

# Unanimous Declaration of the thirteen united States

When in the course of human events, it becomes necessary for one people to dissolve the bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a solemn and conscientious appeal is made to the Supreme Judge of the world for the rectitude of their intentions.

That among these unalienable rights are life, liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to promote their Safety and Happiness. No political connection ought to be dissolved, unless the Principles upon which it is founded be so far from promoting the Blessings of the People, that they require a radical and total reformation in the Structure of the Government.

## CIVIL RIGHTS AND CIVIL LIBERTIES

### A Review of 1955

by

Theodore Leskes and  
Maurice J. Goldbloom

He has excited a multitude of Great Officers, and sent forth legions of Officers to harass the Colonies without the consent of our Legislature. He has endeavored to render the Military independent of our Constitution, and unaccountable to our Laws; giving his Officers the power of punishing them by arms.

For imposing Taxes on us without our Consent. For depriving us in many Cases of our Property, without the consent of our Legislature, and in violation of the Colonies. He has declared a pretended Necessity, and has endeavored to bring large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, and totally annihilate the Lives of our Brethren, or to reduce them to a complete subjection, whose names are known to our ears, and whose destruction of our lives and limbs must be a perpetual injury. At present, who are the only Brethren who have been concerned in repeated injuries.

He has endeavored to excite the former Colonies to bear arms against our Brethren, with a malicious design to interrupt the commerce between us and the other Colonies, and to render them all dependent on the British Crown, and that all political connection between them and the United States, they have felt bound to lay their hands on the sword, and to declare their independence.

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John Hancock

# **CIVIL LIBERTIES**

*by*  
**Maurice J. Goldbloom**



THE PERIOD between July 1954 and the autumn of 1955 saw a marked improvement in the general attitude on civil liberties questions in the United States. Many factors contributed to this. A decreased fear of imminent war was accompanied by a calmer approach to internal policies. The absence of any evidence of new Communist penetration, either in government or in other fields, led to a widespread feeling that the danger from conspiratorial Communist activity had declined. On the other hand, the publicity received by a number of cases in which security procedures had been patently misused led to an increased realization of the dangers arising from measures which departed from the spirit of the Bill of Rights. And there could be little doubt that the clash between Sen. Joseph R. McCarthy and the Army, followed by the report of the Senate Select Committee to Study Censure Charges (Watkins Committee) and the Senate censure vote (*AMERICAN JEWISH YEAR BOOK*, 1955 [Vol. 56], p. 184-85), tended to bring the approach generally described as "McCarthyism" into disrepute.

### *Security Program*

The change was least noticeable in the legislative field, where it took the form of a decrease in new restrictive legislation rather than in the disappearance of any already on the books. There was, however, a marked alteration in both the interests and the behavior of legislative investigating committees. In the executive department, security procedures changed little, and injustices still appeared to be frequent. But when—as increasingly happened—they were brought to public attention, there was a new readiness and even eagerness to remedy them. The judiciary showed itself increasingly impatient with violations of due process by the legislative and executive branches of the government, and increasingly ready to take drastic action to stop them.

It was notable that the operation of the government security program and such related matters as the formulation and abuse of the attorney general's list of subversive organizations were challenged by many who had not previously been critical of them. Some of the sharpest attacks came from ex-Senator Harry P. Cain, who had been nominated to the Subversive Activities Control Board by Pres. Dwight D. Eisenhower on April 11, 1953. As a senator, Cain had been a close associate of Sen. Joseph McCarthy (Rep., Wis.); on January 15, 1955, he explained that he had then lacked the time to look into the security question, but in his new post he had done so, and found that existing procedures undermined basic American freedoms. Another who

criticized the security program was Rep. Martin Dies of Texas, who declared on March 17, 1955, that it had been "badly handled" and called for adherence to "American standards of justice and fair play." On June 28, 1955, a report of the Senate Internal Security Subcommittee, signed by Sen. James Eastland and William Jenner, criticized the widespread use of the attorney general's list for purposes other than that for which it had originally been intended, that of serving as an indication to government departments of circumstances requiring further investigation. Membership, past or present, in any organization on the list had subsequently come to be an almost absolute bar to Federal employment. Many state and local governments had also adopted legislation under which their employees were compelled to abjure membership in organizations on the list, and under the Gwinn Amendment (see AMERICAN JEWISH YEAR BOOK, 1954 [Vol. 55], p. 21), such membership also became a bar to eligibility for Federally aided public housing. In addition, numerous private groups used the list as a basis for the compilation of blacklists in fields unrelated to security.

