

CORNELL CIVIL LIBERTIES
STUDIES
-----Background information

In 1948, The Rockefeller Foundation voted a grant of \$110,000 to Cornell University for a study of the relation of civil rights to the control of subversive activities. To permit completion of this work, three additional grants were made, \$20,000 in 1950, \$6,000 in 1951, and \$3,500 in 1952. The Director of the Survey was Dr. Robert E. Cushman, Chairman of the Department of Government at Cornell and formerly President (1943) of the American Political Science Association. Dr. Cushman chose his own assistants, although Foundation officers knew who the major ones (~~including Walter Gellhorn~~) were to be before the first grant was made.

This was not the first time that the Foundation had concerned itself with the question of civil liberties. In 1944 and 1947 grants totaling \$28,000 had been made to Cornell for a study of civil liberties in wartime, headed also by Dr. Cushman. This wartime study embraced questions relating to the civil rights of enemy aliens, of conscientious objectors, and of civilians under martial law.

The idea of the postwar study originated with Robert M. Hutchins, then Chancellor of the University of Chicago, who called on JHW and left a memorandum asking for a grant of \$50,000 to enable the University of Chicago to make the study. JHW pointed out to RMH that Dr. Cushman had been making studies of civil liberties in wartime under a Foundation grant and said he would like to obtain Cushman's critical judgment of the Chicago proposal.

The letter of comment from Cushman was so sensible and judicial that JHW felt justified in suggesting to Hutchins that Cushman be asked whether he would be prepared to undertake the study at Cornell. Hutchins, with complete generosity of spirit, agreed.

Purpose of study

The purpose of the study was set out by the officers in the 1948 docket as follows: "The research program proposed by Professor Cushman involves studies of the loyalty program in the Executive Branch of the Government, the loyalty tests of scientists, the federal legislative loyalty program and the state loyalty programs as they relate to civil rights. It is the expectation of those concerned that the results of this research will provide a sound factual basis for objective appraisal and criticism of the procedures under examination, as well as proposals of a constructive nature designed to correct discovered abuses of shortcomings..."

The purpose was stated in greater detail by Dr. Cushman in an article in the Cornell Alumni News of October 1, 1950: "This study was set up to explore one of the crucial and perennial problems confronting our American democracy -- the problem of determining the extent to which we are justified, in concrete situations, in restricting our traditional civil liberties in order to guarantee our internal security. No thoughtful person denies the existence of dangers to our security or the need for dealing with them effectively. But if the principle is sound -- as I think it is -- that a democratic government should sacrifice as little liberty as possible in order to be safe, then there seems good ground for studying with dispassionate care our various internal security measures in order to find out how they

actually operate, to what extent they impair freedoms previously enjoyed, and whether changes might be suggested for their improvement. This is what our study undertakes to do.

"This project is in no sense a crusade, or an attack. From the outset its basic purpose has been to do an honest and objective job of reporting on what the government's various programs for internal security and the control of subversive activity actually are; how they are presently operating; what are their advantages and achievements as well as their liabilities; and what, if anything, might reasonably be suggested for their improvement. We had no conclusions in mind when we started, and with regard to our unfinished reports we do not yet know what our conclusions will be... I need hardly point out that the problems with which this study deals are highly controversial. There will be sharp disagreement among thoughtful people with regard to some of our conclusions and proposals. People who are emotional rather than thoughtful will, in some cases, feel that it is unpatriotic to undertake such a study as this, since it might result in some criticism of the Loyalty Program or the work of the House Committee on Un-American Activities. Our greatest hope is that a good many people will be able to read our reports and think seriously about the problems with which they deal. We are much less interested in having people agree with us than we are in placing in the hands of our fellow citizens reliable material upon the basis of which they may reach what seem to them to be sound and fair judgments upon these very important national problems which may affect us all."

Studies published

The following studies have been published:

Security, Loyalty and Science, by Walter Gellhorn, Columbia University Law School

* The Tenney Committee, by Edward L. Barrett, Jr., University of California Law School

* Un-American Activities in the State of Washington, by Verne Countryman, Yale Law School

* Loyalty and Legislative Action, by Lawrence H. Chamberlain, Columbia University Law School

** The States and Subversion, partly written and partly edited by Walter Gellhorn

The House Committee on Un-American Activities, by Robert K. Carr, Dartmouth College

The Federal Loyalty-Security Program, by Miss Eleanor Bontecou

A summary volume bringing together the conclusions as a whole is being prepared by Dr. Cushman, and is scheduled for publication in 1954.

Criticisms

JHW has obtained all the reviews of these publications. KWT has reviewed them and reports: "Consensus is that for what they set out to do, the volumes are immensely useful and valuable. It is characteristic of them all that they describe and analyze their subjects largely within a legal frame of reference."

