Angry letters and articles filled the Honolulu newspapers. The associate editor of the Honolulu *Advertiser*, Gardiner B. Jones, one of Lee's most persistent journalistic critics, began a major article by asserting that "It was a bum deal" to lose President Thomas Hamilton over Professor Oliver Lee.

Many observers did not agree with Hamilton that circumstances compelled him to resign. Harold A. Jambor, who was the chairman of the faculty committee which examined the case, was quoted as saying, "This is going to be a tremendous loss. I just don't understand why Dr. Hamilton thought it necessary to do this. Seems to me he's putting more weight on this matter than it deserves."

On Christmas Day, the Honolulu *Star-Bulletin*, called Lee "a professor of middling abilities and execrable judgment" but criticized Hamilton as well: "Of all the judgments Dr. Hamilton has made in his distinguished five-year career, we are inclined to think this will stand as the poorest." The newspaper said that Hamilton's decision "amounts to a censure of the university by its President" even though "it was hardly intended as such."

Although somewhat dormant at the moment, the Lee case is still a live issue. On 8 February, the Regents of the university returned the report of the faculty senate's hearing committee to the body with their "objections." Lee has still not been granted tenure; unless the administration reverses itself, he will be forced to leave the university. Hamilton has agreed to stay on for as long as 18 months if necessary while the university searches for a new president.

By resigning, Hamilton greatly escalated the intensity of the conflict. The university has not solved its dilemma. If Hamilton's decision on Lee's tenure is finally reversed, some of the more militant elements in the community will cry out against the university and will probably demand financial revenge against it in the state legislature.

If Lee is not granted tenure, many faculty members will be disturbed, and there have been reports that some will resign. Unless further cause is shown to support a decision to refuse tenure for Lee, the AAUP is likely to conduct a formal investigation of the case and, eventually, move toward censure. This ambitious university, which has to work hard to find first-rate faculty members because of its isolated location and other factors, would be severely hampered in faculty recruiting by AAUP "blacklisting."

In Hawaii, there has been some tendency to view the conflict in personal terms, to back either Hamilton or Lee, and to deplore the actions of those of contrary views. However, to this observer, there seem neither heroes nor villains in this dispute. Physically, both Hamilton and Lee are unhurt and unbleeding, but, in a very real sense, they are civilian "casualties" of the passions engendered by the confusing war in Vietnam. Thomas Hamilton and Oliver Lee are among the first important university casualties of this war; they are, sadly, unlikely to be the last.

—BRYCE NELSON

Speaker Ban: Court Decides North Carolina Controversy

One of the many uses of judges and courts of law is that sometimes they can resolve controversies which politicians fear to deal with forthrightly. Ever since that day in late March 1966 when student leaders of the University of North Carolina (U.N.C.) at Chapel Hill brought suit to invalidate the state's restrictive policy on campus appearances by ultra-leftist speakers, U.N.C. officials have hoped that the courts would dispose, once and for all, of the "speaker-ban" controversy. On 19 February, nearly 2 years after the suit was filed, a decision was at last forthcoming. A three-judge federal district court ruled unanimously that the state policy—whereby campus speaking appearances by communists and 5th-Amendment pleaders in loyalty investigations were to be kept "rare" and "infrequent"—was unconstitutional.

Although U.N.C. and other state institutions may not yet be out of the woods of political controversy, the ruling was a signal victory for the student plaintiffs and is regarded as a significant legal precedent. According to William W. Van Alstyne of Duke University Law School, author of a brief filed by the American Association of University Professors in the case, and an authority on academic freedom and the law, "this is the first ruling to grant relief to student plaintiffs with respect to inviting political guest speakers on campus."

In its opinion, the court did not rule directly on the question of whether, under the 1st Amendment guarantee of freedom of speech (and the corollary "freedom to listen"), students can invite speakers of their choice on campus. The court chose, instead, to invalidate the state policy on other grounds—that it was unconstitutionally vague in its reference to "known" Communists and some of its other terminology, and that it penalized persons who had invoked the protection of the 5th Amendment. Van Alstyne observes, however, that the fact that the court allowed the U.N.C. students to sue was in itself implicit recognition that they had a right to select speakers for campus appearances.

Although the decision, which will not be appealed, is binding only in North Carolina, such lower-court rulings often have a persuasive influence on state and federal judges in other jurisdictions. Indeed, the decision could have a bearing on the outcome of several other current speaker-ban controversies. Illinois and Louisiana both have speaker-ban statutes of sorts. In Mississippi the Board of Trustees of Higher Education permits no outsiders to speak on state campuses who will "do violence to the academic atmosphere," who are charged with any "crimes or moral wrongs" or are otherwise in "disrepute in the area from whence they come," or who advocate the overthrow of the government of the United States. Court tests of the Mississippi and Illinois speaker-ban policies are now pending.

The history of the North Carolina

speaker-ban controversy shows that it can be far easier to pass than to repeal a bad law. The state General Assembly passed a speaker-ban law at the close of its 1963 session, acting in haste and without hearings. This precipitous action, which seemed to stem more from concern about civil rights demonstrations than from worries about subversive influences on campus, was denounced by the state's major newspapers, by many leading politicians, and by spokesmen for all elements associated with the University of North Carolina—trustees, administrators, faculty, and students.

