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IN THE

Supreme Court of the United States

OCTOBER TERM (1950)

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF ILLINOIS

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Joseph Beauharnais, respectfully represents and petitions for a writ of certiorari to the Justices of the Supreme Court of the State of Illinois.

Summary Statement

The Petitioner, Joseph Beauharnais, seeks a review of a judgment of the Supreme Court of the State of Illinois, which judgment affirmed the judgment of the Municipal Court of Chicago. The judgment of the Municipal Court of Chicago was a judgment of guilty against the Petitioner for violation of Sec. 224 A of Div. 1 of the Criminal Code (Ill. Rev. Statutes 1949, Chapter 38, Paragraph 471) as follows:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in

> this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00)."

By amended information filed March 6, 1950, your Petitioner was charged as follows:

> "On January 7, 1950, at the City of Chicago, did unlawfully publish, present and exhibit in public places, lithographs, which publications portrayed depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part hereof."

Trial of your Petitioner under the above information was had in the Municipal Court of Chicago May 4, 1950 and on said date after a hearing by jury your Petitioner was found guilty and was fined in the sum of $200.

At such hearing the defendant raised by way of request for instructions to the jury requests Nos. 15 and 16 (R. pp. 36, 37) as follows:

> "(15) The jury is further instructed that even though the article complained of induced a condition of unrest and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest."

"(16) The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest. There is no room under our constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts or dominant political or community groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest."

A serious question as to the constitutionality of the Statute under which the Petitioner was prosecuted was thus raised.

The specific requests for instructions were denied and the Petitioner duly objected and took exception to the Ruling of the Court and after verdict the Petitioner moved for judgment notwithstanding the verdict and/or a new trial and again set forth the issue of the constitutionality of the statute (R. 38 Nos. 1, 2, 3, 7, 12 & 13; pp. 38, 39, 40, 41) as follows:

"(1) That Paragraph 471, Section 244a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the first amendment to the Constitution of the United States and also Article 2, Paragraph 4 of the Constitution of the State of Illinois.

"(2) That Paragraph 471, Section 224a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the due process clause of the Four-

teenth Amendment of the Constitution of the United States and also Section 2 of Article 2 of the Constitution of the State of Illinois.

"(3) That the right of defendant to manufacture, publish and present the lithograph in question (People's Exhibit 3) was protected by the First Amendment to the Constitution of the United States and also by Article 2, Paragraph 4 of the Constitution of the State of Illinois, and by Section 17 of Article 2 of the Constitution of the State of Illinois.

"(7) That to attempt a charge of violation of said section of the statute by the publishing or exhibiting of the lithograph in question (People's Exhibit 3) is in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Illinois."

(12) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 16 appearing (supra) and is not set forth herein.)

(13) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 15 appearing (supra) and is not set forth herein.)

The Petitioner's motion for judgment notwithstanding the verdict and/or new trial was denied and petitioner duly objected and took exception (R. 41). Thereafter, an appeal was taken to the Supreme Court of the State of Illinois which on January 18, 1951 affirmed the judgment of the Municipal Court of the City of Chicago and, thereafter, on a motion for rehearing the court likewise denied said motion on March 19, 1951.

Statement of Facts

It appears from the evidence in the record that on January 7, 1950, the Petitioner was the organizer, founder and president of the White Circle League of America, an Il-

linois non-profit corporation organized November 9, 1949, for the purpose of maintaining and safeguarding the dignity, social edicts, customs, heritage, rights, and the way of life of the white race in America.

Some time on January 6, 1950, there was a meeting of this organization and that meeting was chaired by the Petitioner. The purpose of the meeting was to obtain volunteers who would on the following day distribute leaflets and obtain signatures to a petition. Each of the volunteers was to and did in fact on January 7, 1950, wear a placard sign with the following large letters thereon:

> "Preserve and protect white neighborhoods. Sign petitions here. Sponsored by the White Circle League of America."