The attorney general's list had long been criticized on the ground that it had been formulated without any notice or hearing to the organizations named on it. The attorney general now adopted a policy of notifying organizations and offering them a hearing. By October 1955 only one such hearing had actually begun, that of the Independent Socialist League (ISL), a group of former followers of Leon Trotsky who had broken with him when he supported the Russian invasion of Finland. The hearing in this case was probably speeded up by judicial criticism on January 23, 1955, of the attorney general's list in the passport case of the ISL leader, Max Schachtman.<sup>1</sup> At the time of writing hearings were still in progress, and the attorneys for the ISL had sharply criticized the hearing procedure. Another case relating to the list which received wide notice was that of the National Lawyers Guild. The guild went to court in an effort to enjoin the attorney general from including it on the list or holding a hearing in its case, on the ground that by declaring to the American Bar Association that he intended to list the guild, he had shown that he could not conduct an impartial hearing. On November 4, 1954, Judge Charles F. McLaughlin, in the United States District Court, dismissed the guild's suit, on the ground that "the guild must exhaust administrative remedies before seeking legal relief." On July 14, 1955, the United States Court of Appeals for the District of Columbia unanimously upheld this ruling. The guild's appeal was before the Supreme Court at the time of writing.

The increasing criticism of the security program, as well as the coming into office in January 1954 of a Congress controlled by Democrats (who felt that the administration had used "security" as a partisan weapon), led to an investigation of the program by the Senate Civil Service Committee under Sen. Olin Johnston (Dem., S. C.). On May 26, 1955, this committee began to hear testimony on a number of cases which showed some of the weaknesses of the program. Thus, it became known that the Army had given Sanford Waxen an undesirable discharge (two months after separating him from the Army on May 31, 1955, with his type of discharge to be determined) for

<sup>1</sup> *Schachtman v. Dulles*—Fed 2d—, U.S. Court of Appeals, D.C., June 23, 1955.

associating with "pro-Communist" Prof. Alfred H. Kelly of Wayne University—who turned out to have been a leader in exposing Communist activities on the campus. The security officer of the Small Business Administration, George V. McDavitt, was revealed on June 26, 1955, to be a close associate of Allen Zoll, leader of a group listed by the attorney general as Fascist. McDavitt refused to answer other committee questions on the ground that they related to his private life—although they involved matters within the purview of the administration's security program. Other evidence indicated that McDavitt had included only derogatory information in preparing security files. McDavitt was eventually dismissed (on July 26, 1955) by the Small Business Administration (SBA)—not on the basis of the information developed in the investigation, but for issuing unauthorized statements; SBA employees who had testified against him were, however, fired first. The interest of the SBA in "security" questions, incidentally, was questioned as appearing to extend above and beyond the call of duty; Rep. Wright Patman (Dem., Tex.) charged that the SBA conducted secret security investigations of small businessmen applying for loans.

In July 1955 the Congress unanimously passed a bill sponsored by Sen. Hubert Humphrey (Dem., Minn.) and John C. Stennis (Dem., Miss.), providing for the establishment of a twelve-member commission to investigate the security program. The administration had originally opposed this measure as unnecessary, but later accepted it when its wide support became evident. The commission was to consist of two official and two unofficial members named by the President; two senators and two persons from private life named by the Vice-President; and two representatives and two private persons named by the speaker of the House. The legislative appointees were expected to be divided equally between the two parties.

Another investigation into the broad field of civil liberties was begun on August 14, 1955, by a special Senate committee headed by Sen. Thomas Hennings (Dem., Mo.). This committee sent out questionnaires to a large number of civic groups asking their opinions on various questions relating to civil liberties. It planned to take testimony from civic leaders on these matters, but it was not clear to what extent it would actually examine specific problems in detail.

The Government Operations Committee of the Senate ceased to play a major role in the investigation of Communist activity, a field which had not originally been regarded as within its jurisdiction. During the controversy over Senator McCarthy, the committee was more or less immobilized; when McCarthy was succeeded as chairman by Sen. John McClellan (Dem., Ark.), the committee shifted its attention to other problems. The Senate Internal Security Subcommittee, now under the chairmanship of Sen. James Eastland (Dem., Miss.), continued its investigations into the conduct of the Korean War, the presence of Communists in various industries and areas, and the role of Harry Dexter White in the Franklin D. Roosevelt administration. In this connection during the period October 1954 to June 1955 it examined the so-called Morgenthau Diaries, a collection of minutes and documents assembled by former Sec. of the Treasury Henry Morgenthau, Jr., and estimated at six million words. Senator Eastland also attempted to demonstrate

on May 25, 1955, that the Supreme Court had been under Communist influence when it delivered its decision outlawing school segregation.<sup>2</sup>

The House Un-American Activities Committee, under the chairmanship of Rep. Harold Velde (Rep., Ill.) and his successor Rep. Francis Walter (Dem., Pa.), continued its investigations into various matters within its jurisdiction. One of the last acts of the committee under Velde's chairmanship was to issue a report on December 17, 1955, on right-wing "hate groups" in which it recommended the prosecution of one such group, the National Renaissance Party, under the Smith Act. The report was widely criticized on much the same procedural grounds as had been adduced against previous reports of the committee on groups accused of Communist connections. Of the committee's other investigations, the one which attracted most attention was that into the New York entertainment industry in August 1955. This investigation achieved little, however, since almost all the witnesses called invoked the Fifth Amendment, although it seemed certain that some of them were not Communists. The committee was directly involved in one security case, that of Rhea Van Fosson, who was dismissed as an officer of the Air Force on the charge that he had turned over to the committee a copy of the confidential Federal Bureau of Investigation (FBI) file on Jay Lovestone. This was then used by Rep. Kit Clardy (Rep. Mich.) as the basis for an attack on Lovestone. On the day after his dismissal from the Air Force, Van Fosson was hired as an investigator by the committee. He was, however, dismissed by Rep. Francis Walter (Dem., Pa.) after the latter became chairman, and he was subsequently indicted.

A number of cases of contempt of Congress, based on refusal to answer questions posed by congressional committees, came before the courts. In the cases of Julius Emspak,<sup>3</sup> Thomas Quinn,<sup>4</sup> and Philip Bart,<sup>5</sup> the Supreme Court held that a claim of the privilege against self-incrimination did not have to be made in any express language in order to be valid, as long as the witnesses' language could be interpreted as invoking it. The court added that the possibility that an individual might suffer reprisals for an express claim of the privilege should render a legislative committee more, rather than less, ready to recognize an implied claim, since otherwise private individuals would be able to defeat the purpose of the constitutional protection. In the case of Corliss Lamont, who had denied being a Communist but refused to answer other questions on the basis of both the First Amendment and a challenge to the authority of the McCarthy Committee, the constitutional questions remained unresolved. On July 27, 1955, the trial judge dismissed the indictment on the ground that it did not indicate that McCarthy had been authorized by the Senate to conduct the investigation in question.

#### LADEJINSKY CASE

A number of security cases received wide public attention in the course of the year. One which had international echoes was that of Wolf Ladejinsky, who had supervised the Japanese land reform instituted under Gen. Douglas

<sup>2</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>3</sup> *Emspak v. U.S.*, 349 U.S. 190 (1955).

<sup>4</sup> *Quinn v. U.S.*, 349 U.S. 155 (1955).

<sup>5</sup> *Bart v. U.S.*, 349 U.S. 219 (1955).

