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THE BASIS OF A FREE SOCIETY AND THE CONTRIBUTION OF THE LEGAL PROFESSION

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For many years the American Bar Association in cooperation with the American Law Institute, and through the American Bar Foundation, has sought to fulfill in part its responsibilities to the public of America through the media of educational programs in various fields of the law. These programs have been carried out through the various sections and committees of the Association.

In 1958 this educational effort was brought into sharp focus through the Arden House Conference in New York on continuing legal education conducted by the joint committee of the American Bar Association and the American Law Institute on continuing legal education.

Representatives of state and local bar associations, and from leading law schools over the nation attended the conference. The consensus of the conference indicated the interest of lawyers everywhere in continuing legal education, and moreover, an interest in other areas of education indicative of the lawyer's interest in fulfilling not only his professional responsibility to his profession, but his professional responsibility to the public. Since the Arden House Conference very real progress has been made in the field of Continuing Legal Education, with 17 states now having full or part time directors of legal educational programs.

Immediately preceding the Arden House Conference a six-man delegation from the American Bar Association visited the Soviet Union for the purpose of meeting with Soviet lawyers engaged in private practice, and to attempt to learn from them something of the philosophy of their own legal system, to observe their methods of administering justice, and to learn something of their attitude with respect to a common understanding as to the rule of law. I happened to have the opportunity of being a member of that delegation.

Now, largely as a result of the Arden House Conference, and the conclusions of the delegation to the Soviet Union, the American Bar Association undertook to emphasize two specific areas of education endeavor and inquiry, and to revitalize its interest in a third area.

There was first created a committee headed by Mr. Charles Rhyne, of Washington, D. C., to study the possibilities of world peace through law through discussions with members of the legal professions of other nations.

The second special committee created was under the leadership of Lewis F. Powell, Jr., of Virginia, on education in the contrast between liberty under law and Communism.

The area of revitalization was the Committee on American Citizen-

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ship, headed first by Colonel Harold F. Sullivan, then Air Force Judge Advocate General of the Eastern Air Defense Command at Newburgh, New York, and presently under the leadership of Thomas G. Greaves, Jr., of Mobile, Alabama.

Let us now look back for a moment. It seems appropriate at this time to quote a dedicatory statement.

To the brethern of the Bar of the United States of America in the hope that through their leadership this nation may attain to a larger knowledge and a deeper interest in the legal institutions of other peoples, and thus may be inspired to a more ready cooperation in all that makes for the world's legal progress.

That statement was written in 1928 by Dean John H. Wigmore of Northwestern University, one of the world's greatest legal scholars and teachers. It is as appropriate today as the day it was written. It is the dedicatory statement which open his work entitled *Panorama of the World's Legal Systems*.

Forty years ago we were not too concerned with the fledging Union of Soviet Socialist Republics, nor its potential power, nor the pervasive encroachment of its underlying philosophy upon the free societies of the world. As a factual matter, it is my recollection that we went to considerable effort and expense to assist the Soviet Union in establishing modern methods of agricultural enterprise in order that they might improve their food supply. We sent our experts and successful farmers and ranchers to teach and instruct in the processes which would make for greater production. We sent tractors and other farm machinery to assist them in their endeavor. Relatively few Americans in the 20's had read or heard of the Communist manifesto, Karl Marx or Das Kapital, and moreover cared less. For a while in the depression years of the early 30's it became somewhat popular in social circles to read and discuss Communist writings and teachings. This was considered to be a sort of intellectual exercise. "Parlor pinks" was the phrase to describe such people, and no one thought much about it. In the meantime, under the mailed fists and tyranny of a tight little oligarchy, a reign of terror was producing successive generations of young people dedicated to a Godless creed of world domination through fear and violence.

Then came the great explosion of World War II, and we again came to the assistance of the Soviet Union. Currently we find ourselves in a war of ideologies which could ultimately erupt into another holocaust of force and violence, destruction, disease and death. Strangely enough, we seem to be better equipped to be successful in the latter form of conflict than in the former. This is strange, because our great physical and economic strength has been achieved through a system of free enterprise by a society of free people under law, yet we, as individuals in that society, probably know less of our our free heritage and the struggle of

our ancestors to achieve freedom under law than do the Communists know of their system *and* ours.

With the rise of the hammer and sickle in the Soviet Union and in Eastern Europe, we in the United States somehow arrived at the astonishing conclusion that it was something of a sin to know or to read anything about Communism, its doctrines or philosophy. Recently, however, we have recognized that Communism will not just simply go away if we do not look at it. More and more people, including educators, are attempting to learn something of the Communist system in order that we might intelligently combat it. In 1961, in recognition of the necessity to acquire an understanding of Communism by the American people generally, the American Bar Association House of Delegates adopted the following resolution:

“WHEREAS, We recognize the urgency of instructing all Americans in the full scope and aims of Communism and the increasing threat it poses to the free world and to our democracy and freedom under law, to the end that an informed citizenry may successfully defend and preserve our American heritage; and

WHEREAS, Our educational institutions, both public and private, especially at the secondary, college, and adult levels, afford the best means of developing sound programs of instruction in this area; and

WHEREAS, These institutions and educators, in accepting this responsibility, must be given public understanding and support;

NOW, THEREFORE, BE IT RESOLVED by the American Bar Association:

(1) That through our members and the cooperation of state and local bar associations we encourage and support our schools and colleges in the presentation of adequate instruction in the history, doctrines, objectives and techniques of Communism, thereby helping to instill a greater appreciation of democracy and freedom under law and the will to preserve that freedom;

(2) That to insure the highest quality of instruction in this area, those responsible for our educational programs be urged to provide the appropriate training of instructors and to stimulate the production of scholarly text books and other teaching materials of professional excellence;

(3) That we seek to implement this resolution through a special committee of seven members to observe and encourage progress in this educational program and to render annual reports to the Association, the committee to include the chairman of our Committees on American Citizenship, the Bill of Rights, and Communist Tactics, Strategy and Objectives, and one or more of our members who are educators.”

An implementation of this action, the American Bar Association

created a Special Committee on Education in the Contrast between Liberty Under Law and Communism. That committee has recently published a pamphlet entitled *Instruction on Communism and its Contrast with Liberty Under Law*. This pamphlet is directed to the attention of state and local bar associations, to educators primarily in the field of secondary education; and to groups of lay agencies interested in the educational field. The pamphlet points up various teaching methods, and in addition contains an excellent bibliography of materials on the subject.

As important as it is to the ultimate supremacy of the free societies of the world to have a basic understanding of the Communist dogma, and the strategy and objectives of the world Communist movement with its headquarters in the Kremlin, it would seem far more important that we should have a basic understanding of American freedom under law and the free enterprise system. May I suggest that before we go all out in the education of our young people in the area of Communist doctrine and the danger of that doctrine to a free society, that we first take a good long hard look at what we are doing in the way of educating our young people so that they may have a full understanding of our own system. Does the average high school graduate of today know the philosophy of freedom under law and the American system so that he may not only contrast it with the Communist system, but explain to a Communist why it is a better system.

The average citizen of the Soviet Union is well versed in the history of the development of Marxist-Lenin Socialism. He knows the teachings of Marx, Engels and Lenin. He knows the history of the revolution following the first World War, and the establishment of the democratic government of Kerensky and the subsequent Bolshevik revolution which afforded Lenin the opportunity to assume control. Of the latter government John H. Wigmore in his work previously referred to, had this to say:

"History seems to show that only a despotism (a rational one, if possible, like that of a Nicholas or a Napoleon) can ever hold a Slavic people together in a solid political and legal system. A supreme test came on those fateful days of November, 1917, when the emperor had been quickly deposed, the Kerensky provisional government of intelligentsia took charge, and a genuinely representative democracy at last dawned, after decades of aspiration. At this crisis of modern Russia's history, the Bolshevik conspirators, commanding only a handful of common soldiers, made an armed gesture of disorder. They began by closing the doors of the new Parliament. But then, when prompt Napoleonic action, by counterforce, was needed, the fatal Slav trait of unpractical dissension spelled failure; for the intelligentsia government now wasted three crucial days in disputing among themselves what was best to do. In that brief interval the Bolsheviks supplied the decision of brute force; and the inability of the Slavs to unite delivered Russia into the hands of these

ferocious political lunatics. Their reign of terror renewed the memories of Ivan the Terrible. Under Soviet Bolshevism, Russia had merely exchanged a rational despotism for an irrational one."

It is true that Mother Russia, prior to the Bolshevik revolution had a long and bloody history, the reflection of which is apparent in many of the poses assumed by Soviet Communists. In order to fully understand the posture of the Kremlin in world affairs and in their own domestic affairs, and in order to be able to differentiate between what is purely Russian by character and environment, and what is Marxist-Lenin Socialism, I suggest you read a book on Russian history. You will find it extremely interesting reading, as well as educational.

In contrast to the 40+ years of development and expansion of the Soviet Union, compare our 5½ centuries of documented development of the rule of law conceived and designed for the protection of the basic and inalienable rights of the individual human being.

In 1959 the American Bar Association, through its Committee on American Citizenship, published a single volume which I suggest is the greatest collection of documents in the struggle of free thinking men in search of a free society under law. It is entitled *Sources of our Liberties*. It seems to me that this is the kind of thing with which our young people of today should become familiar in their schools and at home, and certainly our young people's parents should become equally, if not more, familiar with it.

Sources of our Liberties contains 32 documents, beginning with Magna Carta in 1215 through the First Ten Amendments to our Constitution. We all have heard of Magna Carta, but do we all know that the principles of "the law of the land," "due process," and "trial by jury" come directly or indirectly from that document? Are we all familiar with the fact that John Adams cited Magna Carta in support of the principle that there should be "no taxation without representation?" Do we all know that the Ordinances of Virginia of 1618 laid the foundation for representative government? Are we familiar with the fact that the Mayflower Compact of 1620 promulgated the principle of the freedom of religion?

Do we know it was the Virginia Bill of Rights, declared three weeks before the signing of the Declaration of Independence, that set forth such principles as ". . . all men are, by nature, equally free and independent, and have certain inherent rights . . . ; that all power is vested in, and consequently derived from the people; . . . that government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community; . . . that the legislative and executive powers of the state should be separate and distinct from the judiciary; . . .?"

We might examine ourselves upon these documents (and I have

touched upon only four) for many hours, and my guess is that such an examination would prove our knowledge to be woefully inadequate.

It seems to me that it is imperative, if our system of a free society and free enterprise is to survive, that we must have a thorough knowledge of the Communist philosophy, its tactics and its objectives; but before we engage in a national hysteria of witch hunting and name calling under whatever appellation, let us first engage in a nationwide effort of understanding of our own heritage of freedom under law, lest we destroy those very liberties which we so reverently seek to preserve.

It seems to me that, while the organized bar, through the efforts of the American Bar Association, State and Local Bar Associations, and other legal organizations may point up the discussion of professional effort, in the final analysis the responsibility lies within the mind and heart of each lawyers, and if the legal profession is to fulfill its obligation and responsibility to the citizens of American today and tomorrow we, each of us, must undertake to fulfill that responsibility.