ECLC published as a pamphlet.

Editions of *Rights* reached as high as 25,000 copies as part of ECLC's educational program, which also included frequent statements to the press, a hundred or more meetings, and the organization of branches in New Jersey, Philadelphia, the New York suburbs, and elsewhere. Mrs. Edith Tiger joined the staff full time in connection with educational and organizational work and subsequently became Assistant Director of ECLC. Supporters, known as Associates, numbered in 1956 nearly 1,000, almost a 100 per cent increase over the previous year, and more than 2,000 persons contributed financially. The National Council, the governing body, numbered 74. The Council laid down policy and elected members of the Executive Committee. In this period appeared the books *Freedom Is as Freedom Does: Civil Liberties Today*, by Vice Chairman Lamont, and *Fear, the Accuser*, by Dan Gillmor, a member of the Executive Committee.

Another significant breakthrough toward liberty marked the year 1957, when the Supreme Court with only Justice Clark dissenting reversed the conviction of John T. Watkins, an organizer for the Auto Workers Union, who had refused to name for HUAC former associates who had been members of the Communist Party but had later resigned. In a scathing rebuke to HUAC, Chief Justice Warren declared:

"The authorizing resolution of the Un-American Activities Committee was adopted in 1938. . . . It would be difficult to imagine a less explicit authorizing resolution." Commenting on the committee's name, he added: "Who can define the meaning of 'Un-American?'" The Court held that the committee's mandate was too vague to justify its inquiries affecting "the First Amendment freedoms of speech, press, religion or political belief and association" and that a witness had a right to know the subject of the inquiry so that he might judge the pertinency of the questions put to him.

Sweeping as was the Court's condemnation of HUAC's free-and-easy invasions of First Amendment rights, it did not rule strictly on that Amendment but rather on the due process clause of the Fifth. While this was an enormous advance from its refusal a decade earlier even to consider the appeal of the Hollywood Ten, the decision merely clipped HUAC's wings but did not sever them.

At the same time the Supreme Court reversed the conviction of Dr. Paul Sweezy, appealing from persecution by the Attorney General of New Hampshire, acting as a one-man HUAC in his bailiwick. Dr. Sweezy, a member of ECLC's National Council, was defended by Professor Thomas I. Emerson of Yale Law School, also a member of the National Council.

The Watkins decision spurred ECLC in 1957 to undertake a national campaign for abolition of HUAC. In this it was joined by the Citizens Committee to Preserve American Freedoms, in Los Angeles. That city had been raided repeatedly by HUAC in search of headlines in its persecution of outstanding personalities in the movies, TV, the theater and the arts. CCPAF arose from the need in Los Angeles to counter the HUAC thrusts and had built itself a sturdy position on the civil liberties front under the leadership of an able organizer, Frank Wilkinson. ECLC invited Wilkinson East for a year to head up a national abolition campaign, which was kicked off September 20th. Two thousand people attended a Carnegie Hall rally to hear Dalton Trumbo, the blacklisted screen writer, Professor H. H. Wilson of Princeton, Louis L. Redding of Wilmington, Delaware, and Wilkinson in one of ECLC's most memorable meetings.

The campaign carried Chairman O'Connor, Director Foreman and Wilkinson to 20 cities across the country. ECLC reprinted the Supreme Court's decision in the Watkins case (including Clark's dissent) in an edition of 10,000 copies. So effective was ECLC's campaign that HUAC counter-attacked in a report entitled *Operation Abolition* which was circulated in the tens of thousands of copies to ultra-right organizations. Characteristically, HUAC's counter-attack entirely ignored ECLC's arguments for abolition and centered, as usual, on attempts to defame officers and members of the National Council by well-worn tactics of "guilt by association." ECLC riposted with a pamphlet entitled simply, *Abolition*, by Harvey O'Connor which reviewed HUAC's 20 years of hysteria, stating the constitutional and political case against it.

Chairman O'Connor, on December 20, 1965 had won reversal in the Circuit Court of Appeals, by unanimous vote, of his conviction for contempt of Congress for defying Senator McCarthy. As is usual in such cases, the court had shied away from the First Amendment issue which O'Connor had hoped to pose. Instead it was held that McCarthy's questions were vague; as a matter of fact so slipshod was the Grand Inquisitor (although he had been a judge in Wisconsin) that not a one of his many citations ever landed a recalcitrant witness behind the bars. Dr. Lamont had won in District Court, and the Government had appealed and lost in 1956. One and all, the indictments were ultimately thrown out, but at the cost of thousands of dollars in each case to the defendant and to the organizations defending him.

It turned out later that O'Connor had only jumped out of the McCarthy frying pan to land into the HUAC fire. In September, 1958, HUAC

invaded Newark in search of "communism in New Jersey." A dozen or so unionists and teachers—the latter the most defenseless of all creatures—were subpoenaed. As usual, in such invasions, ECLC in cooperation with its New Jersey affiliate went into Newark, helped the subpoenaed people organize their defense, took the issue to the public through advertisements in the newspapers, and held a public meeting in a downtown hotel. As O'Connor entered the hotel lobby he was served with a subpoena. He turned away without touching it, and the forlorn document like a wounded bird fluttered to the floor. "First with the First" in the McCarthy era, the ECLC Chairman was also the first to ignore a HUAC subpoena. (Harry Truman was subpoenaed by HUAC in 1954 but he ignored their summons. As a consequence of such experiences, Truman denounced HUAC as "the most un-American thing in the United States.")

O'Connor challenged HUAC's constitutional right to issue the subpoena. He had never lived in New Jersey and knew nothing about communism there; even had he been a "cooperative" witness he could not have enlightened HUAC on the object of their presumed investigation. Obviously he was subpoenaed because he was Chairman of ECLC which had helped the New Jersey people and was to speak on their behalf. It was a clear case of using HUAC's assumed power to punish a person for expressing his contempt of their arrogance. The Department of Justice, while it went through the motions of indicting, allowed the case to lie on the docket in Federal court until 1965, when rather sheepishly a district attorney moved for dismissal. Fortunately this was one case in which neither the defendant nor ECLC had to waste much money; on the other hand, no one else has ventured since to ignore a subpoena—a rather risky business that any lawyer would advise against. O'Connor was represented by Morton Stavis, a member of the Executive Committee, and by Boudin. Dismissal of the indictment, however, was actually a minor victory for HUAC—once again a clearcut challenge going to the heart of the First Amendment issue had been avoided.

