CONTENTS

VOLUME I

(Listing of untitled Notes and References has been omitted.)

Preface	vii
Tuble of Cuses	xxix
Part One. FREEDOM OF EXPRESSION	
CHAPTER I. Theoretical Framework	1
A. The Basic Theory	1
Milton, Areopagitica 1	
Declaration of Independence 6	
Jefferson, First Inaugural Address 6	
John Stuart Mill, On Liberty 7	
Abrams v. United States 11	
Whitney v. California 12	
Meiklejohn, Political Freedom 12	
B. The Dynamics of Limitation	17
Emerson, Toward a General Theory of the First Amendment	17
C. The Role of Law and Legal Institutions in Maintaining a System	
of Free Expression	21
Learned Hand, The Bill of Rights 21	
Emerson, Toward a General Theory of the First Amendment	25
ON A DELLA D	
CHAPTER II. Development of Freedom of Expression in the United	20
States	29
A. Background of the First Amendment	29
The First Amendment 29	
Chafee, Free Speech in the United States 30	25
B. The Alien and Sedition Acts	35
An Act Concerning Aliens 36	
An Act in Addition to the Act, Entitled "An Act For the	
Punishment of Certain Crimes Against the United	
States" 36	
C. The First Half of the Nineteenth Century	39
Whipple, The Story of Civil Liberty in the United States 40	
Nye, Fettered Freedom: Civil Liberties and the Slavery	
Controversy 1830-1860 41	

D. *	The Civil War	45
	Hall, Free Speech in Wartime 45	
	Lincoln's Defense of his Suspension of Habeas Corpus 46	10.000
E. 3	From the Civil War to World War I	48
F.	World War I and Aftermath	52
	Chafee, Free Speech in the United States 52	
G.	From World War I Through World War II	61
	Since World War II	62
	liography of General Legal Literature on Freedom of Expression	64
CHAPT	ER III. National Security	66
. A.	Background of Laws on Treason, Rebellion, Insurrection,	
2	Espionage, Sabotage, and Similar Conduct	67
	U.S. Constitution, Article III, Section 3 67	
	Rebellion or Insurrection, 18 U.S.C. §2383 67	
	Seditious Conspiracy, 18 U.S.C. §2384 67	
В.	Interference with War or Defense Effort	71
	Schenck v. United States 72	
C.	Anti-Sedition Laws and Similar Direct Restrictions on Political	
	Expression	79
	1. Developments Prior to the Smith Act Prosecutions	79
	Gitlow v. New York 79	1)
	De Jonge v. Oregon 90	
	Bibliography on the Communist Movement and American Reaction to It in the Post World War II Period	05
	2. The Smith Act Prosecutions	95
	5 2 G Set 159/100/000	98
	The Smith Act 98	
	Dennis v. United States 100	
	Yates v. United States 123	
	Scales v. United States 136	
	3. The Internal Security Act and the Communist Control Act	147
	Internal Security Act of 1950 148	
	Communist Party v. Subversive Activities Control	
	Board 163	
	Note — Proceedings Against the Communist Party, Its Officers,	
	and Members for Failure to Register 178	
	Note — Proceedings Against Alleged Communist-Front and	
	Communist-Infiltrated Organizations 182	
	Note - Other Proceedings Under the Internal Security	
	Act 185	
	Communist Control Act of 1954 186	
	4. Other Federal Legislation Directly Restricting Seditious or Sub-	
,	versive Activities	100
	5. State and Local Laws in the Period After World War II	190
	Pennsylvania v Nelson 105	192

Contents	xvii
Dombrowski v. Pfister 205	
D. Denial of Privileges or Positions of Influence to Persons Declared	
Subversive	213
1. Restrictions on Labor Organizations	214
American Communications Association v. Douds 214	
United States v. Brown 237	
2. Qualifications for the Practice of Law	246
3. Taxation	251
4. Social Welfare Legislation	254
a. Welfare Programs	255
Flemming v. Nestor 257	
b. Unemployment Compensation	264
c. Housing	266
5. Other Benefits or Privileges	267
a. Radio and Television Licensing	267
b. Occupational Licensing	269
6. Restrictions on Access to the Election Process	269
Gerende v. Board of Supervisors of Elections of	
Baltimore 272	
8. Expatriation	274
E. Loyalty-Security Qualifications for Employment	281
Bibliography on Loyalty-Security Qualifications for Employment	282
1. Federal Programs	284
a. Background and Structure	284
Public Law 733, 81st Congress, 2d Session 286	
Executive Order 10450 288	
b. Standards of Loyalty and Security	294
In re Abraham Chasanow 295	
c. Court Review of Standards	300
d. Procedures	305
Greene v. McElroy 307	
Cafeteria & Restaurant Workers Union v. McElroy 312	
e. Administration	321
2. State and Local Loyalty Programs	327
Garner v. Board of Public Works of Los Angeles 329	
Baggett v. Bullitt 340	
Elfbrandt v. Russell 345	
F. Legislative Investigations	350
1. Basic Powers and Limitations	354
Watkins v. United States 356	
Barenblatt v. United States 372	
Gibson v. Florida Legislative Investigation Committee 389	
2. The Privilege Against Self-Incrimination and Other	
Constitutional Limitations	401

