

# Thomas I. Emerson: Pillar of the Bill of Rights

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## I

Thomas I. Emerson graduated from Yale Law School in 1931. He died this summer, sixty years after receiving his LL.B. In six decades as a lawyer, Tom enjoyed two distinguished—and closely-linked—careers. The mold for Tom’s two careers was set in his two years of New York practice following law school. The small firm at which Tom was an associate from 1931 to 1933 was Engelhard, Pollak, Pitcher & Stern. The partners Tom chiefly worked for were Walter Pollak and Carl Stern.<sup>1</sup> Pollak and Stern were heavily engaged in bringing to the Supreme Court the pathbreaking right-to-counsel case, *Powell v. Alabama*,<sup>2</sup> the first round of the *Scottsboro Cases*.<sup>3</sup> It was the right apprenticeship for Tom Emerson.

Tom’s first career was as a government lawyer. In 1933, Tom left New York practice to go to Washington. He was one of the cohort of young lawyers who entered government service after Franklin Roosevelt’s election to help the new President fashion the New Deal. Tom started out as an attorney for the National Recovery Administration. And then, in quick steps, he moved to successively higher levels of responsibility at the National Labor Relations Board, the Social Security Board, and the Department of Justice. After American entry into World War II, Tom moved to the Office of Price Administration, first as general counsel and then as deputy administrator for enforcement. In 1945, Tom was named general counsel of the Office of Economic Stabilization and, a few months later, general counsel of the Office of War Mobilization and Reconversion.

In 1946, when Tom, a veteran of thirteen years of government service, retired from the public practice of law, he was all of thirty-nine.

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1. Carl Stern was Anne Bittker’s father; Walter Pollak was my father.

2. 287 U.S. 45 (1932).

3. *Powell* set aside the convictions of the seven (there were originally nine) “Scottsboro Boys,” who had been convicted of rape and sentenced to death. Alabama persisted in the prosecutions. The second capital conviction of Clarence Norris, one of the Scottsboro Boys, was reviewed, and found wanting on jury discrimination grounds, in *Norris v. Alabama*, 294 U.S. 587 (1935). See also *Patterson v. Alabama*, 294 U.S. 600 (1935) (companion case to *Norris*).

Tom left Washington to return to Yale and start his second career—a career which was to span some forty years until, when Tom was in his late seventies, debilitating illness caught up with him. As teacher, scholar, public citizen, and occasional Supreme Court advocate, Tom—New Deal liberal and uncompromising champion of individual liberty—was the academic embodiment of the Bill of Rights.

## II

There was nothing flashy about Tom's teaching. An Emerson class—like Tom himself—was solid, intelligent, and powerful. Each day's class discussion built with precision on what had gone before. At the end of the course, one's class notes disclosed a strong edifice.

A characteristic aspect of Tom's quiet teaching was his resolute unwillingness to use his classroom lectern as a "bully pulpit." Of course, Tom was always prepared to confront, and explore in detail, the policy implications demonstrably inherent in a particular doctrinal position. But, apart from those obligatory issues, it was hard going to get that man of strong convictions to state those convictions—in class.

Outside of class, Tom was ready to—and did—engage. Over the lunch table at the Yale Commons; or when speaking under the banner of the ACLU or the Lawyers Guild; or, on the campaign trail, as Connecticut gubernatorial candidate of the Progressive Party; or as a panelist in the Law School Auditorium on Alumni Weekend; or at the bar, as counsel for an unpopular client; or in his writings—whatever the forum, Tom took, and stood, his ground.

## III

### A

In 1952—with Joe McCarthy on the rise, and the question of the constitutionality of racial segregation in public schools looming on the Supreme Court's docket—the first of Tom Emerson's two major scholarly works appeared. The work was a casebook, *Political and Civil Rights in the United States*, co-authored by David Haber.<sup>4</sup> To the shame of the American law professoriate, it must be acknowledged that before the publication of the Emerson-Haber casebook no such field of systematic pedagogy and scholarship existed. As Robert Hutchins put it in his preface to the book, "This is the only comprehen-