These volunteers were on the public streets of the city of Chicago in various locations. The Petitioner was not one of them, but the Petitioner passed out to the volunteers the various petitions and other literature with instructions that all that remained over should be returned to him. The petition is State Exhibit No. 3 as follows:

> "PRESERVE AND PROTECT WHITE NEIGHBORHOODS!
> FROM THE CONSTANT AND CONTINUOUS INVASION,
> HARASSMENT AND ENCROACHMENT BY
> THE NEGROES
>
> (We want two million signatures of White men and women)
>
> PETITION
>
> To The Honorable Martin H. Kennelly
> and City Council of the City of Chicago
>
> WHEREAS, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—

WHEREAS, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

WHEREAS, there is great danger to the Government from communism which is rife among the Negroes, and

WHEREAS, we are not against the Negro; we are for the white people and the white people are entitled to protection:—

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Aldermen of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro—through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

WANTED

ONE MILLION SELF-RESPECTING WHITE PEOPLE IN CHICAGO TO UNITE UNDER THE BANNER OF THE WHITE CIRCLE LEAGUE OF AMERICA to oppose the National Campaign now on and supported by TRUMAN'S INFAMOUS CIVIL RIGHTS PROGRAM and many Pro Negro Organizations to amalgamate the black and white races with the object of mongrelizing the white race!

THE WHITE CIRCLE LEAGUE OF AMERICA is the only articulate white voice in America being raised in protest against Negro aggressions and infiltrations into all white neighborhoods. The white people of Chicago MUST take advantage of this opportunity to become UNITED. If persuasion, and the need to prevent the white race from becoming mongrelized by the Negro will not unite us, then the aggressions * * * rapes, robberies, knives, guns and marijuana of the Negro, SURELY WILL.

The Negro has many national organizations working to push him into the midst of the white people on many fronts. The white race does not have a single organization to work on a NATIONAL SCALE to make its wishes

articulate and to assert its natural rights to self-preservation. THE WHITE CIRCLE LEAGUE OF AMERICA proposes to do the job. WE ARE NOT AGAINST THE NEGRO!

WE ARE FOR THE WHITE PEOPLE!

We must awaken and protect our white families and neighborhoods before it is too late. Let us work unceasingly to conserve the white man's dignity and rights in America.

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.—Joseph Beauharnais, Pres.—FR 2-8533, Suite 808, 82 W. Washington St. VOLUNTEERS NEEDED TO GET 25 SIGNATURES ON PETITION! COME TO HEADQUARTERS!

I wish to be enrolled as a member in THE WHITE CIRCLE LEAGUE OF AMERICA and I will do my best to secure ten (10) or more members.

THE FIRST LOYALTY OF EVERY WHITE PERSON IS TO HIS RACE. ALL THE COMBINED PRO-NEGRO FORCES HAVE HURLED THEIR ULTIMATUM INTO THE FACES OF THE WHITE PEOPLE. WE ACCEPT THEIR CHALLENGE.

THEY CANNOT WIN!

IT WILL BE EASIER TO REVERSE THE CURRENT OF THE ATLANTIC OCEAN THAN TO DEGRADE THE WHITE RACE AND ITS NATURAL LAWS BY FORCED MONGRELIZATION.

THE HOUR HIS STRUCK FOR ALL NORMAL WHITE PEOPLE TO STAND UP AND FIGHT FOR OUR RIGHTS TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

JOSEPH BEAUHARNAIS

APPLICATION FOR 1950 MEMBERSHIP

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.

(Not For Profit)

Mail to—

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
82 W. Washington St.
Chicago 2, Illinois
Tel. FR 2-8533

Date.....19.....

Membership $1.00

Subscription to Monthly Magazine (WHITE CIRCLE NEWS) per year..... $3.00

Voluntary Contribution .....

I can volunteer some of my time to aid the WHITE CIRCLE in getting under way.

(Signed) (Print Name) .....

NAME .....

ADDRESS ..... PHONE .....

CITY ..... STATE .....

(Note: Tear off and mail to Headquarters with Your Remittance.)"

There is no evidence in this case of any commotion or disturbance on the street and there is no type of breach of the peace whatsoever. There is no evidence that anyone was actually upset or disturbed at the meeting on January 6, 1950 or at the time of the distribution of the petitions.

The Opinion Below

The opinion has been reported and is cited as *The People of the State of Illinois,* Appellee v. *Joseph Beauharnais,* Appellant, 408 Ill. 512.

Jurisdiction

Jurisdiction of this court is invoked under 28 U. S. C. Sec. 1257 Sub. Sec. 3. On the 19th day of March 1951 the Supreme Court of the State of Illinois denied the petition for rehearing. Timely application herein has been made.