MacArthur, a reform whose outstanding success made it a model to which countries all over the world looked for inspiration. His post as agricultural attaché of the United States Embassy in Tokyo was transferred, under new legislation, from the jurisdiction of the State Department to that of the Agricultural Department. Shortly afterward (December 8, 1954), a spokesman for Sec. of Agriculture Ezra Taft Benson reported Ladejinsky's dismissal as a security risk. This aroused a storm of protest; among those who had vouched for Ladejinsky were General MacArthur and State Department security officer R. W. Scott McLeod. The State Department continued to back Ladejinsky, and offered to employ him on its staff despite the adverse finding of the secretary of agriculture—a finding arrived at, incidentally, without the hearing to which Ladejinsky was entitled under the Eisenhower security program. The Department of State had previously asked the Department of Agriculture to lend Ladejinsky to initiate a land reform program in Viet Nam, but at that time the Department of Agriculture had replied that he could not be spared from his duties in Tokyo. Now Harold Stassen, as head of the Foreign Operations Administration which had taken over the Point Four Program, announced on January 5, 1955, that he was employing Ladejinsky in the Viet Nam post. At the time, Secretary Benson continued to maintain that Ladejinsky was a security risk; some months later (on July 2, 1955), however, he publicly admitted that the charge had been unjustified.

#### GUILT BY KINSHIP

A class of cases which aroused widespread interest involved so-called guilt by kinship. Most of them originated in the armed services and involved either discharges "other than honorable" or refusal of commissions. The individuals in question were accused of nothing except association with relatives of suspect political views or affiliations. Three such cases in which the individuals involved were eventually cleared, after their cases had been widely discussed in the press, were those of Eugene Landy, denied a Naval Reserve commission on August 4, 1954, when he graduated from the Merchant Marine Academy; N. Pierre Gaston, whose Coast Guard Commission was held up in August 1955; and Stephen Branzovich, threatened in August 1955 with an undesirable discharge from the Air Force. Landy's mother had been a Communist Party member, but had left the Party at her son's urging. In his case a Navy hearing board ruled against him, but was overridden by Navy Sec. Charles Thomas. Gaston, whose mother had been a member of various front groups but not of the Communist Party, was cleared by a Coast Guard hearing board (in a decision announced September 12, 1955)—partly on the ground that his association with his mother had not really been close. Branzovich, whose father was accused of having been a Communist, was cleared on August 27, 1955, by order of Air Force Sec. Donald A. Quarles.

Not all cases of this nature, even among those which received public attention, ended in clearance, however. Thus Joseph Summers, Jr., a civilian employee of the Navy, was dismissed on July 29, 1955, because his parents had been members of the Progressive Party, although neither that nor any other organization to which they belonged had ever been on the attorney gen-

eral's list. Since Summers was only a probationary employee, he received no hearing before dismissal; at the time of writing (October 1955), he had not been reinstated.

A broader question was raised by the entire "security risk" policy of the armed forces in relation to draftees. A study of 110 cases by Rowland Watts of the Workers Defense League revealed in the summer of 1955 that it was the custom of the Army—until recently the only branch of the armed forces using draftees—to penalize soldiers, both during their service and in respect to the character of their discharges, for alleged associations and acts *prior to their induction*, and to hold the threat of an undesirable discharge for associations and acts which did not meet with its approval for the entire six years of their compulsory membership in the "inactive reserve." The nature of these charges varied greatly from case to case. In some instances, draftees were charged with having been members of the Communist Party—which under Army regulations should have barred them from induction without special high level action. In other instances, they were charged with membership in such reputable organizations as the National Urban League, with having "a father who is reported to have said that if Communism offered anything good he would accept it," and with association with a mother-in-law who had died ten years before the individual involved had met her daughter, and at a time when he was ten years old. In none of the cases examined was there any suggestion that the soldier's service in the Army had been in any way unsatisfactory; draftees were in some cases barred by the Army from performing normal military duties on a basis of charges relating to their previous lives; in other cases they were assigned to and carried out such duties, but in both types of cases they received undesirable discharges, general discharges, or discharges "of a character to be determined"—all of which branded them in civilian life, and the first of which barred them from various legal rights. They received hearings of a character even less adequate than those provided under the civilian security program, and far less adequate than a court-martial. At the time of writing (October 1955) a number of cases relating to this policy of the Army were before the courts; none had been finally decided.