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4. THOMAS I. EMERSON & DAVID HABER, *POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES* (1952) [hereinafter EMERSON & HABER]. A second edition was published in 1958. The third edition, with Norman Dorsen as a third partner in the enterprise, appeared in 1967. With the publication of the fourth edition in 1976, Tom and David Haber had withdrawn, and Paul Bender and Burt Neuborne had joined forces with Dorsen.

sive collection of cases and materials on the most important subject in the world today.”<sup>5</sup>

In their introduction, Tom Emerson and David Haber did not undertake to advertise their book in the properly expansive terms employed by Hutchins. But they managed, with quiet eloquence, to make plain the significance of the problems canvassed in the book. Bearing in mind that the book was published just two years before *Brown v. Board of Education*,<sup>6</sup> one cannot escape the weight of the following words:

The present status of the United States in the world today introduces a new factor into all our decisions on issues of political and civil rights. Our claim to moral leadership in world affairs is based in large part upon our principles and practices of individual freedom and equality. This is perhaps our major contribution and our principal appeal to the world. Hence the eyes of all peoples are upon us in all we do or fail to do to advance freedom among our own people. No decision we make, particularly in the area of racial equality, can ignore this direct impact upon our world position.<sup>7</sup>

## B

In the years that followed, Tom concentrated more and more of his enormous energy on problems of free speech and free press. In 1957, he persuaded the Supreme Court to set aside the New Hampshire contempt conviction of Paul Sweezy, the Marxist economist.<sup>8</sup> Sweezy’s conviction was based on his refusal to answer certain questions propounded by the New Hampshire Attorney General about the Progressive Party, about lectures Sweezy had given at the University of New Hampshire, and about Sweezy’s own political beliefs, including whether he believed in Communism. The New Hampshire Attorney General asked the questions in his role “as a one-man legislative committee,”<sup>9</sup> pursuant to the New Hampshire legislature’s Joint Resolution Relating to the Investigation of Subversive Activities. Chief Justice Warren’s plurality opinion in *Sweezy*<sup>10</sup> found that the state legislative mandate establishing the state’s attorney general as a legislative investigative committee did not adequately define the permitted lines of inquiry.

On the same day, and on somewhat similar grounds, the Court in *Watkins v. United States*<sup>11</sup> set aside the contempt conviction of a House Un-American Activities Committee witness who had refused to answer certain questions.

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5. *Id.* at iii.

6. 347 U.S. 483 (1954).

7. EMERSON & HABER, *supra* note 4, at xi.

8. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

9. *Id.* at 237.

10. *Id.* at 235.

11. 354 U.S. 178 (1957).

Taken together, *Watkins* and *Sweezy* imposed substantial and desirable procedural constraints on legislative investigations into areas of political association and opinion. Even more significant, however, than Chief Justice Warren's plurality opinion in *Sweezy* was the concurring opinion of Justice Frankfurter. Writing for himself and Justice Harlan, Frankfurter went beyond the procedural concerns that the Chief Justice found paramount, and addressed frontally the First Amendment implications of inquiry into political activities and associations and into the contents of lectures delivered at a university. In effect, Tom Emerson's powerful argument in *Sweezy* was mid-wife to one of Frankfurter's most significant utterances on political and academic freedom.<sup>12</sup>

In 1966, Tom published *Toward a General Theory of the First Amendment*. This important essay was the precursor of *The System of Freedom of Expression*. That work of fundamental scholarship, published in 1970, is the North Star from which today's First Amendment mariners take their bearings.

#### IV

Fowler Harper, Tom's long-time Yale colleague, died of cancer on January 8, 1965. During his illness, Harper had asked his friend to take over as chief counsel for two Connecticut residents who were appealing to the United States Supreme Court from criminal convictions that had been affirmed by the Connecticut Supreme Court of Errors. The appellants were Estelle Griswold and C. Lee Buxton, who were, respectively, Executive Director and Medical Director of New Haven's Planned Parenthood Center. They had been convicted of violating Connecticut's anti-contraceptive-use statute by providing contraceptive information and medical guidance to various married persons who had come to the Center for advice about birth control. Tom of course agreed to take over the case, and at once, in partnership with Catherine Roraback, went to work on the brief, putting into compelling form the arguments that were to bring victory in *Griswold v. Connecticut*<sup>13</sup>—one of the most influential constitutional decisions of the second half of the twentieth century.<sup>14</sup> *Griswold*

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12. See Louis H. Pollak, *Mr. Justice Frankfurter: Judgment and the Fourteenth Amendment*, 67 *YALE L.J.* 304, 313-16 (1957).