QUESTIONS PRESENTED

1

Is the Illinois statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

2

Is the Illinois Statute void as being in controvention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

Reasons Relied On for Allowance of the Writ

At the outset the American Civil Liberties Union and its counsel appearing herein wish it to be distinctly understood that by their action in filing this petition, that they neither condone nor agree with the allegations made by the Petitioner in his publication and as a matter of fact the record of both the American Civil Liberties Union and its counsel shows that both have always been opposed to racism of any kind and the American Civil Liberties Union has appeared often, by way of friend of the court, in cases pending before this Honorable Court in matters

which clearly indicate its position. Nevertheless, it has been the policy of the American Civil Liberties Union to consider all cases raising fundamental questions of constitutional law as extremely important. As so often has been said, if the right of free speech and press means anything at all it means freedom for the expression of opinions we hate as well as those with which we agree. It is because we view with alarm this type of statute that we undertake to file this petition. Illinois is not the only state which has such a law. As a matter of fact a similar law in the State of New Jersey was struck down by the court, see *State* v. *Klapprott,* 127 N. J. L. 395. Massachusetts also has a similar law (Gen. Laws, Ch. 272, Sec. 98c) as do many other states. Practically all of them are similarly constituted and are known either as "group" or "race libel laws". It is of the utmost importance, therefore, for this court to determine the constitutionality of such provisions. These provisions, on their face, purport to interfere and prohibit expression of opinion. While no one can dispute the good intentions of the proponents of such measures they still, nevertheless, must meet with constitutional favor. One of the great philosophies underlying all of our rights is the clear and present danger theory. In the case at bar the State of Illinois alleged that the pamphlet or petition itself is sufficient evidence of the clear and present danger and comes within the "fighting words" theory of *State* v. *Chaplinsky,* 315 U. S. 658. Because of the seeming contradiction between the two opinions of the highest courts of the State of New Jersey and the State of Illinois; because of the great possibility of additional cases of this nature which will from time to time arise; because of the obvious error made by the Illinois court in failing to apply the clear and present danger theory and because at the trial the court refused to instruct the jury on the clear and present danger theory, it is of the utmost public importance for the court to review this case and to render an opinion.

Wherefore, your Petitioner prays that a writ of certiorari be issued out of and under the seal of this court directed to the Justices of the Supreme Court of Illinois commanding that court to certify and send to this court for review and determination as provided by law, this cause and a complete transcript of the record and all of the proceedings had therein and that the judgment of said Supreme Court of Illinois affirming the judgment of the municipal court of the City of Chicago be set aside and be reversed and for such other and further relief in the premises that this court may deem proper.

I hereby certify that I have examined the foregoing petition for writ of certiorari and that in my opinion it is well founded and the cause is one in which the petition should be granted.

Respectfully submitted,

ALFRED A. ALBERT,
Attorney-at-Law,
c/o American Civil Liberties Union,
170 Fifth Avenue,
New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM (1950)

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINTS TO BE ARGUED

I

Is the Illinois statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of the State of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

II

Is the Illinois Statute void as being in contravention of the due process elause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

ARGUMENT

I

Is the Illinois Statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of the State of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

It is a well settled law that the police power of a state extends to the point where there is no infringement of the greater constitutional guarantee of free speech, press and assemblage. Practically, all disputes concerning the validity of statutes authorized by the police power of a state center around the line of demarcation. The State in its exercise of its power may regulate free expression but it cannot arbitrarily prohibit it. Free expression may be prohibited, however, only in such cases where there is a clear, present and imminent danger of a breach of the peace. The evidence is clear in this case that there is nothing about the conduct of the persons distributing the literature or of the defendant, himself, which created in any sense any danger that a breach of the peace would occur. This is in contrast to the *Chaplinsky* case, 315 U. S. 658, in which the Supreme Court of the State of New Hampshire found its statute applied only where there was a clear and present danger and that under the many facts in the *Chaplinsky* case there was such clear and present danger. This court will recall in that case the statement uttered by the defendant was uttered at a time when he was being hustled off to arrest in what appeared to be a hotly contested matter. No such situation presents itself in this case and if there can be any finding of clear and present danger it must be within the four corners of the

petition itself (Exhibit 3). The Supreme Court of Illinois mis-applied and misinterpreted the meaning of the *Chaplinsky* case and of the theory of clear and present danger for the court uses the following language:

> "Any ordinary person could only conclude from the libelous character of the language that a clash and riot *would eventually result* between the members of the 'White Circle League of America' and the Negro Race."

The court specifically finds that there was a danger which might eventually occur but there is no finding and no ruling by either the trial court or the Supreme Court of the State of Illinois that there is any clear and present danger. Any statute which tends to prohibit speech can be valid only on the basis that there would be an imminent danger. Look at the statute itself. In this case it is to be noted that there are two possible bases for complaint.

