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Packer: Ex-Communist Witnesses

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EX-COMMUNIST WITNESSES. By *Herbert L. Packer*. Stanford: Stanford University Press. 1962. