

## BOOK REVIEWS

**THE STATES AND SUBVERSION.** Edited by Walter Gellhorn.  
New York: Cornell University Press, 1952. Pp. 454, \$4.50.

"The States and Subversion" is the professors' case against recent state legislative committee investigations in the field of subversion. This volume discusses recent efforts in six representative states to forestall subversive activities, concluding that the states need no further legislation and need "merely to enforce the large body of laws that concentrate on actions instead of opinions and associations." It deprecates pushing "the Academic world into turmoil" in search for illusory "communists."

The educators do not help their case by ridiculing the poor grammar in the reports of those whom they criticize. Nor will the public be satisfied merely by asserting that there is no longer a "communist" problem, or that the problem will be solved eventually by "free speech and education," or by the relief of poverty or the re-distribution of wealth.

"Nowhere has concern about subversive activities been more steadily manifest than in the educational processes," laments the Report. Should not our educational system, as well as the nation, take pride in this fact? The Report also emphasizes that the public is very much aroused over subversion. Is it not heartening to those who believe in our form of government that there should be such concern over the possibility that it is thus threatened? The mere suggestion that a subversive organization existed behind the Iron Curtain would bring hope and joy to millions of Soviet dominated peoples.

Admitting that there is, unfortunately, too great a reliance in this country upon the mere enactment of a law to solve an immediate problem, this applies to all fields of activity. Admitting, also, that there is abuse of the system of legislative hearings and investigations, this also is general, and a better method of helping the appropriate legislative agency to obtain facts has not been suggested. It is said, in the conclusion, that the studies show that "hearings have rarely been held for the purpose of inquiring" but to "publicize conclusions already reached." Now, if the author were in the New York legislature and believed that the Ives Loyalty Oath, for example, was unwise, would he not, if he obtained appointment as chairman of a committee on that matter, "investigate in order to substantiate the position already adopted?" We must be reasonable enough to recognize that the basis for legislative investigations is the assumption that the law-making body may be able to remedy an alleged ill by enactment of proposed legislation. The full legislative body determines whether the proposed legislation is justified sufficiently to warrant enactment.

The committees appear also to be unjustly charged with seeking "loyalty oath" and "registration" legislation, after learning that "communists" are difficult to detect because the use of deceit and falsehood is considered a proper means to their end. At least one purpose of such tame laws, however, like the registration of firearms and certain other criminal laws, is to enact a measure which will trap the criminal-minded. It is assumed that the innocent will comply but that the criminal will evade or lie. Perhaps it is unfortunate, but the fact remains that a large part of our gangsters are apprehended under income tax laws or interstate transportation laws, because of the problem of proof or the difficulty of apprehension for the major crime.

The conclusion discusses "communists" at length, with the indefensible (for educators) failure to clarify the meaning as used. It is clear that the problem of "subversion" involves two groups, both loosely designated as "communists"—those who advocate the overthrow of our government by force and those who are not loyal to this country. One group is interested primarily in destroying our *government*; the other, international in character, would willingly betray the *nation*. Today the latter seems to be generally coupled with allegiance to the Soviet dictatorship. Says the Report, "evidence that an instructor is a communist has . . . been taken, standing quite alone, as conclusive proof that he has frittered away his economic freedom." Why not, if he is a Soviet communist? But the "communist" professor whom the Study seeks to protect is the text-book "communist" of 1900. So also, the Report concludes that communism is a waning issue now, because it has little more "allure for idealists." "One may accept, too, that among communists there are individuals who might readily embrace espionage or sabotage as instruments of political action," the Report continues. Certainly, if we pay any attention to Father Karl and Uncle Joe, there is no such thing as a "communist" who is not willing to commit sabotage and espionage, and to bury what we refer to in our language as "ideals."

"Excessive pre-occupation with subversion" on the part of the public is considered a valid criticism because the authors believe that "freedom" of the individual (the professor's freedom) has sometimes been threatened by overzealous patriots. Little consideration is given to the "Republican form of Government" also guaranteed by our Constitution, which the public appears to consider as the basic protection for the private freedoms. The dilemma of protecting our constitutional guarantees of personal liberty without preventing the growth and spread of those groups which, acting under the protection of that liberty, seek, when the time is ripe, to overthrow the system protecting the guarantees, will always be with us.

This Study is helpful in emphasizing, also, the political nature of legislative committees, the difficulty of defining "subversive activities," the very considerable existing legislation on the subject, and the problem of "anticipatory legislation," of conspiracies, and of guilt by association (is a

"communist" a "communist," is a "Nazi" a "Nazi"?). It is also helpful in disclosing that educators can be almost as zealous and unreasonable in seeking to protect academic freedom as are some recent state legislative committees in endeavoring to protect the source of these freedoms.

This volume is but one of a series sponsored by the Rockefeller Foundation and designed to set forth the impact upon our civil liberties of the present programs designed to insure internal security. The final report obviously will present the problem from a broader viewpoint, and may endeavor to clarify some of the problems raised. Unless a sympathetic understanding is expressed of that which the public believes to be the major present danger, however, it is possible that the usefulness of this study will be minimized by the same criticism which the Professors have levelled at the opposition.