Contents

Quinn v. United States 401 Note — Other Constitutional Limitations 409	
3. Non-Constitutional Issues	411
Note — Perjury 415	
Note — Methods of Obtaining Judicial Review 416	
Note — Relief Through Actions for Damages 418	
4. Procedural Rights of Persons Called Before or Attacked Before	
Legislative Committees	419
House Committee on Un-American Activities — Committee	
Rules of Procedure 420	
Rules of Frocedure 120	
CHAPTER IV. Internal Order	425
A. Basic Rights of Assembly, Petitioning, and Canvassing	425
B. Maintaining the Public Peace	429
Feiner v. New York 432	
Cox v. Louisiana 443	
C. Protecting Other Community Interests	454
Niemotko v. Maryland 455	
Talley v. California 458	
Cox v. Louisiana 464	
Cox v. Louisiana 475	
D. Permit Systems, Injunctions, and Administration	482
Kunz v. New York 483	
Administration of Permit Systems 494	
CHAPTER V. Other Social Interests	500
A. Taxation and Business Regulation	500
National Association for the Advancement of Colored People	
v. Alabama ex rel. Patterson, Attorney General 503	
National Association for the Advancement of Colored People	
v. Button 510	
National Association for the Advancement of Colored People	
v. Alabama ex rel. Flowers, Attorney General 515	
B. Regulation of the Political Process	520
1. Corrupt Practices Legislation	520
Section 304 of the Taft-Hartley Act 520	
Section 9 of the Hatch Act 523	
United Public Workers v. Mitchell 524	
2. Regulation of Lobbying Activities	532
United States v. Harriss 532	
C. Administration of Justice	539
Estes v. Texas 540	
Attorney General Katzenbach, Statement of Policy	
Concerning the Release of Information by Personnel of	

Contents	xix
the Department of Justice Relating to Criminal Proceedings 552	
CHAPTER VI. Defamation Beauharnais v. Illinois 556 An Act to Make Unlawful the Defamation of Racial, Religious, or National Groups 570 New York Times Co. v. Sullivan 576 Note — Miscellaneous Problems 610	556
CHAPTER VII. Obscenity	616
A. Standards	616
Roth v. United States; Alberts v. California 616 Jacobellis v. Ohio 634	
Notes:	640
A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts 641 Mishkin v. New York 645 Gore Vidal, On Pornography 648 Address by Rev. John Graham 650 Ginzburg v. United States 651 Eliot Fremont-Smith, Book Review 660	
B. Procedures	674
1. Prior Restraint — Due Process	674
Near v. Minnesota 674	
Freedman v. Maryland 680	
2. Post Office	693
3. Customs	693
C. Extra-Legal Controls	700
1. Self-Regulation	700
The Motion Picture Production Code 700	700
 Pressure Groups Slough and McAnany, Obscenity and Constitutional Freedom 706 	706
Legal Responsibility for Extra-Legal Censure 717	
Part Two. FREEDOM OF RELIGION AND OTHER INDIVIDUAL RIGHTS	
CHAPTER VIII. Freedom of Religion	736
A. Heritage — and Now	736
Everson v. Board of Education 736	
B. Organized Religion and Education	745
 History of Secular and Religious Education in the United States Illinois ex rel. McCollum v. Board of Education 745 	745
2. Aid to Education	751