Less fortunate than O'Connor were Frank Wilkinson and Carl Braden. Wilkinson's last assignment for ECLC was to go to Atlanta to support the rights of those who had been subpoenaed for a hearing there in September 1958. Wilkinson was subpoenaed on his arrival at his hotel, apparently as a result of wiretapping by agents of HUAC. Both Braden and Wilkinson asserted the First Amendment in refusing to answer questions of the Committee. Both were cited for contempt and convicted. Their sentence of a year's imprisonment was upheld by the Supreme Court. Braden was represented by Leonard Boudin of ECLC, and John Coe of Pensacola; Wilkinson, whom the ACLU had represented in a similar situation in California, was represented by Rowland Watts, ACLU's counsel.

This same year, HUAC made its first and only foray into Puerto Rico. Dr. Foreman went there to support the defendants. As the subpoenaees declined politely to answer all the Committee's questions, Representative Scherer of the Committee burst out with a tirade against Dr. Foreman, accusing him of responsibility for the tactics of the subpoenaees in challenging the right of HUAC to hold hearings in Puerto Rico. "It's a lie," shouted Abraham Diaz-Gonzalez, chief counsel for the subpoenaees. The response of the audience was so tumultuous that the hearing had

to be suspended. All 13 of the subpoenees were cited for contempt by the House. All were indicted; all were acquitted in the courts. HUAC has never returned to Puerto Rico.

The Internal Security Sub-Committee

Becoming more active in this period was HUAC's counterpart in the Senate, the so-called Internal Security Sub-Committee of the Judiciary Committee, headed by the ineffable Eastland of Mississippi.

In 1956, at the behest of the Methodist Federation for Social Action, ECLC checked for a very brief time the rampage of the sub-committee. In a document which the sub-committee distributed by the thousands, it had described the Federation and other organizations as being "communist-fronts." Since the Federation had been started in 1907, long before the Communist Party, it was in a better position than most to disprove the charge. With the assistance of Attorney Harry Rand, a National Council member, ECLC was able to get what was probably the first injunction against a Congressional committee. But it was short lived, as the Attorney General soon found another judge to overrule it, and a Circuit Court of Appeals dismissed the case on grounds of lack of jurisdiction.

Angered by the attitude of the *New York Times* ("the uptown edition of the *Daily Worker*," as the Senator put it), Eastland's committee summoned a group of New York newspapermen to answer for their politics. Contempt citations sprouted from this inquisition, including that against William A. Price of the *New York Daily News*; Price surveyed the First Amendment scene for *Rights*. He tabulated 21 contempt of Congress cases based on First Amendment principles pending in the courts, despite the Supreme Court's *obiter dicta* in the *Watkins* case. Since 1954, Price was able to reveal, 54 contempt citations had been issued by the two Houses of Congress, in addition to 11 citations by HUAC which had not reached trial. On the encouraging side was the fact that of the 65 persons cited, only two, Wilkinson and Braden, had gone to jail; some 30 legal victories had been chalked up by those who chose to resist. But many, including most of the New York newspapermen, had lost their jobs through mere citation by Congress, had been blacklisted, and had had to raise large sums for their defense. Some had to find new careers and develop new skills to provide themselves a living. In 1959 many of the victims of the inquisition came together in the Committee of First Amendment Defendants, the better to bring the issue to the public. Price served as director.

The Military Mind

Over many years preceding World War II Congress had provided protection of due process for soldiers, requiring court martial proceedings for the issuance of dishonorable discharge. But in the '40's the Army instituted a new type of discharge called "undesirable" which evaded these legal safeguards. Its effect upon the undesirably discharged soldier was as damaging for future employment as if he had received a dis-

honorable discharge, and he did not have the protection of any court hearing.

Thousands of men received undesirable discharges and many of them for accused actions or associations even before they were drafted to fight in the Korean War. Many appealed to ECLC for help, and numerous suits were started only to founder on the requirement by the courts that all administrative remedies be tried before suits were initiated. The administrative remedies were so cumbersome that generally they were impractical for the discharged soldiers.

A veteran of the Korean War, Howard Abramowitz, with a Silver Star for heroism, was asked just before his discharge whether he had attended, prior to being drafted, a social affair given by an organization which the Army considered subversive. When Abramowitz declined to answer he was told that if he did not reply he would be given an undesirable discharge.

He declined nevertheless, and asked ECLC help in testing the validity of the Army's actions. With Victor Rabinowitz as counsel, ECLC took the case to the Supreme Court. There, the Solicitor General told the amazed justices that the Army realized its procedure was in violation of the Constitution. Asked why, if that was the case, the Solicitor General was before them he replied that the Army's position was that the Supreme Court had no right to interfere with Army procedures.

Fortunately the Court held that the Constitution does apply to the Army. Abramowitz got his honorable discharge, and so did hundreds of others who had received undesirable discharges for actions prior to their enlistment. They were then able to be admitted to the Bar, teach and get jobs which otherwise would have been denied them.

The Army didn't give up easily however, and before long ECLC received a call from another veteran, in Chicago, who had been asked—he was an associate of a socialist magazine while he was still in the Reserves. Kenneth Swinbourne had previously been honorably separated from his active service, but now was threatened with an undesirable discharge for actions afterwards. ECLC agreed to defend him, and his honorable discharge was finally obtained through administrative processes in Washington.

Right to Travel

The right to travel has occupied a great deal of the effort of ECLC. The first meetings were concerned with the right to travel, as was the first legal action. When the Committee was started the American Civil Liberties Union had issued a statement supporting the State Department's policy of denying passports to Communists and to "members of the world-wide Communist conspiracy." In fact the statement went even further in saying that passports should be denied to anyone with secret information who might be kidnapped and carried into Russia.