13. 381 U.S. 479 (1965).

14. I have previously had occasion to assess the problems of advocacy Tom Emerson faced in fashioning the *Griswold* brief. See Louis H. Pollak, *Thomas I. Emerson, Lawyer and Scholar: Ipse Custodiet Custodes*, 84 *YALE L.J.* 638, 640-53 (1975).

On oral argument in *Griswold*, the shortness of time prevented Tom from developing at any length the privacy issues that were, in one form or another, to be central to the plurality, concurring, and dissenting opinions. Given the line of doctrinal development in cases that followed *Griswold* and led to *Roe v. Wade*, 410 U.S. 113 (1973), it is interesting to note the lawyerly care with which, in response to the questions put during the rebuttal portion of the *Griswold* argument, Tom distinguished anti-contraceptive-use statutes from statutes regulating abortion. See 61 *LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW* 452-53 (Philip B. Kurland & Gerhard Casper eds., 1975).

Tom may not have won *Griswold* on oral argument, but he certainly avoided losing it. On the other hand, counsel for the State of Connecticut may well have clinched defeat in the following colloquy, *id* at

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430-32:

THE COURT: Mr. Clark, what you're touching on now leads me to ask: What is the purpose of this legislation in Connecticut? Your basic argument in your brief, and so far in your oral argument, is that this is well within the so-called police power of the State of Connecticut. What is its purpose?

MR. CLARK: If Your Honor please, I think its purpose is to—

THE COURT: To increase the population of Connecticut, or to impair its decrease, or—

MR. CLARK: If Your Honor please, I do not hold that it is to increase the population of Connecticut. I don't think that we could make this claim.

THE COURT: What is it? What is the purpose of this legislation?

MR. CLARK: I think that it's to reduce the chances of immorality, if Your Honor please, and I use the word "immorality" here in a broad sense—that is, in one way, to act as a deterrent to sexual intercourse outside of the marital relationship.

THE COURT: Well, the only trouble with that argument is that, on this record, this involves only married women.

MR. CLARK: This is correct, Your Honor.

THE COURT: So how can you make that argument?

MR. CLARK: Well, if Your Honor please, I think that on this record, that the statute is a valid exercise of the police power.

THE COURT: For what purpose?

MR. CLARK: If Your Honor please, on this record, there is a distinction and there has to be a distinction between birth control and the use of contraceptives. That is to say that all contraceptives involve birth control, but in order to practice so-called birth control one does not have to use contraceptives, and that the State is able to take this position and able to make this distinction, that there are—if it be said, well, should married people be allowed to use these devices, would this not—is not the State going too far? I think the State can answer to that that there are other methods available to married people.

THE COURT: For what purpose under its police power, assuming we're dealing now with married couples?

MR. CLARK: Well, if Your Honor please, going back, Connecticut in the *Nelson* case cited the *Byrne* case in New York, and one of the reasons cited by the Connecticut court and the *Byrne* case was that, as a matter of act, it would not be improper for the legislature to consider that Connecticut, as any State, has the right to look out for its own continuation. This is the population argument. I personally am not too happy with it, but—

THE COURT: Well, what argument are you happy with?

MR. CLARK: I think, if Your Honor please, the only argument we can honestly say is that this is a question of pure power.

THE COURT: Well, do you think the State of Connecticut could prevent marriage?

MR. CLARK: I think the State of Connecticut would prevent marriage in certain people, certain groups, yes. If Your Honor please, between idiots, say, or age in marriage. I think, if Your Honor please—

complements Tom's two landmark books. Together they form a triad of exemplary jurisprudential accomplishment.