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**CASES AND MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION.** By Arthur T. Vanderbilt. New York: Washington Square Publishing Corp., 1952. Pp. 1390, \$8.50.

"Modern Procedure and Judicial Administration," by Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, is so much more than a "Casebook" that to title it as such is almost misleading. The compilation of cases is secondary to the text as a guide to a right understanding by a student of Law of the value of procedure and judicial administration to him in his future life as a practicing lawyer.

When Chief Justice Vanderbilt undertakes a job, the record shows that it will be done more comprehensively and better than any other similar assignment has been done up to then. This book conforms to this record.

Up to now the graduate of the average law school in these United States has packed up his degree, with or without honors, and entered his career in the field of law, generally without a compass to guide his steps in the direction of the creation and sale of a legal product of the quality required to produce results from which to realize a living wage. The compass which has been lacking is now adequately provided in this latest volume produced from that inexhaustible store of knowledge and wisdom lodged in the mind of Chief Justice Vanderbilt.

On page xviii of the "Preface" the Chief Justice says:

"In procedure above all other courses in the law school curriculum it is essential that the student gain a panoramic view of the entire subject. A grasp of pretrial procedures will not make up for a lack of knowledge of trials or an understanding of trials for ignorance of ju-

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dicial review. The number of *fundamental* questions to be answered in the course of any case is few, ten in fact: (1) *in what court may suit be brought—jurisdiction*; (2) *who may sue whom—parties*; (3) *where may suit be brought—venue and transfer of cases*; (4) *how to get the defendant or his property into court—process*; (5) *what relief is sought—remedies*; (6) *how to state the controversy—the pleadings*; (7) *how to prepare for trial—pretrial procedures*; (8) *how to litigate the controversy—the trial*; (9) *how to correct trial errors—judicial review*; and (10) *how to enforce a judgment—execution*. There are a considerable number of subordinate questions, however, which cluster around each of these ten fundamental inquiries and it is important for the student to become acquainted with them as soon as possible. One of the marks of a real lawyer is to know the question in a case when he meets it, and this he can do only when his study has familiarized him with the variety of questions which arise in concrete cases.”

In the past the teaching of Procedure frequently has been a chore to the faculty member burdened with the assignment and to the student resentfully taking the course. To the student, it was largely the study of what appeared to be a dead language or an attempt to understand mechanical processes which had no apparent application to most of the other subjects of the law school curriculum.

Without an adequate knowledge of procedure, graduates of law schools have entered upon their practice with fear, if practicing alone, or with a definite inferiority complex, if part of a seasoned organization of older practitioners.

The graduate of a law school of today is not equipped to render full service as a skilled practitioner because of this lack of “know how” to apply his knowledge of substantive law; and so, for a substantial period, he gradually accumulates, in a post law school training largely of “trial and error,” enough knowledge of procedure, including pleading, eventually to attain the ability to act independently without critical guidance.

It has been an accepted conclusion attending the engaging of law school graduates by the managing partner of the larger legal firms in this country that these individuals would not be “worth a damn” for several years as responsible representatives of the firm in trial work; that the controlling reasons for selecting such additions to the organization are the appearance of potential values in personality, intellectual ability, and the need in the organization for easy access to the latest expressions of legal adjudication and contemporary legal thought to aid in the research for modern authorities to support legal opinions and briefs.

A purpose of this book is set forth in the “Preface” (xix) by the Chief Justice in these words:

“This casebook has been compiled with the definite purpose of taking the mystery out of procedure, of showing its significance in the

judicial process as well as in the lawyer's daily life, of exhibiting the most modern system of procedure in operation and demonstrating its essential usefulness as an aid in the investigation and ascertainment of the truth in litigation, and of revealing the progress, or the lack of it, in each state in meeting the minimum standards of judicial administration recommended by the American Bar Association. While the student may be disturbed at how much remains to be done in many states to simplify procedure—and the effort is one in which every lawyer should share and for which every law student should prepare—he should at the same time keep in mind how far we have come from the superstitious mists of trial by ordeal and, only a century ago, from the intricate technicalities of special pleading to a point of reasonable efficiency, at least in the federal system and in some states.”

And on pages 8-9 of the “Introduction” he says:

“I would not have it thought that I am opposed to teaching a law student in due season the essentials of the history of procedure, not, of course, from the standpoint of a legal antiquarian, but as an indispensable prerequisite to a thorough understanding of the development of the law. First, however, I would introduce the student to the best simplified practice of today through the rules of court in which it is embodied and the leading cases interpreting these rules. Having once grasped the fundamentals of modern procedure, he can then explore with more understanding and zest the history of how our present-day procedure came to be what it is—and incidentally be thankful for having been spared learning the cumbersome technicalities of by-gone ages as set forth in Tidd's *Practice*, Chitty on *Pleading*, and Daniell on *Equity Pleading and Practice*, or as laid down in some of our complicated state codes of procedure. In this historical phase of his study he will be interested to see how often what now purport to be new ideas are really very old ones with new names, stripped, fortunately, of the technicalities with which they had become encumbered over the centuries and rededicated to a more efficient use.”