ECLC's first attacks on the State Department policy were met by delaying tactics on the part of the Department, and it wasn't until 1955 that the cases of Dr. Otto Nathan and Dr. Clark Foreman reached the

10th October, 1955.

The natural right of every free man to travel is being violated more and more by the unscrupulous with-holding of passports. The situation is most alarming. For every American today, whether he knows it or not, is a prisoner on probation, with a chain around his leg to be drawn in by a jailer at any time he may disagree with the political policy makers who are in temporary power. And who knows that what we agree about today, we may disagree about tomorrow.

Such international artists as Paul Robeson and Rockwell Kent, whose art is a credit to America and whose art has enriched understanding between America and Europe, are chained by this vicious and dangerous policy. To deny the right to travel to Americans held in such general respect abroad, is stupid and inhuman. It destroys American prestige and creates doubt and suspicion in the countries whose friendship America most needs.

This is not a plea alone for American artists in chains, but for every American over whose fundamental freedom this menacing shadow is creeping.

The violation of the right to travel affects every aspect of American democracy and freedom. That is why nothing can be of greater importance than this effort by the Emergency Civil Liberties Committee.

/signed/ CHARLES CHAPLIN

courts. In June of that year the District Court of the District of Columbia ordered the State Department to give the passports or a fair hearing. In both cases the Department chose to give the passports without a hearing. In Foreman's case the judge also held that the Department had seized his passport illegally in 1951.

Although the Department complied with court orders on specific cases, it continued to deny passports for political reasons. Not everyone was willing to fight for four years as Nathan and Foreman had done to get a passport. Both of them had signed the Department form denying previous membership in the Communist Party. In order to get the matter to the Supreme Court it was necessary to find someone who wouldn't sign such a statement.

Rockwell Kent, the famous poet, applied for a passport to go to Ireland to paint and was denied it. ECLC took up his case, whereupon he told the Department that he was an American citizen who wanted to go abroad and that was all he would say. Consequently the lower courts did not order the Department to give him a passport. Dr. Walter Briebl, a psychiatrist from Los Angeles took the same position. ECLC supported both cases before the Supreme Court. By that time, 1959, the ACLU had adopted the ECLC position and entered an *amicus brief*.

The decision of the Court cleared the whole issue. It held that the State Department had been acting for ten years without any legal justification for its denials. The question of unconstitutionality was not decided but the Court clearly suggested that even if there had been a law it might be held unconstitutional. Justice Douglas's opinion held that the right to travel was a basic part of American liberty.

With every victory which ECLC achieved in the courts there was a corresponding fight to prevent Congress from passing laws such as the State Department pretended to have existed before the *Kent-Briebl* decision. In all the 15 years, since ECLC began its passport cases, although efforts were made in every Congress, no law limiting the right to travel was passed.

All the attempts in the courts were not, however, successful. Dr. Waldo Frank, the distinguished writer, was invited to lecture on Walt Whitman at the University of Peking but the State Department refused to validate his passport for the trip. He sued with ECLC support but unsuccessfully. Similar attempts by Professor and Mrs. Alan M. MacEwan and Louis Zemel to win validation of passports for trips to Cuba were unsuccessful.

When a group of students in 1963 decided to challenge the State Department ban on travel to Cuba, several were indicted on their return. They appealed to ECLC for help and the cases were taken and won in the Brooklyn District Court. An effort by the Department of Justice to upset the decision by appealing a similar ruling on the 1964 group was unsuccessful in the Supreme Court.

Attack on the Court

Stung by a series of Supreme Court decisions striking down as unconstitutional various laws or sections of them, the Dixiecrats and conservative Republicans mounted an alarming counter-offensive in 1958-59.

In the *Yates* decision the Court had construed the word "organize" in the Smith sedition act to include only those who had originally organized the Communist Party and had sharply circumscribed the definition of "advocacy." In the *Nelson* decision it had outlawed state sedition laws. In the *Cole* case the Court had prescribed conditions governing the discharge or suspension of Federal employees. Following these and other decisions legislation was introduced to nullify the Court's decisions. The bills, referred to the Judiciary Committee under the aegis of Mississippi's gift to the nation, Senator Eastland, expanded the scope of the Smith Act, gave department heads "absolute discretion" in suspending Federal employees, authorized the State Department arbitrarily to deny passports and tightened control of aliens awaiting deportation. Similar measures were dumped into the House hoppers.

In this real emergency ECLC, along with many other organizations concerned with liberty, mounted an intensive lobbying campaign in the halls of Congress, opened an office in Washington and rang the alarm bells across the nation. Some of the bills passed one House only to die in the other, others were stopped in committee, and some died when a new Congress took over.

An aroused public opinion backed up the Court as it proceeded in case after case to nullify the more obnoxious sections of the Smith Act and similar legislation. However, in no case did the Court come to grips with underlying First Amendment features of these laws; it preferred to hack away at the limbs rather than the roots. In partial justification it could be said that, after all, it was asking very much of the Court to nullify laws passed by whopping majorities in both Houses. ECLC never ceased to stress the point that the public should elect more members of Congress who were willing to stand by their oath to uphold the Constitution and its Bill of Rights when unconstitutional measures came before them.

The Supreme Court itself dealt a body blow to the Bill of Rights in 1959 when by a 5 to 4 vote it refused to overturn the conviction of Lloyd Barenblatt. For the first time the Court confronted the First Amendment, and retreated. Justice Harlan wrote the majority opinion in which he "balanced" the plain words of that Amendment, that "Congress shall make no law" regarding freedom of expression, with the argument that "national security" may require exceptions. This piece of legalistic forensics elevated a humble psychology professor in a woman's college into a risk formidable enough to the Republic to require the nullification of the Bill of Rights. By this vote, a decision was lost which might otherwise have decreed death to the era of McCarthyism. Another Court, in another time, it is hoped, may reverse the odious "balancing" act and restore the First Amendment to its original position as the cornerstone of the Bill of Rights. But that time had not come even in 1966.

In 1958 ECLC began annual awards for outstanding achievement in the tradition of Tom Paine. The first of these was awarded to John M. Pickering who, as editor of *Rights* had done so much to make the civil liberties issue better understood.

