to be worthy of reference.²⁰) As it is, this basic problem remains in so abbreviated and attenuated shape that the students are left in a haze as to the nature of the problem, not to speak of the philosophy involved and its practical implementation in day-to-day litigation.

As I have shown, my attitude toward the book is unfortunately ambivalent. There is so much of good and interest and careful preparation in it that I should like to join in its general acclaim.²¹ So I do to a large extent. But I cannot avoid some query as to whether it provides the intellectual exercise to arouse the student's imagination and secure his permanent and abiding interest. And I end with concern lest undue brevity in detail may stimulate affirmative reactions with undesirable effects in the procedural field.

CHARLES E. CLARK†

RISKS AND RIGHTS IN PUBLISHING, TELEVISION, RADIO, MOTION PICTURES, ADVERTISING, AND THE THEATER. By Samuel Spring. New York: W. W. Norton, 1952. Pp. xviii, 385. \$7.50.

IN the last issue of the JOURNAL, this reviewer discussed a book by Alexander Lindey¹ having much in common with Mr. Spring's work. Both books deal with the law protecting intellectual creations; both are intended primarily for laymen rather than lawyers; both cite cases at the end of the book to support points made in the respective chapters; both are by practicing lawyers in the so-called entertainment branch of the law. The similarities, however, end here.

Mr. Lindey's book is limited to a single branch of this broad field of law, namely, plagiarism; Mr. Spring's work runs the whole gamut in its five parts: Right of Privacy (31 pages); Defamation (34 pages); Copyright (155 pages, of which two chapters cover plagiarism—pp. 177-88; 213-28); Unfair Competition (24 pages), and Television, Ideas, and Censorship (50 pages). With so much to cover, Mr. Spring is forced to rush through his subjects at a rate that leaves little room for an easy style on the one hand, or complete legal analysis on the other. Yet many portions of the book are provocative and worth noting.

20. Thus citation of the writings of Professor J. W. Moore, except as they appear in reported cases, is limited to a few inconsequential matters.

21. Murrah, Book Review, 38 A.B.A.J. 754 (1952); Medina, *Judicial Administration and the Law Schools*, 40 KY. L.J. 359 (1952); Winters, Book Review, 36 J. AM. JUD. SOC'Y 61 (1952); Rooney, Book Review, 27 ST. JOHN'S L. REV. 195 (1952); De Witt, *Chief Justice Vanderbilt's "Cases and Materials on Modern Procedure and Judicial Administration,"* 7 THE RECORD 450 (1952); Parker, Book Review, 5 J. LEGAL EDUC. 265 (1952).

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1. PLAGIARISM AND ORIGINALITY (1952); see Review, 62 YALE L.J. 126 (1952).

The chapter on Defamation urges that the distinction between libel and slander be abolished as archaic in view of modern means of mass communication such as radio and television; this supports the arguments advanced by Judge Fuld in his concurring opinion in *Hartmann v. Winchell*.² The discussion of the scope of fair comment³ should prove useful to critics and editors. An interesting summary of statements which have been the subject of libel litigation appears at pages 62-6.

An excellent analysis by Mr. Spring of some of the shortcomings of existing copyright legislation is hidden away in a chapter entitled "Protection of Manuscripts and Rights of Authors."⁴ The treatment of the subject merits a part of the book standing by itself.

A brief chapter is devoted to Musical Compositions and Mechanical Reproductions.⁵ We cannot agree with the author's distinction between so-called "grand rights" and "small rights." Those terms are used loosely in the industry to indicate a European distinction between the rights of "representation" of dramatic works, and the right of "execution" of individual musical compositions. That is as close as we can come to the distinction in this brief review. There is really no such distinction in our law. Our nearest approach to it is in the separation of dramatic and non-dramatic performing rights. Mr. Spring tells us that grand rights include "the right to publish the score or sheet music . . . also the right to record for records sold for home playing or public use."⁶ This reviewer has never before heard the term used to include either of these rights. In fact it is quite customary for the ownership of the so-called grand or dramatic rights in musical shows to be completely separate from the publishing or recording rights respecting the individual songs in the show. After giving us his definition of these rights the author tells us: "The distinctions between the two rights . . . fluctuate in practice and change by reason of changing practices in the trade, and as a result of antitrust prosecutions by the United States government against ASCAP."⁷ No authority is cited for this statement; indeed it is entirely without foundation.

While on the subject of ASCAP, in which this reviewer may be charged with having a partisan interest, we should point out that Mr. Spring suggests that ASCAP's rates be regulated by the Register of Copyrights "or some similar public authority" in order to protect the right both of the public and the composers.⁸ He is apparently unaware of the fact that ASCAP's Consent Decree entered in the United States District Court for the Southern District

2. 296 N.Y. 296, 300; 73 N.E.2d 30, 32 (1947).