There is one under which this petitioner was prosecuted and there is another where such conduct of the defendant is productive of breach of the peace or riots. The petitioner was not charged with doing certain things which were productive of a breach of the peace or riots. He is simply charged with publishing, presenting and exhibiting certain lithographs in violation of that section of the statute which merely refers to so called criminally libelous words. Clearly it was the intent of the legislature of the State of Illinois to make two separate bases for complaint. The Supreme Court of Illinois, did not comment on this separation. Therefore, we have to deal only with this case on the basis that there is nothing in the evidence and that there is no charge that any breach of the peace or riots would result from the publication of the particular lithographs. Furthermore, it should be called to the attention of the court that the Supreme Court of the State of Illinois, in its opinion, stated:

> "The very statute which defendant challenges as unconstitutional was upheld in the case of Bevins v.

> Prindable, 39 Fed. Supp. 708 and affirmed by the U. S. Supreme Court in a memorandum opinion at 314 U. S. 573."

However, a careful check of the *Bevins* case clearly indicates that the court did not so rule. As a matter of fact, the court specifically ruled as follows (p. 712):

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say it is not clearly apparent that the statute in question is unconstitutional."

The Illinois court then goes on to discuss the question of vagueness which is further discussed in this brief under Point II of the argument. In the *Bevins* case the only thing that the Supreme Court affirmed was the specific finding of the district court that no case was made out by the Petitioners for injunctive relief and in no way can the affirmance of judgment by the Supreme Court in the *Bevins* v. *Prindable* case be taken to mean that the statute here drawn in question was constitutional. As a matter of fact, this court in *Winters* v. *New York,* 333 U. S. 507, 68 Sup. Ct. 665, cites the New Jersey case of *Klapprott* v. *New Jersey,* 127 N. J. L. 395, in an apparently favorable manner. The New Jersey case held that a similar statute was unconstitutional on its face. As a matter of fact, in the *Bevins* case the United States District Court opined that the constitutionality of this section of the Illinois law should be ruled upon, first, by the highest court in the State of Illinois.

In *Terminiello* v. *City of Chicago,* 337 U. S. 713, this court stated:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stir people to anger."

The ordinance and the charge in the *Terminiello* case was even more carefully drawn than this one and dealt specifically with creation of breach of the peace. The ruling of the Supreme Court in the *Terminiello* case, however, was confined to the application of the ordinance to the conduct of the defendant. It is our contention here that this statute first of all on its fact is invalid and void because it is prohibitive of free speech, press and assemblage, and, secondly, that if our first proposal is not sustainable then as construed and applied, the Illinois law violates the petitioner's right of free speech, press and assemblage because there was no evidence of clear and present danger and because the information under which this defendant was charged does not charge that his remarks were productive of riots or breach of the peace.

There remains the question of the application of this court's opinion in the recently decided *Dennis* case, June 4th, 1951. There, this court held the issue of clear and present danger was to be decided by the court and not by the jury. At least up until that time, it had always been supposed that the determination of the factual situation with regard to clear and present danger was one for the fact finding body, namely, the jury or a Judge sitting without jury. In the case at bar the court refused to instruct the jury on this matter (Par. R. p. 36, nos. 15, 16). The Supreme Court of Illinois, in its opinion, does not comment on the court's refusal to so instruct the jury, but finds simply that the Illinois statute is one of those "fighting word" statutes, but it is clear on the reading of the record and of the opinion in this case that neither the Trial Court nor the Supreme Court found as a fact or a matter of law that there was a clear and present danger. Taken together with the separation of the statute, which makes two offenses, we find that the *Dennis* case is not decisive of this case.

The defendant does not waive the argument that the finding of clear and present danger is a finding of fact to be found by the jury rather than by the court. The defend-

ant still maintains that no court could rule as a matter of law when there is or is not a clear and present danger. That since speech is limited by the existence of such threat the determination that that said existence is one clearly of fact and therefore the sole province of the fact finding agency.

II

Is the Illinois Statute void as being in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

This court has enunciated several times the standards which must be applied in determining whether or not a statute meets the test of the due process clause of the Fifth Amendment and the requirement of the Sixth Amendment concerning the right of the defendant to be fully informed of the charge against him. Both such provisions have been made applicable to the states by virtue of the Fourteenth Amendment.

In *Winters* v. *New York,* cited supra, this court struck down a New York statute on obscenity which made it an offense to publish stories principally made up of crimes, lust, etc. The court said that the Statute was so vague that men of reasonable understanding could not determine when an offense had been committed. This followed the theory as set forth in the court in *Connally* v. *General Construction Co.,* 269 U. S. 385, 46 S. C. 126, and the well known case of *Cantwell* v. *Conn.,* 310 U. S. 296, 60 Sup. Ct. 900. See also the late case of *Jordan* v. *DeGeorge,* 71 Sup. Ct. 703, decided May 7th, 1951.