The year 1959 ended on a spirited note. Senator Stephen Young of Ohio accepted an invitation to be the principal speaker at the annual Bill of Rights dinner. For this some Cincinnati Legionnaires denounced him.

The annual Tom Paine Award was instituted in 1958 to honor outstanding champions of civil liberties. Since then the Award has been given to the following:

**1958: John M. Pickering
1959: I. F. Stone
1960: Josiah W. Gitt
1961: Frank Donner
1962: Bertrand Russell
1963: Bob Dylan
1964: James Dombrowski
1965: Carey McWilliams
1966: Arthur Kinoy**

In a biting reply, the Senator wrote: "So—you self-appointed censors and self-proclaimed super-duper 100% America Firsters censure me. You professional veterans who proclaim your vainglorious chauvinism have the effrontery to issue a press release gratuitously offering an expression of censure and making urgent demand that I cancel a speaking engagement previously made. I'll make that speech in New York. . . . I repudiate your resolution, Buster, and your pompous, self-righteous, holier-than-thou title of 'Americanism Chairman.' Why don't you as 'Americanism Chairman' read and try to understand that cornerstone of our liberties, the Constitution of the United States?" The ECLC dinner was over-subscribed.

As in any group dealing with civil liberty, ECLC council members often disagreed on matters of emphasis and tactics. Perhaps the most painful disagreement came over the Director's criticism of New York's Mayor Wagner for withdrawing a permit for the Nazi leader, George L. Rockwell, to speak. To a few members of the Executive Committee and Council, Rockwell's views were so loathsome that they should be denied public expression. Council members, by a vote of 43 to 4, sustained the Director's defense of free speech in accordance with the Statement of Principles adopted in 1954. (See Inside Cover)

HUAC

HUAC found it essential in 1960 to harry those who had attended the World Youth Festivals. ECLC sponsored a protest meeting for the students. The Washington hearings turned into a fiasco. HUAC did not gain popularity by its charge that communists had infiltrated the Protestant clergy. During 1960 it came out that part of HUAC staff activities was devoted to proving that Negroes are inferior biologically. Congressman James Roosevelt of Los Angeles denounced the committee on the floor of the House, the first such expression in years. While his was the lone voice, more than 50 Congressmen were known to be antagonistic in varying degrees to HUAC.

In 1960 six persons went to jail for defending the First Amendment. Lloyd Barenblatt served six months; Dr. H. Chandler Davis, the mathematician, six months; Paul Rosenkrantz, three months; Frank Wilkinson

and Carl Braden, both one year. Twenty persons cited for contempt by HUAC were awaiting indictment or trial along with seven cited by the Senate Internal Security Sub-Committee. Four more had been cited for refusal to answer questions by "little HUACs" set up in Florida and New Hampshire. Dr. Willard Uphaus went to jail for one year.

Not to be outdone in infamy by HUAC, the Senate subcommittee (SISS), tried to force Dr. Linus Pauling, the Nobel Prize winner, to reveal the names of the solicitors of 11,000 signers—mostly in the academic world—of a petition for an international agreement to end nuclear testing. ECLC supported vigorously Dr. Pauling's right to refuse and carried on a nationwide protest including an ad in the *New York Times*. He refused and later the United States did sign such an agreement. Dr. Pauling received an ovation when he spoke before ECLC's annual Bill of Rights Day dinner, as did Dr. Uphaus, who had just been released from a year's imprisonment in New Hampshire.

In the post-McCarthy period, 1960-61, the Supreme Court, in a series of decisions, upheld the Smith and McCarran Acts. By a 5 to 4 decision the Court ratified the action of the Subversive Activities Control Board, set up under the McCarran Act, declaring the Communist Party to be subversive. This meant that the State Department would be authorized to resume its practice of denying passports to persons whom it believed to be communists and that all literature issued by the Communist Party was to be labelled as issued by "a Communist organization." In effect the decision outlawed the Communist Party, inasmuch as it could carry on no legal activity except under the threat of imprisonment of its members. Since officials of the Communist Party were required to register as "for-



Dr. W. E. B. Du Bois and Dr. Clark Foreman before the E.C.L.C. meeting memorializing Dr. DuBois's long fight for civil liberties, on his 93rd birthday, June 14th, 1960.

eign agents," such persons sought safety in anonymity as they began the long fight to re-establish the legality of their party. The Communist Party, however, refused to register and later was upheld by the Court.

The bright spot was unintentionally provided by HUAC itself, which invaded San Francisco. Previously ECLC and others had done what they could to help the subpoenaed and to press the issues before the forum of public opinion, but these had been holding operations. In San Francisco, for the first time, thousands joined to protest the HUAC hearings, in the hearing room, in the lobbies and in the streets. Police brutality was at its worst as the protesters, in great part student from universities in the Bay area, were dragged down the monumental marble steps of City Hall, flushed along by fire hoses, and herded into patrol wagons. The entire nation witnessed the brutal scenes via TV.

This was the turning point. Students the nation over responded with horror and indignation and from that day in May, 1960, the fight for civil liberty spread out from the core of libertarians who had carried the banner in the dark, silent years, to include tens of thousands of students and young people to whom HUAC had revealed its horrid face. Sit-ins spread across the country and particularly in the South where Negroes, heartened by the resistance in San Francisco, went out into the streets, not to regain, but to gain a liberty they had never had.

A grotesque result of the San Francisco outrages was HUAC's doctoring of a "documentary" film entitled *Operation Abolition*, a repetition of the title it had given to its attack on ECLC a few years before. This film was issued in hundreds of copies to right-wing organizations but so patent was its distortion of the events that ECLC and others found it valuable to show to audiences in order to expose the frauds.

ECLC, in its educational work, had distributed tens of thousands of pamphlets, reprints and statements. Among these, it issued in 1961 David Wesley's *Hate Groups and the HUAC*, an analysis of the intimate relations between the committee and the Birch Society and kindred groups. *Rights*, the ECLC publication, was going into hundreds of libraries and, under the editorship of John M. Pickering, had become an outstanding spokesman for civil liberty.