V

On December 15 of this year we will celebrate the 200th anniversary of the Bill of Rights. On that day we would do well to ponder what Tom Emerson and David Haber wrote thirty-nine years ago, in the introduction to their book:

The mechanisms of democracy, up to now, have on the whole operated well in the United States. We have applied them with confidence and growing skill. And the results, taken as a whole, have been as good as Milton foresaw they could be. Our people, with significant exceptions, have been more free to live and work and play than probably any other people in history. The nation as a whole has prospered. We have remained an alert and vigorous people, reasonably tolerant, ready to experiment, improvise and adjust. The crucial question before us now is whether, under the new conditions of the modern world which press upon us, we can continue to maintain the practices of democratic freedom or whether we shall abandon them for a stagnant and servile existence.<sup>15</sup>

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THE COURT: But surely you'll agree with me, they couldn't—I should think you'd agree with me, that if the State of Connecticut should say, there'll be no marriages contracted in this State, there'll be no sexual intercourse of any kind, married or unmarried—

MR. CLARK: I agree with you.

THE COURT: Well now, what purpose, what is the police power purpose of Connecticut in telling married people, two people who are married to each other, that they cannot use contraceptives?

MR. CLARK: I think, if Your Honor please, it's just to preserve morality.

15. EMERSON & HABER, *supra* note 4, at xi-xii.

# Writings of Thomas Irwin Emerson†

## Books

- POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES (1st ed. 1952) (with David Haber); (3d ed. 2 vols. 1967) (with David Haber & Norman Dorsen); (4th ed. 2 vols. 1976) (Norman Dorsen, Paul Bender & Burt Neuborne).
- THE SYSTEM OF FREEDOM OF EXPRESSION (1970).
- TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT (1966).
- YOUNG LAWYER FOR THE NEW DEAL: AN INSIDER'S MEMOIR OF THE ROOSEVELT YEARS (1991).

## Articles

- Fowler Vincent Harper*, 16 OHIO N.U. L. REV. 366 (1989), reprinted from 74 YALE L.J. 600 (1965).
- Access to Classified Information: Constitutional and Statutory Dimensions*, 26 WM. & MARY L. REV. 805 (1985).
- Law as a Force for Social Progress*, 18 CONN. L. REV. 1 (1985).
- Introduction, *National Lawyers Guild v. Attorney General*, 42 GUILD PRAC. 33 (1985).
- Pornography and the First Amendment: A Reply to Professor MacKinnon*, 3 YALE L. & POL'Y REV. 130 (1984).
- The State of the First Amendment as We Enter "1984"*, 97 L.A. DAILY J. 523 (1984).
- Introduction to Symposium, *National Security and Civil Liberties*, 69 CORNELL L. REV. 685 (1984).