3. Pp. 56-9.

4. Pp. 276-84.

5. Pp. 189-99.

6. P. 192.

7. *Ibid.*

8. P. 196.

of New York on March 14, 1950, provides that the court may determine such rates on the application of any user, and that such an application by certain telecasters is now pending. Mr. Spring might have cited in support of his proposal a Canadian law which provides for the annual determination of such rates by a Copyright Appeal Board.⁹

In discussing "risks and rights" as applied to models, Mr. Spring indicates that the modeling profession "was given legal impetus and reality" by the passage of Sections 50 and 51 of the New York Civil Rights Law in 1903 (the "right of privacy" statute); he says that "[w]ithout the statute, a pretty girl would not have an exclusive right in the public use of her face or figure."¹⁰ It is rather novel to consider the right of privacy in this light, that is, as giving commercial value to a pretty figure. The more usual view is that the right of privacy is meant to protect people who want to be let alone, rather than to give something of commercial value to those who purposely pose in public for financial gain. The only case cited by Mr. Spring, *Gautier v. Pro-Football, Inc.*¹¹ holds that one who appears professionally in public for pay may not resort to the "right of privacy" statute to recover damages sustained in his *professional* capacity by an unauthorized reproduction of his exhibition. It would appear that if the modeling profession owes any debt to the New York legislature, it is because the legislature has deprived advertisers of the right to make an unauthorized use of the photograph of the ordinary citizen, thus paving the way for a professional class whose income is derived from selling the consent required by the statute. Beyond that, it is believed that a model has little occasion to refer to Sections 50 and 51 of the New York Civil Rights Law.

Returning to the *Gautier* decision, Mr. Spring questions its soundness. He also takes issue with several other decisions which have narrowly construed the New York privacy statute on the ground that freedom of the press should not be curtailed. Mr. Spring suggests, with an eye to the decisions handed down in the *Sidis*¹² and *Molony*¹³ cases, that courts in the future should adopt a twofold test when deciding cases in which newspapers and periodicals are charged with invading the private lives of publicly known individuals: (a) distinguish between current and stale news; and (b) distinguish the reason for publication (*i.e.*, news reporting or entertainment). Judge Yankwich points out in his recent article on "The Right of Privacy,"¹⁴ however,

9. Copyright Act, 1936, 1 Edw. VIII, c. 28, § 2.

10. P. 14.

11. 21 U.S.L. WEEK 2081 (N.Y. July 15, 1952), *affirming* 278 App. Div. 431, 106 N.Y.S.2d 553 (1st Dep't 1951); cited in Mr. Spring's book at p. 19.

12. *Sidis v. F-R Pub. Corp.*, 113 F.2d 806 (2d Cir.), *cert. denied*, 311 U.S. 711 (1940).

13. *Molony v. Boy Comics Pub., Inc.*, 277 App. Div. 166, 98 N.Y.S.2d 119 (1st Dep't 1950).

14. *The Right of Privacy: Its Development, Scope and Limitation*, 27 NOTRE DAME LAW. 499 (1952).

that it is often difficult to draw a line between what is straight news and what is feature material designed for entertainment purposes.

This is really not a book for lawyers. It will give the layman engaged in the entertainment or advertising fields some inkling of his legal problems, though much of the presentation may be over the heads of most lay readers. However, lawyers are probably not good judges of a layman's reaction to such works. We feel, nevertheless, that it is well for law reviews to consider them. Perhaps some day we will see a law review article on "Law Books Intended for Lay Readers"—and possibly it should be written by a journalist rather than a lawyer.

HERMAN FINKELSTEIN†

UN-AMERICAN ACTIVITIES IN THE STATE OF WASHINGTON. By Vern Countryman. Ithaca: Cornell University Press, 1951. Pp. ix, 405. \$5.00.

IN a memorable address at Freedom House in 1951, Paul Hoffman discussed what may well be the central problem of our time. This is how to resist the communist encroachment of the U.S.S.R. without sacrificing liberty in the United States.

Mr. Hoffman warned against "making criticism socially dangerous." He spoke of people who "are forcing conformity through fear. They are ready to pillory anyone who holds an unpopular view or supports an unpopular cause. . . . In far too many cases, decisions, often decisions in high places, have been influenced by fear. In short, the danger of Communist penetration and disruption has been compounded by the spread of panic." No one reading Paul Hoffman's literate speech could fail to realize he was disturbed over what we call, for want of a better term, "McCarthyism." This refers to the reckless charges made against dissenters and minorities by a succession of figures in the Congress, starting with Martin Dies and running through Parnell Thomas, Senator McCarran, and finally the *ne plus ultra*, Senator Joseph R. McCarthy, lately reelected from the state of Wisconsin.

But this type of "investigation" has occurred not only at the federal level, although there it has attracted the greatest attention and received the most notoriety. McCarthyism can be politically profitable in the states, too. One of the most prolonged state legislative probes into communism occurred in the state of Washington, commencing in 1947, under the leadership of Representative Albert F. Canwell of Spokane County.

This probe has been studied in detail by Vern Countryman, associate professor of law at Yale. The result is a documented case history which should give pause to any American who believes that fundamental civil liberties are safe in the possession of a band of politically-elected officials, armed with the

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