Liberty v. "Gutlessness"

The blacklist of Hollywood writers, directors and actors which had followed the HUAC hearings in the forties had a bad effect on the industry as well as those who were blacklisted. A continuing fight had been conducted against the blacklist and in 1961 ECLC held a Carnegie Hall meeting to raise money for the suit which Nedrick Young and 23 others had brought against the Motion Picture Association.

Nedrick Young and his attorney David Shapiro spoke at the meeting and their speeches were so effective that they were recorded and a thousand records were sold. "The blanketed arenas of protest must be opened—the arenas of protest and of action. To be properly informed is to be properly armed. And once so armed, our children and our people will know how to secure the gifts of life for ourselves and for people of all nations," said Nedrick Young at the Carnegie Hall meeting.

Not all the world's wisdom is concentrated in the minds of civil liber-

tarians, but fortunately they can always rely on the stupidity of liberty's enemies. ECLC's annual Bill of Rights Day dinners had been held for several years at the Commodore Hotel but in 1961, just a few days before the dinner, the Commodore yielded to the pressure of ultra-right groups and tore up its contract. ECLC went into court with William Kunstler as counsel, and won a judgment from Justice Arthur Markewich, who said: "This is about as indecent and un-American a thing as I have ever seen. Someone had just gotten cold feet. This is plain gutlessness and nothing else." And thus was a new world coined.

Abashed by its San Francisco misadventure, HUAC retreated into its Washington kennels in 1961-62. A foray into Los Angeles avoided public hearings while an inquisition against Women Strike for Peace wound up in hilarious confusion when the ladies presented the summoned witnesses with floral offerings as they testified and defied committee instructions to refrain from laughter at the questions. The Supreme Court added to HUAC's confusion by throwing out eight contempt convictions, including that against William Price, the journalist. Some of the indictments had been obtained by HUAC's counterpart in the Senate, the Eastland sub-committee.

The McCarran Act

As the interpretation of the Smith Act used by the Department of Justice was curtailed with each new decision of the Supreme Court the Department turned increasingly to the McCarran Act in its efforts to enforce conformity. A number of organizations had been called before the Subversive Activities Control Board (SACB) in the early 1950s, but full disposition of their cases awaited the action of the Supreme Court with respect to the labelling of the Communist Party. When the Supreme Court in 1961 held that the Communist Party was a communist action organization under the McCarran Act, and the Party was ordered to register as such, the government proceeded against the organizations which had been labelled by the SACB as communist fronts.

ECLC held several public meetings on the McCarran Act, moderated an hour discussion of its effects on Station WBAI and published a special issue of *Rights* including the famous veto message of President Truman. A pamphlet by Alexander Crosby called "The Rape of the First Amendment" was commissioned and over 20,000 copies were distributed.

The Veterans of the Abraham Lincoln Brigade, an organization composed solely of the American survivors of the attempt in the 1930s to preserve the democratic government of Spain, was one of those so labelled. It is by definition not a growing organization. Nevertheless, it was subjected to weeks and weeks of hearings by the SACB in 1953 and 1954. When the Veterans' appeal of the SACB registration order finally got to the courts in 1962, the small organization was without the funds necessary to defend itself. It appealed in vain to the ACLU, the New York Bar Association, and others from whom it hoped to get help. Unsuccessful in these quarters, it appealed to ECLC to take the case. Although the record of the hearing, consisting of some 3,000 pages, and the necessary research in connection with the case imposed a heavy burden, ECLC decided that a special effort must be made to save the organization and prove that the SACB was acting unconstitutionally. Attorney David

Rein, a National Council member in Washington, working with Leonard Boudin, carried the case to the Circuit Court of Appeals, and then to the Supreme Court which on April 26, 1965 reversed the lower court and the Board. In the words of the Supreme Court, "In this case, the order to register was based almost exclusively on events before 1950, and very largely on events before 1940. The hearings themselves were concluded in November 1954, more than 10 years ago. On so stale a record we do not think it is either necessary or appropriate that we decide the serious constitutional questions raised by the order."

Justice Hugo L. Black in his dissent stated the position which ECLC supports:

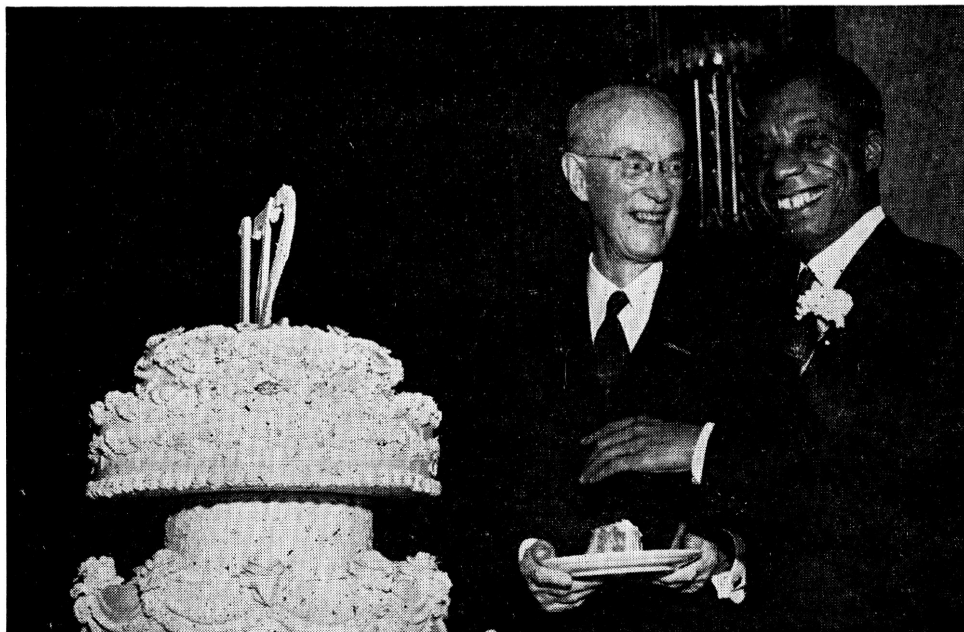
"... In *Communist Party v. Subversive Activities Control Board* . . . I stated at some length my reasons for believing that the Subversive Activities Control Act, on which the Government's case here rests, violates a number of provisions of our Constitution and Bill of Rights in many respects. . . . I think that among other things the Act is a bill of attainder; that it imposes cruel, unusual and savage punishments for thought, speech, writing, petition and assembly; and that it stigmatizes people for their beliefs, associations and views about politics, law, and government. The Act has borrowed the worst features of old laws intended to put shackles on the minds and bodies of men, to make them confess to crime, to make them miserable while in this country, and to make it a crime even to attempt to get out of it. It is difficult to find laws more thoughtstifling than this one even in countries considered the most benighted. Previous efforts to have this Court pass on the constitutionality of the various provisions of this freedom-crushing law have met with frustration on one excuse or another. I protest against following this course again. My vote is to hear the case now and hold the law to be what I think it is—a wholesale denial of what I believe to be the constitutional heritage of every freedom-loving American."