#### PRIVATE EMPLOYMENT

Another aspect of the security problem was the clearance of individuals in private employment. The armed services had long used their power to police contracts as a basis for screening employees of defense plants. One case which received some attention was that of Edward U. Condon, who was forced out of a position as director of research for the Corning Glass Works when the Navy suspended his clearance in October 1954. Condon had been cleared by the Eastern Regional Personnel Security Board, but his clearance was revoked by Navy Sec. Charles S. Thomas, reportedly at the instance of Vice Pres. Richard M. Nixon. The armed services sought the passage of the Defense Facilities Bill, sponsored by Sen. John Marshall Butler (Rep., Md.), which would greatly have extended their powers to screen civilian workers. This, however, failed to win any wide Congressional support.



## PETERS CASE

One major case affecting the security program reached the Supreme Court. Under the Truman Loyalty program, Prof. John P. Peters had been dismissed as a medical consultant, and had sued for reinstatement on the ground that he had not been permitted to confront the witnesses against him, and that this constituted a denial of due process. The Supreme Court, however, avoided the constitutional issue by holding that Peters had been unlawfully dismissed because the Loyalty Review Board had overruled a favorable decision by a departmental board, although its terms of reference gave it no power to take such action.<sup>6</sup>

## INFORMANTS

In security hearings, the government was still able to use the testimony of anonymous informants. In court cases and in certain types of administrative hearings, however, it was obliged to produce the witnesses on whom it relied. Some of these witnesses were employed by the Department of Justice as "consultants"; others received fees for their testimony as "experts." In August 1955 the department released a list of some forty such persons who had received a total of \$42,744.37 for their testimony during the period from July 1, 1953 to April 15, 1955. This did not of course include FBI agents or other regular employees of the department. It did include Paul Crouch, whose testimony the government ceased to use after he had been publicly discredited (*see* AMERICAN JEWISH YEAR BOOK, 1955 [Vol. 56], p. 190). It also included Harvey Matusow, who on January 31, 1955, publicly declared that he had perjured himself, and wrote a book on the subject entitled *False Witness*; as well as Frank Lowell Watson, who testified before the Federal Communications Commission that he had falsely accused Edward Lamb in proceedings before that body. Mrs. Marie Natvig also confessed (February 1955) to having given false testimony against Lamb in the same proceedings. Perjury prosecutions were initiated against Matusow (July 13, 1955) and Mrs. Natvig (March 8, 1955)—not for their original testimony, but for their repudiation of it. (At the time of writing, no perjury prosecution had been instituted against Crouch, although over seventeen months had elapsed since the contradictions in his testimony had been revealed.) In New York, two Communist leaders, Alexander Trachtenberg and George Blake Charney, in whose Smith Act convictions Matusow's testimony had played a key role, were granted new trials on April 22, 1955, on the basis of Matusow's recantation. But in the case of Clifford Jencks, convicted, on Matusow's testimony, of filing a false non-Communist affidavit under the Taft-Hartley Act, Federal District Judge R. E. Thompson in El Paso, Tex., on March 12, 1955, refused to grant Jencks a new trial on the basis of Matusow's recantation. Judge Thompson stated that he believed Matusow's original testimony had been the truth, and sentenced him to prison for contempt of court for changing it. There appeared to be some reason to believe that Matusow's new testimony

<sup>6</sup> *Peters v. Hobby*, 349 U.S. 331 (1955).

and his old were similarly motivated; the government had paid him for the original testimony, and the union of which Jencks had been an official sharply increased its order for his book immediately after he had given his affidavit recanting it. Mrs. Natvig was convicted (May 16, 1955) and sentenced (June 20, 1955) to eight months' imprisonment; at the time of writing (October 1955) her case was being appealed on the ground that trial judge Alexander Holtzoff had refused to permit questions which would have indicated that her original testimony had been offered by government attorneys who knew it to be false.