By the fall of 1965 it was apparent that the speaker-ban law was hurting the university, and, except among the state's superpatriots and a minority of the legislators, sentiment for its repeal was strong. However, repeal was approached cautiously, for no North Carolina politician wanted the voters to think he was anything less than foursquare against Communist speakers who harangue the young. In November 1965 the General Assembly, following the recommendations of a special commission named by Governor Dan Moore to study the problem, amended the speaker-ban law. The statutory ban against Communists and 5th-Amendment pleaders was lifted, and authority to regulate the appearance of speakers in these categories was given to the boards of trustees of U.N.C. and other state institutions.

This was a compromise solution, and, to carry out its part of the deal, the U.N.C. board of trustees adopted a policy statement saying that appearances by speakers of the kind the speaker ban had proscribed would be permitted only rarely and then only when it served an educational purpose. Authority to approve or disapprove invitations by student groups to such speakers was delegated to the chancellors of the four U.N.C. campuses (Chapel Hill, Raleigh, Greensboro, and Charlotte).

Immediately, student leaders at Chapel Hill extended speaking invitations to Herbert Aptheker, the Marxist theoretician, and Frank Wilkinson, who had once invoked the 5th Amendment in a California loyalty hearing and who was chairman of the National Committee to Abolish the House Un-American Activities Committee. Although permission later was granted for certain Communists to speak on U.N.C. campuses, requests for permission to have Aptheker and Wilkinson appear on the Chapel Hill campus were twice disapproved by Chancellor J. Carlyle Sitterson. Governor Moore, ex-officio chairman of the board of trustees, had attacked an earlier student invitation to these speakers, calling it deliberately provocative. Following Sitterson's second refusal, the student leaders, joined as plaintiffs by Aptheker and Wilkinson, brought suit against the university's board of trustees; its president, William Friday; and Sitterson.

In overthrowing, last week, the amended speaker-ban statute and the trustees' policy, the federal court said these were "facially unconstitutional because of vagueness." A term such as a "known member of the Communist Party," the court indicated, is imprecise in the extreme. " 'Known' to whom, and to what degree of certainty?" it asked.

While the plaintiffs' brief had asserted that the students' right of "freedom to listen" had been violated, the fact that the court invalidated the state policy principally for its vagueness was unexceptional. Courts often avoid establishing sweeping precedents when the case at hand can be disposed of on an issue that is narrowly drawn. In this case, however, it is clear that the judges felt considerable personal sympathy for those who would restrict or eliminate appearances of Communist speakers on state campuses.

Students Are Criticized

In striking down the speaker policy, the court prefaced its ruling with language which has been interpreted by some as permitting the legislature or the trustees to adopt a new law or policy, this time with the categories of speakers to be "regulated" spelled out with clarity and precision.

"It is beyond question," the court said, "that boards of trustees of state-supported colleges and universities have every right to promulgate and enforce rules and regulations, consistent with constitutional principles, governing the appearance of all guest speakers. . . . We are also aware that when student groups have the privilege of inviting speakers, the pressure of considerations of audience appeal may impel them to so prefer sensationalism as to neglect academic responsibility. Such apparently motivated the plaintiff students during the spring of 1966."

Later, the court seemed to indicate that a board of trustees' policy on speakers might withstand constitutional attack if it imposed a "purely ministerial duty" upon the officials charged with approving or disapproving invitations, or if it contained "standards sufficiently detailed to define the bounds of discretion."

Yet, despite this language, President Friday (a lawyer), as well as such students of constitutional law as Van Alstyne, believes that any policy discriminating against a particular class of speakers for its political beliefs would be unconstitutional. The court itself emphasized that policies regulating the appearance of visiting speakers must conform to constitutional principles. In any event, judges, lawyers, and most politicians generally are impressed more by the binding, enforceable rulings of a court than by the "dicta," or philosophical ruminations, which precede them.

After reviewing the ruling on the speaker policy, Governor Moore said last week that he hoped the U.N.C. trustees and administration would adopt a new policy within the framework of the ruling that would "serve the educational purposes of the institution and not the purposes of the enemies of our free society." However, this appears to have been largely rhetoric, for on Monday the trustees, with Moore presiding, adopted a policy which, for the most part, represented a return to the policy which prevailed prior to the enactment of the speaker ban in 1963.

The new policy calls for a balanced program of public addresses in which all sides of controversial issues can be heard. Certain safeguards—such as to have a senior faculty member preside over the forum when appropriate, and to assure that questions shall be allowed from the floor—also are provided. According to Chancellor Sitterson, the legislature, which does not meet again until next February, is not likely to take up the speaker-ban issue again unless someone successfully exploits it in the approaching primary and general election campaigns.

For many years, proposals to insulate students from the extremes of political opinion have cropped up in state legislatures, boards of trustees, and in the offices of university administrators. While such proposals no doubt will continue to arise, the decision in the North Carolina speaker-ban case indicates that the students' assertion of a "right to listen" is gaining clear recognition from the courts.

—LUTHER J. CARTER