Thereafter the Department of Justice surrendered and the Board vacated its own order and dismissed the proceeding.

Since 1960 the Attorney General has asked the SACB to label only two organizations, both of them youth groups. In 1963 Attorney General Kennedy asked the SACB to label a small New York youth group called Advance. At the time the group had only about \$40 in its bank account and could not defend itself against the charge. It appealed in desperation to ECLC, which helped it get the services of Attorney Mary Kaufman, whose brilliant defense in the weeks of hearings in New York showed the despicable tactics of the Government informers. Although the hearing officer recommended in 1964 that the organization be labelled as a communist-front, the SACB took no such action. In the meantime the organization had become defunct. Attorney General Katzenbach revealed the Government's strategy at Princeton University on April 1, 1966, when he declared that while he thought the SACB unconstitutional, it was nevertheless useful in destroying organizations of which the Government disapproved.

Expatriation

The idea of involuntary loss of nationality was not one considered by the framers of the Constitution. In the 18th and 19th centuries the ques-



James Baldwin and Dr. Alexander Meiklejohn at the 1963 Bill of Rights dinner.

tion rather was the possibility of a person's surrendering nationality voluntarily. The Congress that passed the Smith Act in 1940 also passed a Nationality Act; before that the only time the Supreme Court had passed on the matter was in 1915, when it upheld a 1907 statute that a woman could temporarily lose her citizenship if she married a foreign subject.

In 1940, however, under the war hysteria of that time, Congress passed a law enumerating a number of circumstances in which a native-born or naturalized citizen might involuntarily lose his American citizenship. In the '50s the Court upheld a provision of that act, relating to voting in foreign elections. In a second case, however, the Court ruled that the Act's provision for loss of citizenship for desertion from the armed forces was invalid.

When ECLC took on the case of Dr. Joseph Henry Cort, the State Department argued that its revocation of Dr. Cort's citizenship did not constitute punishment. The Eighth Amendment proviso against cruel and unusual punishment seemed to many to apply with great force to the withdrawal of one's citizenship, but the men in control of the State Department at that time did not agree.

In 1965 the Court ruled 5 to 4 that the ECLC position was correct, that the Act did provide punishment and that the State Department had acted without a trial. The Court thereby invalidated the law.

Other victories in this area by ECLC followed, establishing in the courts that it is invalid to withhold the protection of the Bill of Rights from a naturalized citizen. Then in May 1964, Joseph Johnson, a U.S. citizen who had resided in Canada, was notified by the U.S. Immigration and Naturalization Service that he had been declared a stateless citizen because he had run for office while in Canada. He was ordered to appear at a hearing and show cause why he shouldn't be deported.

At the request of Mr. Johnson ECLC adopted the case in 1964 as a further test. With Attorney Douglas Hall of St. Paul, Minnesota, Counsel Boudin has been defending Mr. Johnson ever since. The case has had a series of hearings and appeals before the Immigration Service but has not as of the end of 1966 reached the courts. Another case was added in 1966, that of Robert Charles Mote, an American who joined the Canadian Army and whose American citizenship the State Department has sought to take away from him for that reason.

In 1963 Dr. Corliss Lamont became Chairman of ECLC, with Mrs. Eleanor Brussel as Vice-Chairman, John M. Pickering, Secretary, and John H. Scudder, Treasurer. Fourteen hundred people attended the annual Bill of Rights Day dinner at the Hotel Americana to applaud Mrs. Cyrus Eaton and James Baldwin.