The Chief Justice has used the Federal Rules of Civil and Criminal Procedure as the medium through which to develop the course on Procedure and wisely has he done so. On pages 8 through 12 of the “Introduction” the reasons which he has given are most convincing.

The practice of criminal law has been widely neglected. The activities in that field have been limited to too few lawyers, many of whom have repelled the invasion by others by making a mystery of the criminal law procedure and by enlarging upon the responsibilities of the lawyer unfamiliar with such procedure in the defense of a defendant charged with a major crime. This proposed course, which carries into it the study of procedure in the criminal law, will open a door to a fascinating forum for

many lawyers who could contribute much to the elevation of these activities of the profession and incidentally prove not unprofitable to the participants.

The choice of cases to support the question under consideration is one of the most successful features of the book. By incorporating only decisions of quality in limited numbers, the book sustains the interest of the reader and lays a firm foundation for further research. The Chief Justice no doubt accompanied the insertion of several with a smile reflecting an impish glee, intending them as an uninvited contribution to the education of some of his fellow jurists on the nation's bench of more recent vintage than the writers of these opinions and maybe in need of the guidance which the reading of them should contribute.

The student who has a knowledge of procedure based upon a careful study of this book is fully equipped to assimilate the procedure of the state in which he will practice, and he is able to understand the differences in the rules of his state from the Federal Rules, and the advantages, if any, of maintaining the former or of making them conform more nearly to the Federal Rules.

The impact of such a course taught to the students of all of the major law schools could become the most effective means of stimulating the uniform adoption of the Federal Rules of Civil and Criminal Procedure in states which up to now have resisted such a change. One of the reasons why many states do not follow the Federal Rules is that only a small percentage of the lawyers of such states practice in the federal courts. The increase in litigation in the federal courts, particularly in the large metropolitan centers, in contrast to the volume of litigation in the state courts, is convincing proof of the need for each practicing lawyer to become better acquainted with the rules of federal practice. The lawyers practicing in state courts who do not have reason to use the Federal Rules resent the thought of having them imposed upon their professional life and are irritated at the prospect of having to learn something new as a means to their professional existence. These lawyers frequently have controlling influence in the legislation of their state or over the rule-making by the appellate court of the state, one or the other being necessary for the adoption of changes in rules for state practice. The new generation of practicing lawyers, however, equipped with the knowledge attained in the course of Procedure outlined in the Vanderbilt book, would have an incentive to effect such a change and, if not immediately, would eventually accomplish it.

The book is a most effective professional implement for various uses. The "Table of Contents" is an ideal outline of a trial brief for the practicing lawyer of all ages and experience, and the text and leading cases contained in the book offer a means to complete the trial brief with a minimum of effort. It is a gift from the legal heavens to every law student, whether contemplating the career of a practicing lawyer or that of a member of the legal staff of a large corporation. In the latter group, there can be no doubt but that the vice president in charge of the legal department

will be a more efficient "general" if, by reason of an acquaintance with the Vanderbilt book, he can understand, correct and guide the thinking of the lawyers working with him and for whose efficient performance he is responsible to his corporation.

It is a mandate to the governing body of every law school to cause its faculty, even though reluctant, to include a comprehensive course in Procedure as required in the curriculum of the institution. The trustees should desire to produce a product in graduate students capable of more efficiently conducting their independent practice at an earlier day or more desired as additions to the larger groups of practicing lawyers represented by the law firms of the country.

It is not too difficult to believe that in the not-far-distant future the managing partners of such law firms will embody as an essential question in the basis for appraisal of law school graduates applying for employment the inquiry as to whether a course in Procedure based upon the theories of this book of Chief Justice Vanderbilt was included in the required courses of the law school from which the applicant graduated and what record the applicant made in such required courses. After all, law schools advance in stature by the record made by their graduates, and the placement of the entire graduating class may, in the future, be determined by the quality of the service which each individual in it is capable of rendering in the field of procedure.

Beginning on page 1226 the analysis of "The Basic Responsibilities of the Lawyer" carries a message to lawyers of all ages which each could read with keen interest and real profit.

I close the reading of my copy of this book with a sense of deep regret that it was not made longer by the inclusion of "Forensic Persuasion," the Tucker Memorial Lectures of the Chief Justice at Washington & Lee University, which all lawyers and law students should read. I am tempted to believe that if in my early days of practice I had had the benefit of the influence and guidance of this contribution of the Chief Justice to the welfare of the legal profession and the efficient discharge of its obligations to the public, I might have been equipped to convince more juries and might have lost fewer cases in the appellate courts. Even now the reading of it stirs a desire to begin anew to be a better trial lawyer.

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