There were also a number of other perjury and false statements cases, most of which received little notice, but the results of which indicated an increasing unwillingness on the part of juries to assume that only government witnesses told the truth. One major case of this nature, that of Owen Lattimore (*see AMERICAN JEWISH YEAR BOOK*, 1955 [Vol. 56], p. 188-89), finally reached a conclusion. When Judge Luther Youngdahl on January 18, 1955 threw out the major counts of the new indictment which the Justice Department had secured to replace the one previously dismissed,<sup>7</sup> and the United States Court of Appeals again upheld him on June 14, 1955, the government finally decided to drop the prosecution.

There were a number of new prosecutions under the Smith Act, mostly of relatively unimportant figures in the Communist movement, since most of the top leaders had already been convicted. Two new convictions, those of Claude Lightfoot (January 26, 1955) and Junius Scales (April 11, 1955), were nevertheless of major importance because they were the first under the membership clause of the act. Both Lightfoot and Scales were party officials, and could presumably have been convicted under the conspiracy clause had the government so desired, but it was apparently the desire of the attorney general to secure a precedent for future action against rank-and-file Communists. Both cases were on appeal at the time of writing (October 1955).

The appeal of the Communist Party against the order of the Subversive Activities Control Board (SACB) that it register as a Communist action organization under the McCarran Subversive Activities Control Act was before the Supreme Court. Until and unless this appeal was rejected by the court, most of the other provisions of the act were without effect, and other proceedings before the SACB were surrounded by an aura of unreality.

## PASSPORT CASES

Major changes in State Department policy on passports followed a series of court decisions rejecting the department's claim that their issuance was within its absolute discretion. The most important court decisions were those in the cases of Otto Nathan and Max Schachtman. Nathan had been denied a passport by the state department for some years on the ground that his participation in Communist-front groups made his travel undesirable from the point of view of the national interests. Judge Henry Schweinhaut of the Federal District Court of the District of Columbia ruled in May 1955 that the procedure for passport appeals set up by the Department of State did not

<sup>7</sup> *U.S. v. Lattimore*, 127 F. Supp. 405.

give Nathan due process, and ordered the department to set up and submit for his approval a procedure which would. When the department failed to do so, Judge Schweinhaut ordered it to grant Nathan a passport forthwith.<sup>8</sup> The department announced it was appealing, but before the case could reach the court of appeals it granted Nathan his passport, ostensibly on the ground that it had reversed its determination of fact as to the dangers involved in Nathan's travel. It thus avoided a higher court precedent adverse to its powers.<sup>9</sup> In the Schachtman case, however, the district court decision had been favorable to the department, and it was therefore Schachtman who appealed. He had been refused a passport on the ground that the Independent Socialist League (ISL), which he headed, was on the attorney general's list. The District of Columbia Court of Appeals ruled on June 23, 1955<sup>10</sup> that, since Congress had made the possession of a passport essential for legal travel to Europe, its issuance was no longer a purely political matter. The court declared: "The right to travel . . . is a natural right. . . . A restraint imposed . . . upon this liberty, therefore, must conform with the provision of the Fifth Amendment that 'no person shall be . . . deprived of . . . liberty . . . without due process of law.'" The court went on to hold that, since the reason given for the denial was the inclusion of the ISL on the attorney general's list, and since Schachtman had asserted that the ISL was anti-Communist, anti-totalitarian, and opposed to the use of violence, and had for six years unsuccessfully sought an opportunity to prove this to the attorney general, the passport had been denied on invalid grounds. The case was returned to the district court for further action "not inconsistent with this opinion"—which would presumably have meant an order to grant the passport. The State Department again avoided further proceedings by not seeking a Supreme Court review or waiting for district court proceedings, and on August 3, 1955, granted Schachtman his passport. The department also gave passports to a number of other persons whose cases were pending in court, as well as to some who had been denied passports but had not yet resorted to legal action. While the case asserted the right of a citizen to travel and the right of the courts to supervise the State Department's exercise of its discretion in passport matters, it did not by any means abolish that discretion. Indeed, the decision made it fairly clear that there were circumstances—including Communist affiliation—which would, if established by a proper hearing, furnish adequate grounds for denying the right to travel. The department therefore continued to refuse passports where it felt it had a strong case. Thus, it withheld a passport from Paul Robeson, although permitting him to go to Canada for a singing engagement. On August 16, 1955, the department's action was upheld by District Judge Burnita Matthews, who ruled that it was not arbitrary for the passport division to refuse Robeson a hearing unless he signed a non-Communist affidavit. On August 31, 1955, the department announced that it had refused a passport to Leonard B. Boudin, who had been the attorney for Nathan and Robeson. Boudin's appeal was before the courts at the time of writing (October 1955).

