

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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power of subpoena, and girded with the armorplate of legislative immunity from suits for libel or slander.

The general tenor of the Canwell committee's methods probably is best epitomized by Professor Countryman's analysis of the case of Professor Melvin Rader of the University of Washington. A witness before the committee, a professional ex-Communist, identified Rader as having attended a Communist school near New York City for about six weeks in the late summer of 1938. Although the register of a mountain resort in the Cascade Range listed Rader's name during the period he was supposed to be at the Communist school 3,000 miles away, this vital evidence incredibly was concealed by the committee presumed to be searching for the truth in connection with subversive activities in the state of Washington.

Countryman quotes a report by the Attorney General of the state, pointing out that the lodge register and other irrefutable evidence indicated that George Hewitt, the ex-Communist, "did not tell the truth when he testified he had seen Rader at the school in New York. . . ."¹ Rader filed a perjury charge against Hewitt, whom Countryman identifies as an employee of Alfred Kohlberg, the exporter whose financial operations have been associated with the so-called "China Lobby." Through a labyrinth of intrigue Hewitt never was brought to book. Charles O. Carroll, ex-All-American football star and Seattle district attorney, claimed that the Seattle Post-Intelligencer, only Hearst outlet in the Northwest, had promised him editorial support if he would dismiss the case against Hewitt. Carroll declared that a reporter for the Post-Intelligencer, Fred Niendorff, had told him that he (Niendorff) was "the father of the Canwell legislative Committee. . . ."²

Of course, the Canwell committee itself felt that "the perjury charge filed against Mr. Hewitt was not only hasty and unwarranted, but of political significance."³ No mention is made, of course, of any possible political significance to a charge which had threatened to wreck Professor Rader's teaching career, had eaten heavily into his personal finances, and had endangered the health of his wife.

Hewitt never was extradited from New York. The episode showed that it was easier to brand a man as a possible traitor to his country than to obtain redress or revenge for the damage inflicted by such an accusation.

Professor Countryman frequently notes that the approach of the committee was far from judicial and that favored witnesses were allowed wide latitude in their accusations. Howard Rushmore of the Hearst papers, another ex-Communist, submitted a good deal of testimony about his experiences. Chairman Canwell explained that this was thrown in "just for the general welfare." Professor Countryman adds rather wryly:

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1. P. 326.
 2. P. 293.
 3. P. 296.

"But, no matter what action the 'general welfare' may require on these matters, that action cannot conceivably be brought within the scope of any legitimate function of the Legislature of the state of Washington."⁴

Although the people labeled as communists might be injured in reputation for all time to come, Professor Countryman contends that the accusatory testimony under oath by many committee witnesses

"reveals that frequently when they characterized meetings as 'Communist,' 'unit,' or 'fraction' meetings, or when they named people as members of the Communist Party, they were not testifying from personal knowledge, but were merely offering their own opinions or the opinions of someone else, without in either case being called upon to disclose any factual basis for the opinions."⁵

As a lawyer, Professor Countryman is properly shocked by the twilight realm in which the legislative committee operated, a realm where prejudice was often indistinguishable from facts presumed to be true.

With the possible exception of the case of Professor Rader, the outcome of the Canwell hearings which stirred the most controversy was the series of tenure proceedings on the campus of the University of Washington.

Three faculty members were dismissed by the Board of Regents on the basis of recommendations by the President of the University, Raymond B. Allen, who since has resigned. The Allen recommendations were evidently concurred in somewhat ambiguously by a faculty committee on tenure and academic freedom, although there is sharp disagreement over this fact in Seattle even now.⁶ More than one faculty member, not personally involved in the controversy, was caught in a vise which pinched his conscience more than any visible portion of the anatomy.

When President Allen suggested dismissal of the controversial teachers, he made a good deal of the point that they had concealed alleged membership in the Communist Party. It seems to this reviewer that Professor Countryman very properly points out that "[i]f a member of the Communist Party is disqualified for teaching because his membership involves commitments to the party which deprive him of his freedom 'to seek the truth wherever it shall lead,' he is not less disqualified when his membership is disclosed than when it is concealed."⁷

Professor Countryman is critical of President Allen's "patently unsupportable assumption upon which [he] bases his position that all members of the

4. P. 340.

5. P. 341.

6. In the case of one of the three faculty members, Professor Gundlach, Professor Countryman believes that some of the testimony against him was by persons of dubious authenticity, although he admits that Gundlach's own testimony was "not such as to inspire great confidence in his credibility, either." P. 360.