Everson v. Board of Education /51	
Total and Partial Integration of Religious and Public	
School Systems 763	
Other Aids to Religious Schools 765	
Federal Aid to Education 767	
3. Released Time	772
Illinois ex rel. McCollum v. Board of Education 772	
4. Bible Reading and Prayers	784
Engel v. Vitale 784	
School District of Abington Township v. Schempp 792	
5. Flag Salute and Other Compulsory Practices Offensive to Cer-	
tain Religions	814
C. Police Regulation	818
1. General	818
United States v. Ballard 818	
2. Sunday Laws	825
McGowan v. Maryland 825	022
Braunfeld v. Brown 836	
3. Denial of Privileges	840
4. Conscientious Objection	845
United States v. Seeger 845	לדט
D. Other Aspects of Freedom of Religion	853
B. Other Aspects of Preedom of Rengion	673
CHAPTER IX. Individual Rights Within Private Associations Note, Exclusion From Private Associations 856 Labor-Management Reporting and Disclosure Act of 1959, Title I, Bill of Rights of Members of Labor Organizations 867	855
International Association of Machinists v. Street 870	
Lathrop v. Donohue 884	
CHAPTER X. Right of Privacy	885
Griswold v. Connecticut 885	007
CHAPTER XI. The Right to Travel	908
A. Domestic	908
Edwards v. California 908	
B. International	916
Kent v. Dulles 919	
Aptheker v. Secretary of State 926	
Zemel v. Rusk 937	
CHAPTER XII. The Right of Franchise	
	049
A. Reapportionment	948 948
A. Reapportionment	948

Contents	xxi
2. Gerrymandering	973
Gomillion v. Lightfoot 973	
Wright v. Rockefeller 976	
B. Minority Parties	990
MacDougall v. Green 990	
C. Other Aspects of the Right of Franchise	993
VOLUME II	
Part Three. DISCRIMINATION	
Preface	vii
Table of Cases	xxi
	006
CHAPTER XIII. The Right to Security of the Person	996
A. Ideal and Reality	996
To Secure These Rights, Report of the President's	
Committee on Civil Rights 996	1004
B. Slavery, Involuntary Servitude, and Peonage	1004
Thirteenth Amendment 1004	
To Secure These Rights, Report of the President's Committee on Civil Rights 1004	
8	1008
C. Historical Development of Federal Power Fourteenth Amendment 1009	1000
Fifteenth Amendment 1009	
Carr, Federal Protection of Civil Rights 1010	
Slaughter-House Cases 1013	
Civil Rights Cases 1019	
United States v. Cruikshank 1028	
D. Criminal Statutes to Protect Security of the Person	1034
Screws v. United States 1036	200
United States v. Price 1050	
United States v. Guest 1056	
The Proposed Civil Rights Act of 1966 1068	
E. Civil Remedies to Protect Security of the Person	1070
1. Section 1983	1072
Monroe v. Pape 1072	
Note — Application of Section 1983 1078	
2. Section 1985(3)	1086
Collins v. Hardyman 1086	
F. Other Sources of Federal Power	1094
1. Presidential Power	1094
United States Commission on Civil Rights, Law	
Enforcement: A Report on Equal Protection in the	
South 1094	
2. The Contempt Power	1098

Contents

The Proposed Civil Rights Act of 1966 1102 Bickel, Civil Rights' Dim Prospects 1103	
CHAPTER XIV. Discrimination in Voting	1105
A. The White Primary	1107
Smith v. Allwright 1107	
Terry v. Adams 1113	
B. The Poll Tax	1120
Amendment XXIV 1122	
Harman v. Forssenius 1122	
Harper v. Virginia State Board of Elections 1125	
United States v. Texas 1130	
C. The Use of the Criminal Sanction to Protect the Right to Vote	1134
Ex parte Yarbrough 1134	
D. The Attempt to Control Voting Registrars	1141
1. The Civil Rights Acts of 1957, 1960, and 1964	1141
Christopher, The Constitutionality of the Voting Rights	
Act of 1965 1141	
The Civil Rights Acts of 1957, 1960, and 1964 1144	
United States v. Duke 1146	
Hamer v. Campbell 1165	
2. The Impact of the Voting Rights Act of 1965	1173
United States v. Ramsey 1173	
E. The Voting Rights Act of 1965	1180
Voting Rights Act of 1965 1180	
South Carolina v. Katzenbach 1191	
Katzenbach v. Morgan 1208	
Cardona v. Power 1214	
F. Intimidation	1219
United States v. Original Knights of the Ku Klux	
Klan 1219	
CHAPTER X V. Discrimination in Education: South	1230
A. Separate but Equal — From Plessy to Brown	1230
Plessy v. Ferguson 1230	
Brown v. Board of Education (First Decision) 1237	
Bolling v. Sharpe 1243	
Wechsler, Toward Neutral Principles of Constitutional	
Law 1245	
B. The Equity Decree, Southern Resistance and Counterattack	1252
Brown v. Board of Education (Second Decision) 1252	
Cooper v. Aaron 1257	
Griffin v. County School Board of Prince Edward	
County 1268	
Case Note (Griffin v. State Bd. of Education) 1276	