- Control of the Intelligence Agencies*, 1983 DET. C.L. REV. 1205 (1983).
- National Security and Civil Liberties*, 9 YALE J. WORLD PUB. ORD. 78 (1982).
- The Power of Congress to Change Constitutional Decisions of the Supreme Court: The Human Life Bill*, 77 NW. U. L. REV. 129 (1982).
- The Affirmative Side of the First Amendment*, 15 GA. L. REV. 795 (1981).
- Should the E.R.A. Be Ratified?*, 55 CONN. B. J. 227 (1981) (with Barbara G. Lifton).
- The Bill of Rights Today* (Public Affairs Comm. Pamphlet No. 489, 1973); (No. 489A rev. ed. 1980).
- First Amendment Doctrine and the Burger Court*, 68 CAL. L. REV. 422 (1980).
- Justice Douglas and Lawyers with a Cause*, 89 YALE L.J. 616 (1980).
- The Right of Privacy and the Freedom of the Press*, 14 HARV. C.R.-C.L. L. REV. 329 (1979).
- ERA: Stretching the Deadline*, HUM. RTS., Fall 1978, at 20.
- Needed: A New Cloak for Intelligence Agencies*, HUM. RTS., Summer 1978, at 14.
- Rights of Minorities and Children: The Limits of the Legal Process*, 53 N.Y.U. L. REV. 1240 (1978).
- Colonial Intentions and Current Realities of the First Amendment*, 125 U. PA. L. REV. 737 (1977).
- Legal Foundations of the Right to Know*, 1976 WASH. U. L.Q. 1 (1976).
- The National Lawyers Guild in 1950-51*, 33 GUILD PRAC. 61 (1976).
- Recent Trends in the Supreme Court of the United States*, JURIST, Apr. 1, 1975, at 106; Apr. 15, 1975, at 134; May 1, 1975, at 99 (in Japanese).
- "Two Ups, Two Downs": On Keeping a Revolution*, 220 NATION 369 (1975).
- Information is Power: The Danger of State Secrecy*, 218 NATION 395 (1974).
- Justice Douglas' Contribution to the Law: The First Amendment*, 74 COLUM. L. REV. 353 (1974), reprinted sub nom., *Douglas: The Longest and the Youngest*, in BILL OF RTS. J., Dec. 1973, at 3.
- On Executive Privilege*, YALE L. REP., Winter 1974, at 27.
- The FBI as a Political Police*, in INVESTIGATING THE FBI 239 (Pat Watters & Stephen Gillers eds., 1973).
- The FBI and the Bill of Rights*, in INVESTIGATING THE FBI 412 (Pat Watters & Stephen Gillers eds., 1973).
- Communication and Freedom of Expression*, SCI. AM., Sept. 1972, at 163.
- The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871 (1971) (with Barbara A. Brown, Gail Falk, & Ann E. Freedman).
- The Federal Bureau of Investigation and the Bill of Rights*, 2 YALE REV. L. & SOC. ACTION 169 (1971).
- In support of the *Equal Rights Amendment*, 6 HARV. C.R.-C.L. L. REV. 225 (1971), reprinted sub nom., *The Constitutional Law View*, in 57 WOMEN L.J. 12 (1971) (reprinting *Hearings on the Women's Equal Rights Amendment Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 298 (1970)).
- The Right to Protest*, in THE RIGHTS OF AMERICANS 208 (Norman Dorsen ed., 1971).