The government continued its efforts to deport alien Communists, and

<sup>8</sup> *Nathan v. Dulles*, 129 F. Supp. 951 (1955).

<sup>9</sup> *Dulles v. Nathan*, 225 F. 2d 29 (1955).

<sup>10</sup> *Schachtman v. Dulles*, 225 F. 2d 938.

several left the country in the course of the year. Perhaps the best known was Cedric Belfrage, editor of the *National Guardian*, who dropped his fight against deportation to England after an adverse decision in the court of appeals on July 12, 1955.<sup>11</sup> A number of Communists whose deportation could not be carried out because no country would take them appealed to the courts on November 19, 1955, against the limitations on their travel and other activities imposed on them by the immigration service under the McCarran Subversive Activities Control Act. The case had not been decided at the time of writing (October 1955).

Communists were not the only persons against whom the government brought deportation proceedings. Mohammed Hassan Tiro, a former Indonesian official who had resigned because he claimed Communists had infiltrated the government, was ordered deported, despite his plea that he would be exposed to physical persecution. The Department of Justice eventually reversed the order after an appeal from a number of leading liberals.

The government suffered what appeared to be final defeat in its long campaign to revoke the citizenship of Harry Bridges so that he might be deported. After the Supreme Court had reversed his conviction for perjury, on the ground of the statute of limitations, the government instituted a civil suit to revoke Bridges' citizenship, on the charge that he had obtained it by falsely denying Communist Party membership. On July 29, 1955, Federal Judge Louis Goodman of the San Francisco Federal District Court ruled that the government had failed to offer "clear and convincing evidence" that Bridges had been a party member when he became a citizen in 1945. He said: "To cancel Bridges' citizenship after ten years of presumptively good and proper citizenship, the government had to meet an exacting standard. It did not meet that standard by the kind of witnesses it produced."<sup>12</sup>

In the course of 1954-55 the government withdrew the obstacles which had been placed in the way of Chinese students and scholars who wished to return to Communist China. In some cases, persons who had been prevented for some years from leaving were suddenly ordered to leave within a few weeks—even though altered circumstances (such as the death of parents whom they had wished to join) were reported to have caused some of them to change their minds in the interim.

### *State and Local Action*

On the state and local levels, the problems of subversion and censorship continued to receive attention. In the case of censorship, there was a merry-go-round of state and Federal decisions invalidating censorship laws and ordinances, and attempts by local authorities to get around these decisions. On the whole, the courts seemed to be winning out.

South Dakota joined the ranks of those states requiring loyalty oaths from their employees on July 1, 1955, when a law went into effect under which state employees had to pledge to defend the state and Federal constitutions, and to certify that they had not within a year belonged to any organization

<sup>11</sup> *U.S. ex. rel. Belfrage v. Kenton*, 224 F. 2d 803.

<sup>12</sup> *U.S. v. Bridges*, 133 F. Supp. 628.

advocating violent revolution in the United States. Newark, N. J., on June 1, 1955, required its employees to file oaths and state whether they had been members of any organizations on the attorney general's list. New York State and New York City continued to remove persons accused of subversive activities or affiliations from employment which had been designated as sensitive. In New York City courts on various occasions overruled the city's attempts to refuse employment to persons on the grounds of the alleged subversive activities or associations of members of their families. A resolution of the New York City Board of Education passed on March 17, 1955, permitted the dismissal of teachers who had formerly been Communists and who had refused to name others whom they had known as party members. Several teachers were suspended under this ruling. At the time of writing (October 1955) their cases were being appealed to the state commissioner of education, Lewis A. Wilson, who had previously indicated his belief that dismissal on this basis was beyond the power of the municipal board of education. New York State legislative committees investigated Communist fund-raising and Communist summer camps, with no notable results.