Contents	xxiii
Notes — "Private" Schools 1280 Notes — Colleges and Universities 1283	
C. Tokenism and Transition	1286
United States Commission on Civil Rights, Civil Rights	
U.S.A. — Public Schools, Southern States 1286	
Goss v. Board of Education 1292	
D. The Civil Rights Act of 1964 and the Statements of Policies	1300
1. The Civil Rights Act of 1964	1300
Title IV — Desegregation of Public Education 1300	
Title IX — Intervention and Procedure after Removal in	
Civil Rights Cases 1301	
Title VI — Nondiscrimination in Federally Assisted	
Programs 1302	
2. The 1965 Statement of Policies for School Desegregation Plans	1303
United States Commission on Civil Rights, Survey of	
School Desegregation in the Southern and Border	
States 1303	
Singleton v. Jackson Municipal Separate School	
Dist. 1306	
Leeson, Faster Pace, Scarcer Records 1314	
United States Commission on Civil Rights, Survey of	
School Desegregation in the Southern and Border	
States 1316	
General Statement of Policies under Title VI of the Civil	
Rights Act of 1964 Respecting Desegregation of	
Elementary and Secondary Schools 1323	
E. Discrimination Against Negro Teachers	1332
Note, Desegregation of Public School Facilities 1332	1002
Chambers v. Hendersonville City Board of	
Education 1338	
	000000 000 00
CHAPTER XVI. Discrimination in Education: North and West	1346
A. The Factual Background	1346
National Association of Intergroup Relations Officials	
(NAIRO), Public School Segregation and Integration in	
the North 1346	
B. Action by Boards of Education to Relieve Racial Imbalance	1353
Fiss, Racial Imbalance in the Public Schools: The	
Constitutional Concepts 1353	
Note, Racial Imbalance in the Public Schools: Constitutional	
Dimensions and Judicial Response 1356	
Addabbo v. Donovan 1358	
C. De Jure Segregation	1367
Taylor v. Board of Education of City School District of	
New Rochelle 1367	

D. De Facto Segregation	1380
Bell v. School City of Gary, Indiana 1380	
Barksdale v. Springfield School Committee 1384	
E. Racial Imbalance and Compensatory Programs	1391
Massachusetts General Laws 1391	
Note — Compensatory Education 1398	
F. Fair Educational Practices Acts	1401
The Model Anti-Discrimination Act 1401	
CHAPTER XVII. Discrimination in the Administration of Justice and	
Federal-State Relations	1403
A. Administration of Justice	1403
United States Commission on Civil Rights, Law	1103
Enforcement: A Report on Equal Protection in the	
South 1403	
Swain v. Alabama 1406	
Notes — Discrimination in Jury Selection 1416	
Johnson v. Virginia 1425	
Notes — Discrimination in the Judicial Process 1426	
B. Federal-State Relations	1431
Amsterdam, Criminal Prosecutions Affecting Federally	
Guaranteed Civil Rights: Federal Removal and Habeas	
Corpus Jurisdiction to Abort State Court Trial 1431	
Dombrowski v. Pfister 1436	
Hillegas v. Sams 1436	
Georgia v. Rachel 1441	
City of Greenwood v. Peacock 1452	
CHAPTER XVIII. Discrimination in Employment	1467
A. The Problem	1467
House Committee on Education and Labor 1467	1107
B. The Duty of Fair Representation	1470
1. The Steele Doctrine	1470
Steele v. Louisville & Nashville R.R. Co. 1470	1170
2. The National Labor Relations Act	1478
National Labor Relations Act 1478	
Sovern, The National Labor Relations Act and Racial	
Discrimination 1479	
Independent Metal Workers Union: Local No. 1 1484	
C. State and Local Legislation	1501
Sutin, The Experience of State Employment Commissions:	
A Comparative Study 1501	
Sovern, Legal Restraints on Racial Discrimination in	
Employment 1511	
Model Anti-Discrimination Act 1514	