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- Where We Stand: A Legal View*, COLUM. JOURNALISM REV., Sept-Oct. 1971, at 34, *reprinted sub nom.*, *Pentagon Papers and Press*, in BILL OF RTS. J., Dec. 1971, at 5.
- Willard Uphaus: A Committed Man*, RIGHTS, Apr. 1971, at 15.
- Opening Remarks, Symposium, *Points of Rebellion*, 37 BROOK. L. REV. 1 (1970).
- Political Trials*, YALE REV. L. & SOC. ACTION, Winter 1970, at 6.
- Crime: From Society's Failure*, HATCHET ENCOUNTER (Geo. Wash. Univ.), Feb. 1-20, 1968, at 8.
- Freedom of Expression in Wartime*, 116 U. PA. L. REV. 975 (1968).
- Roundtable on Constitutional Law: Comments of Professor Thomas I. Emerson*, 20 J. LEGAL EDUC. 506 (1968).
- Judicial Protection of the Civil Rights Demonstrator*, 26 GUILD PRAC. 1 (1967).
- Presentation of Franklin Delano Roosevelt Award to George W. Crockett, Jr.*, 26 GUILD PRAC. 25 (1967).
- Speech Without Assembly? The Court v. the Demonstrators*, 203 NATION 704 (1966).
- Fowler Vincent Harper*, 74 YALE L.J. 601 (1965).
- In Action and in Writing*, RIGHTS, Feb. 1965, at 11.
- Philosopher of Freedom*, 25 HUMANIST 55 (1965).
- Nine Justices in Search of a Doctrine*, 64 MICH. L. REV. 219 (1965).
- Teaching at Ole Miss—Selected Problems in Public Law*, YALE L. REP., Fall 1965, at 1.
- Freedom of Association and Freedom of Expression*, 74 YALE L.J. 1 (1964), *reprinted sub nom.*, *Libertad de Asociarse y Libertad de Expresión*, in 34 REV. JUR. U.P.R. 161 (1965).
- An Old Tool of Tyrants*, WASH. POST, Aug. 30, 1964, at E1 (with Eugene Rostow).
- Reapportionment in Connecticut*, YALE L. REP., Summer 1964, at 5.
- Academic Freedom of the Faculty Member as Citizen*, 28 LAW & CONTEMP. PROBS. 525 (1963) (with David Haber).
- Academic Freedom and Tenure: The University of Illinois*, 49 AM. ASS'N UNIV. PROF. BULL. 25 (1963) (with R. Butts & H. Leon).
- Linder Memorial*, GUILD LAW., Feb. 1963, at 4.
- Toward a General Theory of the First Amendment*, 72 YALE L.J. 877 (1963).
- Malapportionment and Judicial Power*, 72 YALE L.J. 64 (1962).
- Forgotten Remedy for the Voteless Negro*, 192 NATION 55 (1961) (with Arthur E. Bonfield).
- The Impact of the Supreme Court's Decision in the McCarran Act Case*, RIGHTS, Nov-Dec. 1961, at 4.
- The First Amendment: What Factors Should be Considered in Striking the Balance Under Barenblatt*, 20 LAW. GUILD REV. 41 (1960).
- Negro Registration Laws*, 190 NATION 240 (1960).
- The Scopes Case in Modern Dress*, 27 U. CHI. L. REV. 505 (1960) (with David Haber).
- The Doctrine of Prior Restraint*, 20 LAW & CONTEMP. PROBS. 648 (1955).
- The Powers of Congressional Inquiry*, 52 LISTENER 269 (1954).
- Administration of Stabilization Policy*, in INCOME STABILIZATION FOR A DEVELOPING DEMOCRACY 659 (Max F. Millikan ed., 1953).
- In Memoriam Carol King*, 12 LAW. GUILD REV. 54 (1952).
- The Conditions of Democratic Survival*, N.Y. TEACHER NEWS, Apr. 21, 1951, at 3.
- An Essay on Freedom of Political Expression Today*, 11 LAW. GUILD REV. 1 (1951).
- President's Greetings*, GUILD L. STUDENT, Sept. 1951, at 3.
- The Trend of American Democracy*, 11 LAW. GUILD REV. 194 (1951).
- Answer to the Report of the House Committee on Un-American Activities on the National Lawyers Guild*, 10 LAW. GUILD REV. 45 (1950).
- The National Lawyers Guild: Legal Bulwark of Democracy*, 10 LAW. GUILD REV. 93 (1950).
- The Role of the Guild in the Coming Year*, 10 LAW. GUILD REV. 1 (1950).
- Segregation and the Equal Protection Clause*, 34 MINN. L. REV. 289 (1950).
- Segregation and the Law*, 170 NATION 269 (1950).
- Both Major Parties Split Internally Along Same Lines*, N.Y. DAILY COMPASS, June 14, 1949, at 8.
- Foreword to OETJE ROGGE, OUR VANISHING CIVIL LIBERTIES (1949).
- Reply by the Authors*, 58 YALE L.J. 412 (1949) (with David Helfeld).
- Loyalty Among Government Employees*, 58 YALE L.J. 1 (1948) (with David Helfeld).
- Forward or Backward?*, MACHINISTS, Mar. 1947, at 86.
- Toward a Democratic Labor Policy*, 7 LAW. GUILD REV. 6 (1947).
- Ration Robbers*, AM. MAG., Sept. 26, 1943, at 26.