7. P. 371.

Communist Party are, solely because of party membership, disqualified as teachers."⁸ Countryman does not agree that a member of the party *ipso facto* is unable to seek the truth because of that membership, and he quotes in indorsement of his position an article by Professor Alexander Meiklejohn in the New York Times Magazine.

There is validity to all that Countryman writes, and yet I wonder if he is sufficiently tolerant of the vicissitudes confronting the president of a state-supported university in an hour when American boys are being killed by communists on the battlefield in Korea? It seems to me a college executive can defend American civil liberties and yet take the position that Communist Party members should not be allowed to teach on the faculty of his school.

I regard myself as a defender of civil liberties. I cast one of the five votes in the Oregon State Senate against a teacher's oath bill and have been re-elected to do so again, if necessary. Yet I seriously question the contention that our Bill of Rights is in jeopardy if a Communist is excluded from the teaching staff of a school supported with taxpayers' funds.

Professor Countryman cites as a minor premise the claim that a member of the Communist Party is dedicated to suppressing the very freedom which our existing order guarantees and which allows him to operate. Then he concludes: "This is a counsel that we should qualify the very freedom we are trying to protect by withdrawing protection from the pursuit of ideas which are dangerous to freedom. To follow that counsel is to abandon one of the chief distinctions that sets us apart from totalitarian regimes. . . ."⁹

The argument is persuasive, but I believe that, if carried to an ultimate conclusion, it could lead to the downfall of the freedom to which Professor Countryman is dedicated. The examples of countries which have succumbed from within to communism cannot wholly be disregarded.

Professor Countryman is a stern taskmaster. Perhaps that is required in an hour of much cowardice and compromise. Yet many of his judgments are all black or all white and admit of no shading. He is nearly as critical of the Seattle Times as of the Seattle Post-Intelligencer, and yet the Times helped to uncover a good deal of the evidence which eventually cleared Melvin Rader. His criticism of the Times stems from the fact that it did not publish the evidence until the president of the University had accepted it. I would say that this is looking a gift horse in the face, especially in view of the witch-hunting proclivities of the rival Post-Intelligencer. Part of understanding the problems of a democracy is to understand the tensions and stresses under which the servants of a democracy must function.

I also would disagree with Professor Countryman's somewhat smug satisfaction over the defeat of State Representative Canwell for the U.S. Senate nomination in 1950. Canwell lost the Republican Senatorial nomination by

8. P. 377.

9. P. 380.

only 2,500 votes to W. Walter Williams, now a leading Eisenhower consultant, in a statewide race. In view of the fact that Canwell came from the sparsely-populated "east side" of the Cascade Range, whereas Williams was a resident of Seattle, this was considered a strong showing. The only factor which could have made Canwell a contender was the publicity resulting from his chairmanship of the Un-American Activities Committee.

In 1952 Canwell won the nomination of the Republicans for Congressman-at-large. He lost the election by a slender margin to a Seattle Times reporter named Magnuson. This could be considered hopeful, in view of the Republican landslide. Yet here again, Canwell, from the least populous portion of the state, was pitted against a Seattle opponent. In addition, Magnuson is one of the most widely-known names in Washington state politics. Furthermore, it is a Scandinavian name, in a state with a larger proportionate Swedish and Norwegian minority than any other except Minnesota.

I would say that Mr. Canwell's activities in "investigating" subversives in the state had paid him well politically, even if the result to the state as a whole has not been quite so salutary.

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PROBLEMS OF THE FAMILY. By Fowler V. Harper. Indianapolis: Bobbs-Merrill Co., 1952. Pp. x, 806. \$9.00.

[Because the contents of this volume are drawn from several disciplines, the JOURNAL presents reviews by representatives of four professions: a psychiatrist, a law professor, a social work educator, and a domestic relations judge].

IN the preface to his book, Mr. Harper questions the validity of the concept of fault underlying the moral, religious, and legal sanctions which our society imposes for the regulation of the family. He suggests that family relations and their disorders are associated with complex, multi-determined, social and biopsychic factors, and that legal study of family problems should be enriched with appropriate source materials from the biological, social, and psychological sciences.

To his cases and text notes on the legal problems of family, marital, and sexual relations, Mr. Harper has therefore added a judicious selection of readings from the fields of psychiatry, sociology, and cultural anthropology. In these fields, behavior is evaluated on the basis of deterministic thinking, *i.e.*, as the resultant of causes or forces in the life history of the individual and of the pressures and demands of his socio-economic milieu. It is evident from the readings that the social and psycho-biological sciences are not interested in

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