The Supreme Court of Florida overruled the action of Miami judges in imposing contempt sentences on persons invoking the Fifth Amendment, and on July 29, 1955, reversed a lower court decision banning one of them, Leo Sheiner, from the practice of law.<sup>13</sup>

On the other hand, the California Supreme Court on January 19, 1955, upheld the action of the Cutter Laboratories in dismissing Doris Walker on a charge of Communist affiliation. It threw out an arbitration award reinstating her under the terms of a union contract, on the ground that an employer could not be required to employ a Communist, and that any contract requiring him to do so was void. This decision appeared to go beyond anything in previous Anglo-American judicial history, in that it set up a class of persons, not legally incompetent, with whom it was impossible to make a valid contract. Also in California several lower courts ruled against, and one in favor of, the constitutionality of a provision requiring a loyalty oath from persons claiming realty tax exemptions.<sup>14</sup>

In the aftermath of the Supreme Court decision outlawing school segregation, a general attack on the civil liberties of Negroes was launched in certain Southern states. In Georgia, the State Board of Education on August 1, 1955, adopted a resolution calling for the dismissal of any member of the National Association for the Advancement of Colored People (NAACP)—and then withdrew it on the ground that the same result could be accomplished under existing "loyalty" legislation. In Mississippi, two Negro leaders, Lamar Smith (August 13, 1955) and Rev. George W. Lee (May 7, 1955), were assassinated for urging Negroes to vote. In the Lee case, no arrest was made. In the case of Smith, who was shot down publicly in the town square of Brookhaven, the district attorney attempted to secure the indictment of three white men for the crime, but was unable to secure the testimony of anyone who would admit seeing it. In the Mississippi Democratic primaries on August 2, 1955, there was evidence that the votes of even those Negroes whom intimidation

<sup>13</sup> *Feldman v. Kelly*, decided November 19, 1954; *Sheiner v. State*, 82 So. 2d 657.

<sup>14</sup> *Speiser v. Randall*, Superior Court of California, Feb. 9, 1955.

had not prevented from registering were thrown out wholesale. And in several Southern states, there was organized economic persecution, with the backing of local authorities, of Negroes who had participated in the demand for non-segregated schools or other civil rights. Similar measures were taken against white Southerners who were insufficiently enthusiastic about segregation in certain areas. In Holmes County, in Mississippi, two white liberals and a minister who attempted to defend them were ordered to leave town, and in South Carolina, a vestry headed by George Bell Timmermann, Sr., the Federal district judge whom the Supreme Court had overruled in one of the segregation cases, dismissed a minister who did not support segregation.

A number of state courts and the Federal District Court of the District of Columbia held that the Gwinn Amendment, establishing loyalty tests for occupants of Federally aided public housing, was unconstitutional. At the time of writing (October 1955) the issue had not yet reached the higher Federal courts. A reminder that not all civil liberties cases arose from political issues came from the Federal Circuit Court of Appeals in New York in the *Caminito* case. Invalidating a conviction because the police had held a man incommunicado for forty hours before arraignment and during that period had subjected him to various forms of pressure and deceit in order to obtain a confession, Judge Jerome Frank wrote on May 11, 1955:

Recently many outstanding Americans have been much concerned—and justifiably—with inroads on the constitutional privileges of persons questioned about subversive activities. But concern with such problems, usually those of fairly prominent persons, should not blind one to the less dramatic, less publicized plight of humble, inconspicuous men (like *Caminito*) when unconstitutionally victimized by officialdom. For repeated and unredressed attacks on the constitutional liberties of the humble will tend to destroy the foundations supporting the constitutional liberties of everyone. . . . The test of the moral quality of a civilization is its treatment of the weak and powerless. . . . All decent Americans soundly condemn satanic practices, when employed in totalitarian regimes. It should shock us when American police resort to them. For they do not comport with the barest minimum of civilized principles of justice.”<sup>15</sup>

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<sup>15</sup> *U.S. ex rel. Caminito v. Murphy*, 222 F. 2d 698.

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