## Book Reviews

- 74 COLUM. L. REV. 131 (1974) (reviewing RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973)).
- WASH. POST, Dec. 21, 1971, at C9 (reviewing MARCUS RASKIN, *BEING AND DOING* (1971)).
- 211 NATION 55 (1970) (reviewing RICHARD HARRIS, *JUSTICE: THE CRISES OF LAW, ORDER, AND FREEDOM IN AMERICA* (1970)).
- SATURDAY REV., Jan. 17, 1970, at 29 (reviewing MELVIN RADER, *FALSE WITNESS* (1969); ARTHUR V. WATKINS, *ENOUGH ROPE* (1969); and MICHAEL PARENTI, *THE ANTI-COMMUNIST IMPULSE* (1970)).
- 77 POL. SCI. 267 (1962) (reviewing OTTO KIRCHHEIMER, *POLITICAL JUSTICE: THE USE OF LEGAL PROCEDURE FOR POLITICAL ENDS* (1961)).
- 53 LAW LIB. J. 70 (1960) (reviewing CLEMENT VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP AND THE RESTRICTIVE COVENANT CASES* (1959)).
- 34 TUL. L. REV. 857 (1960) (reviewing S.A. DE SMITH, *JUDICIAL REVIEW OF ADMINISTRATIVE ACTION* (1959)).
- 4 HOW. L.J. 143 (1958) (reviewing MILTON KONVITZ, *FUNDAMENTAL LIBERTIES OF A FREE PEOPLE: RELIGION, SPEECH, PRESS, AND ASSEMBLY* (1957) and WALTER BERNS, *FREEDOM, VIRTUE AND THE FIRST AMENDMENT* (1957)).
- 9 J. LEGAL EDUC. 144 (1956) (reviewing CHARLES P. CURTIS, *THE OPPENHEIMER CASE: THE TRIAL OF A SECURITY SYSTEM* (1955)).
- 29 TUL. L. REV. 810 (1955) (reviewing WILLIAM R. BEANEY, *THE RIGHT TO COUNSEL IN AMERICAN COURTS* (1955)).
- 65 YALE L.J. 133 (1955) (reviewing BIBLIOGRAPHY ON THE COMMUNIST PROBLEM IN THE UNITED STATES (1955) and DIGEST OF THE PUBLIC RECORD OF COMMUNISM IN THE UNITED STATES (1955)).
- RIGHTS, Nov. 1954, at 12 (reviewing HUBERT H. WILSON & HARVEY GLICKMAN, *THE PROBLEM OF INTERNAL SECURITY IN GREAT BRITAIN* (1954)).
- 13 LAW. GUILD REV. 139 (1953) (reviewing ROBERT L. HALE, *FREEDOM THROUGH LAW* (1952)).
- 5 J. LEGAL EDUC. 261 (1952) (reviewing KENNETH C. DAVIS, *ADMINISTRATIVE LAW* (1951) and FRANK E. COOPER, *ADMINISTRATIVE AGENCIES AND THE COURTS* (1951)).
- 36 CORNELL L.Q. 191 (1950) (reviewing A.S. MONRONEY, ET AL., *THE STRENGTHENING OF AMERICAN POLITICAL INSTITUTIONS* (1949)).
- 59 YALE L.J. 581 (1950) (reviewing EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME* (1949)).
- 58 YALE L.J. 1414 (1949) (reviewing HORACE E. READ & JOHN W. MACDONALD, *CASES AND OTHER MATERIALS ON LEGISLATION* (1948)).
- 1 J. LEGAL EDUC. 328 (1948) (reviewing EDWARD BROWN, *LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE* (1948)).
- 97 U. PA. L. REV. 144 (1948) (reviewing *TO SECURE THESE RIGHTS, THE REPORT OF THE PRESIDENT'S COMM. ON CIVIL RIGHTS* (Gov't Print. Off. 1947) and ROBERT K. CARR, *FEDERAL PROTECTION OF CIVIL RIGHTS: QUEST FOR A SWORD* (1947)).
- 61 HARV. L. REV. 199 (1947) (reviewing MILTON KATZ, *CASES AND MATERIALS ON ADMINISTRATIVE LAW* (1947)).
- NEW REPUBLIC, June 2, 1947, at 26 (reviewing WILLIAM MCCUNE, *THE NINE YOUNG MEN* (1947) and CHARLES CURTIS, *LIONS UNDER THE THRONE*).
- 56 YALE L.J. 1094 (1947) (reviewing GEORGE P. GALLOWAY, *CONGRESS AT THE CROSSROADS* (1946)).

## Briefs

- Motion for Leave to File Brief Amicus Curiae of Certain Law Professors, *City of Akron v. Akron Center for Productive Health, Inc.*, 462 U.S. 416 (1983).
- Brief Amicus Curiae for Twenty-Seven Members of Congress, *New York Times Co. v. United States*, 403 U.S. 713 (1971) (with Bob Eckhardt).
- Brief for Appellants, *Griswold v. Connecticut*, 381 U.S. 479 (1965) (with Catherine G. Rorabeck).
- Brief of the National Lawyers Guild as Amicus Curiae, *Communist Party of the United States v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961).
- Brief for Appellant, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (with William L. Phinney).
- Brief of Committee of Law Teachers Against Segregation in Legal Education as Amicus Curiae, *Sweatt v. Painter*, 339 U.S. 629 (1950) (with John P. Frank, Alexander Frey, Erwin N. Griswold, Robert Hale, Harold Havighurst & Edward Levi).