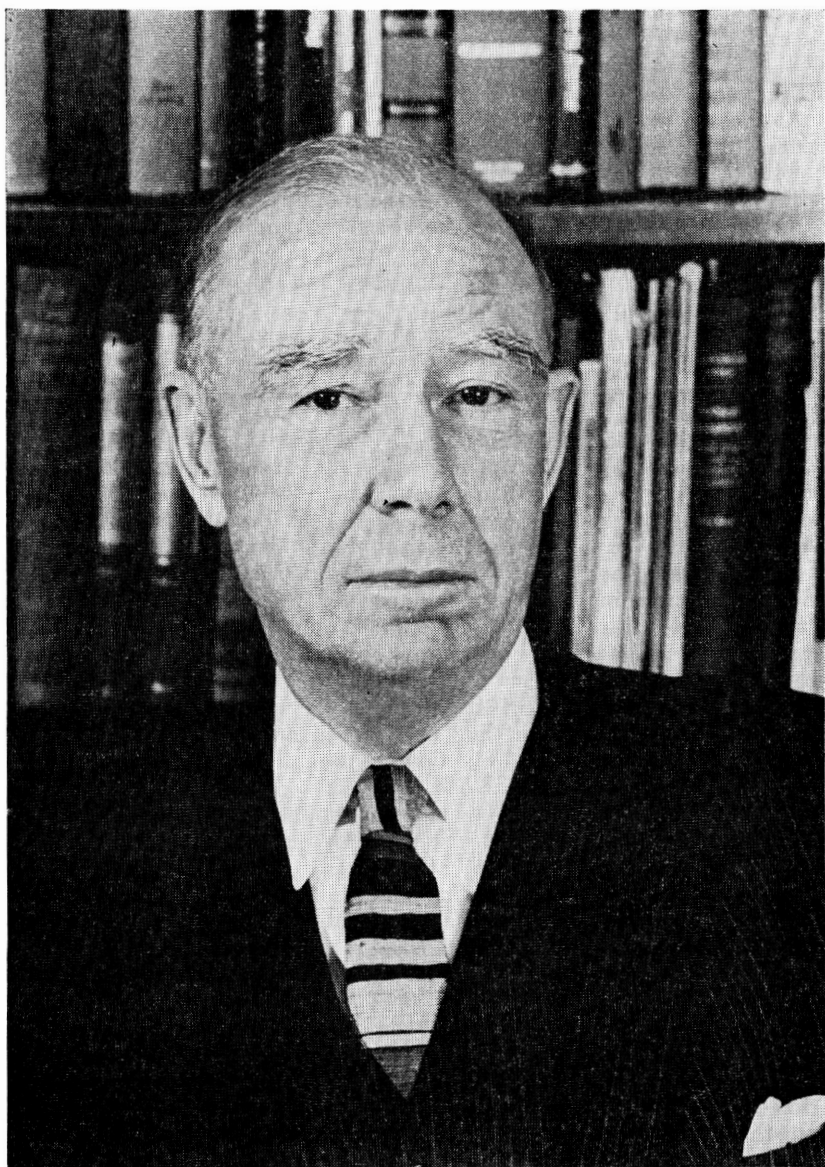
In 1966 there were many victories for American liberty, but the same issues were being constantly contested, both in the courts and in the Congress. Hardly had Federal Judge Joseph C. Zavatt decided in Brooklyn that the Government's case against the students who went to Cuba was groundless, when Senator Eastland introduced a bill to give the Administration sweeping powers to declare what regions of the world a citizen might visit. ECLC and other organizations testified against the bill. Even the Administration objected to Eastland's strategy and the bill got no further than the Judiciary Committee.

ECLC took the case of Christopher Koch, a news analyst for a New York radio station whose passport had been seized on his return from a visit to North Vietnam. After proceedings within the State Department the passport was returned to Mr. Koch.

Dick Gregory, the famous comedian, announced that he was going to Vietnam and was warned by the State Department that he would lose his passport. With the assistance of ECLC Mr. Gregory has asked the courts to enjoin the Government from punishing him in any way for going into any part of the world. That case was pending in the courts at the end of 1966.

Also in 1966 the Supreme Court made a historic ruling in the Bond case. For the first time the Court decided on the basis of the First Amendment that a state legislature could not exclude an elected representative because of his expressed views. Counsel Boudin and Howard Moore, Jr. represented Bond and ECLC submitted an *amicus brief*. The brief was reprinted in *Rights* and 45,000 copies were distributed.

In the field of the First Amendment the Chairman of ECLC, Dr. Corliss Lamont, won a landmark decision in 1965 when the Supreme Court for the first time in history invalidated a law on the basis of the First Amendment. The suit was against the Post Office, which had been insisting that citizens request in writing if they wished to receive from abroad



Dr. Corliss Lamont.

Photo by Paul Draper

third class matter addressed to them which the Government considered subversive. A similar case sponsored by ACLU was decided at the same time.

Justice William J. Brennan, Jr., speaking for the Court, said:

"It is true that the First Amendment contains no specific guarantee of access to publications. However, the protection of the Bill of Rights goes beyond the specific guarantees to protect from Congressional abridgement those equally fundamental personal rights necessary to make the express guarantee fully meaningful."

Three students at Indiana University who had been indicted in 1963 under a state law that called for "extermination" of allegedly subversive elements called on ECLC for help. Leonard Boudin won the case for the students in the lower court when the judge ruled the law unconstitutional. The local prosecutor appealed a similar case and the higher court in Indiana upheld the state law. Counsel Boudin took the case to the Federal Courts, asking for an injunction against further state action on the basis that the law was unconstitutional. The State has now indicated its readiness to drop the criminal prosecution.

As the year 1966 ended ECLC was seeking to have the right to vote restored to Gil Green, a Communist leader, whose conviction under the Smith Act had branded him as a felon, barred from his right to vote.

At the 1966 ECLC annual dinner, General Counsel Boudin announced that, on behalf of the Veterans of the Abraham Lincoln Brigade, he was bringing suit challenging not only the inclusion of the Veterans on the Attorney General's List but the validity of the List itself. The Veterans had been listed by the Attorney General in 1947, and despite their victory in the long litigation over the SACB order to register, the Government has continued to use the Attorney General's List against them and others for blacklisting purposes. The List is widely distributed and used by the Army and many private sources as a basis for discrimination.

In 1965 ECLC announced its decision to consider the legality of drafting young men for the fighting in Vietnam. A great number of young men applied for help, and the cases of three were taken as tests: Geoffrey R. Conklin challenges the right of the Government to draft him because he is against war on moral grounds; Antonio Fargas considers himself a conscientious objector on religious grounds even though the Government has not been willing to accept his grounds; and Pfc. Bruce Robertson, a soldier, refuses to bear arms and insists on the status of a conscientious objector. All three cases have been contested for a number of months but none by the end of 1966 had been tried in the courts.

In Puerto Rico the Federal Government uses a constitutionally questionable system of requiring that all jurors in Federal cases speak English. This system in a Spanish-speaking land is highly discriminatory against the majority of the population. It was challenged by Attorney Boudin in the case of Sixto Alvelo, who had refused to take the oath given to men about to be drafted. Following this challenge in the courts, the *Alvelo* and all other pending draft cases were dropped by the U.S. Government.

In 1966 ECLC felt that some new approach must be made to the problems of the young people who are disturbed about the draft but

not clear in their own minds as to just what they should do. Mrs. Edith Tiger, Assistant Director, developed the idea of a "speak-easy" approach, at which the young people would do the talking but there would be authorities present to answer questions though not to make speeches. The first of these "speak-easies" was held in the Ethical Culture Auditorium in New York in September 1966 with Dick Gregory as moderator. A number of organizations participated, through their experts, in answering questions. The idea for promoting the use of the First Amendment by practicing free speech was immediately successful, and plans are under way to repeat the "speak-easies" in other cities. Already other organizations have taken up the idea.