Let us then for the moment analyze the statute in question and separate it into two parts, (a) that it simply means it is an offense to manufacture, sell or offer for sale, etc. * * * which said publication or exhibition exposes

the citizens of any race, color, creed or religion to contempt, derision, or obloquy, and (b) * * * which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision or obloquy, which said publication or exhibition is productive of breach of the peace or riots. The defendant is charged with violation under (a) and not with violation under (b). Under this part of the statute conduct which may be perfectly innocent conduct becomes unlawful. It is our contention that a man has a right to criticize a religious group because of its activities, or a racial group because of its activities. A non-Zionist Jew has the right to take to task a Zionist Jew and in so doing may use the words "Zionist Jew". He may use such words so as to group all Zionist Jews together and not any one in particular. Likewise the Negro race will have a perfect right to criticize the conduct of whites and conversely white people have the right to criticize Negroes. We should not interfere with the right of Protestants to criticize Catholics and vice versa.

When viewing the statute, minus the provision concerning breach of peace or riots, we find that any application of this statute would possibly interfere with some of these matters above enumerated. As was pointed out in the brief filed by Petitioner in the Supreme Court of the State of Illinois, the constant derision of American citizens of Japanese ancestry would subject practically every single newspaper in the State of Illinois to prosecution under this law and, today, present criticism of Chinese whether you call them Communist Chinese or non-Communist Chinese would subject anyone to prosecution. The same may be applied to the Russian people. Under what circumstances can any individual be apprised of what is unlawful under this statute? Again, the court below cites *Bevins* v. *Prindable* to support its contention that this statute was constitutional and was not void for vagueness. The United States District Court in the *Bevins* case said as follows:

> "With reference to the Statute plaintiff says it is vague and indefinite. There is truth in the charge but

> the statute deals with the type of offense that defies exact definitiveness. In that respect it is similar to statute creating the offense of criminal libel, Chapter 38, Sec. 402, Illinois revised Statutes 1939. Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question of the courts of Illinois. This statute does not subject the plaintiffs to previous restraint such as received the condemnation of the Supreme Court in Lowell v. Griffin, 303 U. S. 444, etc."

The court went on to say that the plaintiff in the *Bevins* case had ample opportunity to test the constitutionality of the statute in the State Court of Illinois wherein criminal prosecution was then pending and in the next to the last paragraph the District Court said as follows:

> "The precise question presented to us now takes form as follows: Should an application for an interlocutory injunction restraining state officers from enforcing a state criminal statute be allowed where the statute is not clearly unconstitutional and where the evidence shows that though some injuries and loss may be suffered by plaintiffs, through the enforcement of the statute, which may, because of their nature, be irreparable, it fails to appear that such injuries and loss need be more than slight or inconsequential? We think the question must be answered in the negative and the application for interlocutory injunction denied."

The view that we take is a fair view and what has been said concerning subdivision (a) of the Illinois statute may also be said concerning subdivision (b). The fact that use of language such as "which is productive of breach of the peace or riots" is added in no way cures the defect of vagueness because it does not amplify or explain the words used in the statute, such as "contempt, derision or obloquy".

See also *Klapprott* v. *State of New Jersey*, 127 N. J. L. 395.

CONCLUSION

In conclusion the Illinois statute fails because

(1) As interpreted by the Illinois Court it is prohibitive of free speech, press and assemblage even in the absence of clear and present danger.

(2) Even as construed and applied in the present case it operates so as to deprive the petitioner of his constitutional rights.

(3) The *Dennis* case is not decisive of this case because here there is no finding of fact or ruling of law by the Court that any clear and present danger exists.

(4) It is void on its face for vagueness.

(5) Under any circumstances, the defendant was not charged with conduct which was productive of breach of the peace or riots and there is no evidence to support any such conclusions.

American Civil Liberties Union and its counsel herein wish again to remind this court that we are in no way in favor of the utterances made by this petitioner and that we would oppose such utterances by combating them in the proper forum. Such utterances ought to be refuted. However, when it comes to the question of this petitioner's words or right to publish the expressions herein complained of this places the question on an entirely different footing and we stand four-square on that issue.

"I may disagree with what you say but I will give my life for your right to say it."

Respectfully submitted,

ALFRED A. ALBERT,
Attorney-at-Law,
c/o American Civil
Liberties Union,
170 Fifth Avenue,
New York, N. Y.