## Congressional Hearings

- Statement entitled *Espionage Laws and Leaks* in *Hearings Before the Subcomm. on Legislation of the House Permanent Select Comm. on Intelligence*, 96th Cong., 1st Sess. 164 (1979).
- Testimony concerning *The Equal Rights Amendment Extension* in *Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 95th Cong. 2d Sess. 114 (1978).
- Testimony in *Hearings on the Women's Equal Rights Amendment Before The Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 298 (1970).
- Statement in *Hearings on Nomination of James P. Coleman, of Mississippi, to be a U.S. Circuit Judge for the Fifth Circuit Before a Special Subcomm. of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. 47 (1965).
- Testimony in *Hearings on H.R. 3903 and H.R. 7595 Before the House Comm. on Un-American Activities*, 81st Cong., 2d Sess. 2252 (1950).

## Articles Written About Thomas Irwin Emerson

- Guido Calabresi, *Tom Emerson: The Scholar as Hero*, 101 YALE L.J. 315 (1991).
- Norman Dorsen, *In Memory of Tom Emerson*, 101 YALE L.J. 317 (1991).
- Louis H. Pollak, *Thomas I. Emerson: Pillar of the Bill of Rights*, 101 YALE L.J. 321 (1991).
- Patricia M. Wald and Peter M. Gerhart, *Thomas I. Emerson: A Dedication*, 38 CASE W. RES. L. REV. xv-xix (1988).
- Guido Calabresi, *Tom Emerson: Law in the Service of Justice*, 38 CASE W. RES. L. REV. 477 (1988).
- Melvyn R. Durchslaq, *Misuse of Separation of Powers Theory in Cases Outside the System of Freedom of Expression*, 38 CASE W. RES. L. REV. 496 (1988).
- Jonathan L. Entin, *The Law Professor as Advocate*, 38 CASE W. RES. L. REV. 512 (1988).
- John P. Frank, *Tom Emerson: The Constructive Advocate*, 38 CASE W. RES. L. REV. 537 (1988).
- Ann E. Freedman and Sylvia A. Law, *Thomas I. Emerson: A Pioneer for Women's Equality*, 38 CASE W. RES. L. REV. 539 (1988).
- William P. Marshall, *The Dilution of the First Amendment and the Equality of Ideas*, 38 CASE W. RES. L. REV. 566 (1988).
- Burt Neuborne, *Notes for a Theory of Constrained Balancing in First Amendment Cases: An Essay in Honor of Tom Emerson*, 38 CASE W. RES. L. REV. 576 (1988).
- Marlene A. Nicholson, *Basic Principles or Theoretical Tangles: Analyzing the Constitutionality of Government Regulation of Campaign Finance*, 38 CASE W. RES. L. REV. 589 (1988).
- Victor Rabinowitz, *The National Lawyers Guild: Thomas Emerson and the Struggle for Survival*, 38 CASE W. RES. L. REV. 608 (1988).
- Charles A. Reich, *Affirmative Action for Ideas*, 38 CASE W. RES. L. REV. 632 (1988).
- Aviam Soifer, *"Toward a Generalized Notion of the Right to Form or Join an Association:" An Essay for Tom Emerson*, 38 CASE W. RES. L. REV. 641 (1988).
- Mark G. Yudof, *Personal Speech and Government Expression*, 38 CASE W. RES. L. REV. 671 (1988).
- Bibliography, *Writings of Thomas I. Emerson*, 38 CASE W. RES. L. REV. 729 (1988).
- Pierre J. Schlag, *An Attack on Categorical Approaches to Freedom of Speech*, 30 UCLA L. REV. 671, 721 (1983).
- Martin Redish, *Advocacy of Unlawful Conduct and the First Amendment: In Defense of Clear and Present Danger*, 70 CAL. L. REV. 1159, 1190 (1982).
- Bibliography, *Writings of Thomas I. Emerson*, 85 YALE L.J. 467 (1976).
- Norman Dorsen, *Thomas Irwin Emerson*, 85 YALE L.J. 463 (1976).
- Louis H. Pollak, *Thomas I. Emerson, Lawyer and Scholar: Ipse Custodiet Custodes*, 84 YALE L.J. 638 (1975).