Contents	XXV
Contents	XXI

In the Matter of State Commission for Human Rights v.	
Farrell 1516	
Girard and Jaffe, Some General Observations on	
Administration of State Fair Employment Practice Laws 1524	
The Model Anti-Discrimination Act 1531	
D. The Role of the Federal Government	1532
1. The Civil Rights Act of 1964	1532
a. Prohibitions and Exemptions	1533
Title VII 1533	175.
b. Investigations, Inspections, Record-keeping	1538
Title VII 1538	1750
c. Administration and Enforcement	1542
Title VII 1542	12.12
Berg, Equal Employment Opportunity Under the Civil	
Rights Act of 1964 1545	
Conciliation Agreement between Equal Employment	
Opportunity Commission et al. and Newport News	
Shipbuilding and Drydock Company 1553	
2. Federal Employment	1557
Executive Order 11246 1558	
3. Federal Contracts	1560
Executive Order 11246 1560	
E. Apprenticeship Programs	1563
F. Other Forms of Discrimination	1568
1. Discrimination Because of Sex	1568
Murray and Eastwood, Jane Crow and the Law: Sex	
Discrimination and Title VII 1568	
2. Discrimination Because of Age	1571
Note, Age Discrimination in Employment: The Problem	
of the Older Worker 1571	
3. Discrimination Against Aliens	1576
4. Discrimination Because of Religion	1577
	1 5 50
CHAPTER XIX. Discrimination in Housing	1579
A. The Problem	1579
Drake, The Social and Economic Status of the Negro in	
the United States 1579 From An Franchic and Social Profile of the Negro	
Fein, An Economic and Social Profile of the Negro American 1581	
	1502
B. Judicial Restrictions on Private Discriminatory Arrangements Shelley v. Kraemer 1583	1583
Note — Restrictive Covenants 1591	
Abrams, Forbidden Neighbors 1596	
Abrams, Forbidden reignbors 1990	

Contents

Mulkey v. Reitman 1602	
C. Anti-Discrimination Legislation	1613
1. State Fair Housing Laws	1613
Robison, Housing — The Northern Civil Rights	
Frontier 1613	
Pearl and Terner, Fair Housing Laws: Halfway	
Mark 1615	
Housing and Home Finance Agency, Fair Housing	
Laws 1619	
The Model Anti-Discrimination Act 1620	
2. "Blockbusting"	1623
Ohio Rev. Code §4112.02 1623	
3. The Antitrust Remedy	1625
Dorsen, Critique of "Racial Discrimination in 'Private	1027
Housing'" 1625	
4. Municipal Ordinances	1627
Pearl and Terner, Survey: Fair Housing Laws — Design	1027
for Equal Opportunity 1627	
D. Federally Assisted Housing	1630
1. Federal Involvement	1630
Grier and Grier, Equality and Beyond: Housing	1030
Segregation in the Great Society 1630	
2. The Federal Response	1633
Executive Order No. 11063 1633	1055
E. The Benign Quota	1637
Note, Racial Discrimination and the Role of the	1037
State 1637	
Note, Racial Discrimination in Housing 1639	
Cooney v. Katzen 1640	
20.10	
CHAPTER XX. Discrimination in Public Accommodations	1644
A. The Problem	1644
Dean Erwin N. Griswold, Testimony Before the Senate	1644
Committee on Commerce 1644	
B. The Fourteenth Amendment	1645
Burton v. Wilmington Parking Authority 1645	1040
Bell v. Maryland 1649	
Evans v. Newton 1667	
C. State Anti-Discrimination Legislation	1672
Caldwell, State Public Accommodation Laws, Fundamental	1673
Liberties and Enforcement Programs 1673	
D. The Civil Rights Act of 1964	1683
Title II 1683	1003
Heart of Atlanta Motel, Inc. v. United States 1686	

Contents	xxvii
Katzenbach v. McClung 1692 E. The Private Club Exemption Bradshaw v. Whigam 1700 Note, Liquor Regulation, Racial Discrimination, and Private Clubs in Kansas 1703 Dixon, Desegregation and Government Initiative, 1887-1955: Transportation Discrimination 1708	1700
CHAPTER XXI. Discrimination in Health and Welfare Services	1716
A. Health Services	1716
North Carolina Advisory Committee to the United States Commission on Civil Rights, Equal Protection of the Laws in North Carolina 1716 New York State Advisory Committee to the United States Commission on Civil Rights, Report on Buffalo: Health Facilities 1717 Note, Working Rules for Assuring Non-Discrimination in Hospital Administration 1718 United States Commission on Civil Rights, Title VI One Year After: A Survey of Desegregation of Health and Welfare Services in the South 1726 United States Department of Health, Education, and Welfare, Guidelines for Compliance With Title VI of the Civil Rights Act of 1964 1733	
B. Welfare Services	1735
Bell, Aid to Dependent Children 1735 Discrimination in Welfare Law 1738 Note — Miscegenation 1744	
Index	1747