By 1966 HUAC's star had so waned that Administration leaders in the House felt public embarrassment, particularly after the notorious fiasco of the hearings on students opposed to the Vietnam war, during which Attorney Arthur Kinoy was forcibly ejected. HUAC, ever true to its worst sins in publicity-hunting, summoned students to hearings in Washington to answer for their sentiments on the Vietnam war. The students fought back and stood on the First Amendment, some unabashedly admitting they were communists—rejecting the Fifth Amendment defense typically used by the previous generation. The hearings were highlighted by the brutal treatment given to Arthur Kinoy, attorney for some of the subpoenaed, and even Senator Dirksen was obliged to express his distaste for HUAC's hooliganism. Most Congressmen are lawyers and they don't like to see a confrere treated in a way that would be tolerated in no court of law. Back in 1960 a lone Congressman had dared to speak out against HUAC; in 1961 six voiced their dissent; in 1963, 20; in 1965, 64, and by now 141 Congressmen have expressed their disgust, in varying degrees, with the antics of HUAC. In the cloakrooms it was being bruited about that "something must be done" about the committee. Sentiment for abolition was mounting; as a counter-measure there was danger that the House leadership might "kill" HUAC by transferring its mandate to a sub-committee of the Judiciary Committee. In this position it would be shielded, as is a similar sub-committee (SISS) in the Senate, under the wing of a committee whose legitimacy is not disputed. "Transfer" on these terms would be no defeat for HUAC.

Out of the 1966 HUAC hearings came the Pool Bill, introduced by the Dallas Congressman who had disgraced himself in the hearings. This offered savage penalties for those who, in effect, impeded "the war effort" in Vietnam. While the bill was given little chance of passing the Senate, ECLC and other organizations rang the tocsins. Particularly concerned were many unionists who had long stood on the sidelines in the fight against HUAC. Any strike that impeded the production of the "hard-ware" needed in Vietnam would come under the bans imposed by the Pool Bill.

After 15 years of steady pressure some of the guarantees of the Bill of Rights which had been suppressed by the Smith, McCarran, Communist Control Acts, and official usurpation have been restored through court actions. But in other areas the rights of the people were still threatened. In the mood of America's undeclared war in Southeast Asia there is a demand for the stifling of opposition that requires vigilance and courageous action.

GREETINGS

for this history

have been received from the following

Nathan Albert

William A. Pierce

Hans Blumenfeld

John M. Pickering

Bouslog & Symonds

Rose Rabinowitz

Benjamin Dreyfus

Nathan Rosenshine

Harold Coy

Paul Rothkrug

Rabbi Robert E. Goldberg

Henry A. Sauter

Martin R. Haase

Berthe Small

Dorothy Haven

Charles Small

Robert J. Havighurst

Herbert S. Southgate

Isidore Hofferaman

S. C. Stampleman

Crockett Johnson

Professor Morris Swadesh

William Kamlage

**Veterans of the Abraham
Lincoln Brigade**

Simon Kaplan

Craig Vincent

Oliver Loud

Jenny Vincent

Beatrice Magdoff

**West Side Women's
Committee**

Helen E. Meiklejohn

Anatol Murad

Letitia Weager

Orlene Murad

Joseph Wortis

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* Members of the Legal Committee.

"M*r. Speaker,*
that the scope and meaning of the
limitations imposed by the first section,
fourteenth amendment of the Constitution
may be more fully understood,
permit me to say that the privileges
and immunities of citizens of the United States,
as contradistinguished from citizens of a State,
are chiefly defined in the
first eight amendments to the Constitution
of the United States. . . .
These eight articles I have shown
never were limitations
upon the power of the States,
until made so by the Fourteenth Amendment."

REP. JOHN A. BINGHAM of Ohio
Author of the XIV Amendment

"Some people, Madison remarked, believed that because the powers of the Federal Government were limited and enumerated, there was no need of a Bill of Rights, 'the great residuum being the rights of the people.' These arguments were not without foundation, said Madison, but they took no account of the fact that Congress had power to pass all laws 'necessary and proper' to carry the enumerated powers into effect. That included the *means* of doing so. Might not, for example, general warrants be considered necessary for the enforcement of revenue laws? For analogous reasons general warrants were prohibited in state constitutions and there was like reason for restraining the Federal Government.

"That argument by Madison is in total conflict with the contention of some judges that the grant of power to Congress to legislate in a particular field carries with it, by implication, the power to use a means that Congress is generally forbidden to use. Such decisions say in effect that Congress *may do lawfully, in spite of the prohibition*, what the framers feared Congress would do *unlawfully, without the prohibition*. There could hardly be a more glaring perversion either of the words or purpose of the Bill of Rights."

Irving Brant, "The Bill of Rights, Its Origin and Meaning," p. 48.



Rep. James Madison (1751-1836) of Virginia, Author of the first ten Amendments, by Antonio Frasconi.

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March 17, 1967

Dear Associates:

We take this opportunity to say thank you for the interest and support you have shown in the struggle for civil liberties. The fight is by no means over. It won't be until we have won all the guarantees that we are entitled to by the Bill of Rights.

The work of the Emergency Civil Liberties Committee is known to a small group of the American people. This group has obviously been capable of supporting the Committee and its work for 15 years. Because we know that even among these people there is often confusion as to the specific function of ECLC, we have recently chronicled these first years of ECLC's work.

The objectives of printing this history are two-fold. First, to remind and re-familiarize the people who have stood staunch with us during all these years and to clarify ECLC's aims, purposes and position. The second objective, which basically depends on the first, is to marshall significant new financial support for ECLC. We would appreciate you sending us names of people who you think would enjoy receiving this special edition of RIGHTS. As you know, civil liberties requires not only hard work and dedicated fighters but a continuously new flow of financial and moral contributors.

Sincerely,

Clark Foreman

Clark Foreman
Director

CF:shj