Unfavorable criticisms came from two sources - the public press and professional journals. The chief critics from the press included George Sokolsky (chiefly aimed at Gellhorn), the Chicago Tribune (aimed at Carr and Gellhorn), Westbrook Pegler (Carr and Gellhorn) and "Counterattack."

* Condensations of these three volumes also appear as chapters in The States and Subversion.

** Chapters for this volume were also prepared by E. Houston Harsha, University of Chicago Law School, on the State of Illinois; by William B. Prendergast, Assistant Professor of Political Science, US Naval Academy, on the Ober Act of the State of Maryland; and by Robert J. Mowitz, Department of Government, Wayne University, on the City of Detroit.

The charges against Gellhorn boiled down to the fact that he had lent his name to a series of "liberal" causes that were actually Communist-front organizations. (This criticism was also made to JHW privately by Morris Ernst, a prominent liberal lawyer.) "Atmospheric" support for these charges was given by the fact that Gellhorn's sister, Martha, had been married to Ernest Hemingway, fought on the loyalist side in the Spanish Civil War, and was charged with Communist sympathies. Gellhorn asked the House Committee on Un-American Activities for the privilege of appearing before it to refute the charges. This request was refused. Gellhorn then prepared a statement refuting the charges. (JHW has a copy if Counsel desires to read it, or JHW can summarize it.) Dr. Cushman accepted the statement and re-affirmed his confidence in Gellhorn.

All these criticisms appeared and were repeated many times long before the study was completed. Gellhorn appeared in JHW's office one day and wanted to know if the Foundation was being embarrassed by his connections with the study. JHW told him that only poor work or dishonest work embarrassed the Foundation and that he hoped that Gellhorn's published work would be the answer to all criticisms. This proved to be the case.

After the appearance of Gellhorn's book, the reviews were practically all favorable and the book won the first annual Goldsmith Award of the Bulletin of Atomic Scientists (1952).

Gellhorn is a very able man who, since the controversy outlined above, has been selected for an important job by the Association of the Bar of New York.

R. K. Carr was criticized by the Chicago Tribune (partly, JHW believes, as a phase of the Tribune's general row with Dartmouth and John Dickey over the

"Great Issues" course) and by Westbrook Pegler. No severe criticism appeared after his book was published, however, even though Carr concluded that the bad outweighed the good in the work of the House Committee on Un-American Activities. The book was not mentioned by the Cox Committee. Apparently the reason for this lay jointly in the very satisfactory personal relations that Carr had established with the House Committee through Mr. (now Vice-President) Nixon and, perhaps, because he justly gave credit for the good that the Committee had achieved.

The criticisms from professional sources were generally favorable. But KWT gleans these unfavorable comments from the reviews:

1) of several contributors it is said:

"The author makes no attempt to deal with materials outside statutes and courts reports."

2) of Eleanor Bontecou's volume, The Federal Loyalty-Security Program:

"(a) Assumes Loyalty-Security Program unconstitutional - not shown.

"(b) Underestimates common sense, wisdom and experience of loyalty board members."

3) of all books:

"(a) Ignore reality of public opinion. In the American Political Science Review: 'There is a certain air of unreality about much of the scholarly discussion of the broader problem of loyalty and subversion with which this book is concerned.'

"(b) Books reach the converted but those who feel there is a danger will not be reached. Authors too often 'regard the belief that such a danger exists as a great aberration, and ... conclude that they can only denounce it or deplore it.'

"(c) Perhaps a more dispassionate analysis of the moral, socio-psychological and economic roots of the present situation is needed."

Yet the evidence is clear that Foundation money has contributed to understanding important aspects of this problem.

(Severe criticism by reviewers did attach to one volume of Cushman's previous series on civil liberties in wartime. This book, The Alien and the Asiatic in American Law, by Konwitz, is held to be emotional, unscholarly and polemical. On the other hand, another book in the same series, Conscription of Conscience, by Sibley and Jacobs, won the award of the American Political Science Association as the best book of the year in the field of American government and politics.

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The general conclusion seems to me to warrant the Foundation taking the following position:

- 1) A good and important job was done well - a job that should aid the American people in their analysis of the issues involved in attaining the two important objectives of national security and civil liberty;
- 2) The most criticized study (Gellhorn's) was probably the best; [Not for DR to state.]
- 3) The popular criticisms were greater before publication of the studies than after;
- 4) The studies should help to substitute analysis of issues for name calling.
- 5) The studies were made by human beings. If some had bias, it was a good bias - in defense of civil liberty.

JHW

JHW:ph
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