

# A JUDGE BARS U.S. FROM PUBLISHING LIST OF 'RADICALS'

## Limits Congressional Power and Defends Rights of 65 Campus Speakers

OCT 28 1970

Special to The New York Times

WASHINGTON, Oct. 28—A Federal judge issued a permanent injunction today barring official Government publication or distribution of a report by the House Internal Security Committee listing 65 persons as "radical" campus speakers.

In a landmark decision limiting Congressional power, Judge Gerhard A. Gesell of United States District Court here said the committee report "is without any proper legislative purpose and infringes on the rights of the individuals named therein." He said it would be "illegal" to publish the report at public expense.

Judge Gesell said it was an inescapable conclusion that the report intended "to inhibit further speech on college campuses by those listed individuals and others whose political persuasion is not in accord with that of members of the committee."

### Limits to Power

The judge decided not to attempt to restrain members of Congress or others from privately publicizing or distributing the report or list of names, recognizing that "there are limits to judicial power, just as there are limits to Congressional committee action under our tripartite form of government."

But his actions today, if upheld, would prevent the report's being issued and quoted as an official Government document, with any special authority that official designation might impute.

However, the chairman of the committee, Representative Richard H. Ichord, Democrat of Missouri, released the list

to the public two weeks ago, when Judge Gesell issued a temporary restraining order forbidding the public printer or superintendent of documents from publishing it.

### Litigation Welcomed

Lawrence Speiser, executive director of the American Civil Liberties Union, said his organization and clients were satisfied with the judge's decision. But a spokesman for the committee said that "the case will be appealed and it will be brought to the attention of the House when it reconvenes."

Mr. Ichord could not be reached for comment. But he has stated in the past that he welcomes litigation and would challenge the court's right to restrict publication of an official Congressional report.

Historically, Congress has

Continued on Page 20, Column 1

interpreted the Constitution to give it authority to regulate Federal court jurisdiction to hear various types of cases. But this interpretation has not been litigated since the Civil War era.

In his 13-page opinion, Judge Gesell disputed the argument of the committee that "every Congressional investigation is justified by a public need that overbalances any private rights affected," saying such author-



Judge Gerhard A. Gesell

ity "is not unlimited but is subject to judicial review." He added:

"There are undoubtedly individuals who would destroy our institutions and form of government. If any of them are listed in this report, our Constitution nevertheless preserves their right to speak even though their acts may be restrained.

"It is alien to any legitimate Congressional function, as well as contrary to our most established traditions, for any committee of the Congress to disseminate lists designed to suppress speech."

Mr. Ichord has maintained in speeches and letters in recent years that campus honorariums are a major source of financing for left-wing groups. He attempted to prove this last summer by asking 179 colleges and

universities to list the names of all the speakers who appeared on their campus in the last two school years.

The committee staff decided that 65 of the persons listed on the 95 questionnaires returned were "radical and/or revolutionary" speakers. Their names and affiliations comprise most of the report that was banned.

Mr. Ichord released the list to the public two weeks ago, when Judge Gesell issued a temporary restraining order forbidding the public printer or superintendent of documents from publishing it.

Those listed ranged from John Ciardi, poetry editor of *The Saturday Review*, to Angela Davis, the militant black Marxist arrested in New York City two weeks ago on California charges resulting from a fatal courtroom gun battle. Mr. Ciardi's listed affiliation was with the National Committee to Abolish the House Un-American Activities Committee, predecessor of the Internal Security Committee.

In making the injunction permanent today, Judge Gesell made an appeal for Congressional restraint.

"The court notes the increasing tendency of the legislative branch to investigate for exposure's sake, and expresses the hope that members of the Congress will by rule and attitude limit Congressional inquiry to those matters amenable to constitutional legislative action," he said.

"The Congress, the judiciary and the executive branch properly seek remedies against violent conduct, but the marketplace of ideas cannot be closed and all branches of government must in the last analysis depend on the common sense of citizens," he continued. "This is the essence of democracy and it is in times of stress that the fundamental requirement of free speech and nonviolent assembly must be assiduously preserved wherever possible."

Last November, Judge Gesell, who is the son of Dr. Arnold Gesell, the pediatrician, handed down a controversial decision voiding District of Columbia abortion laws.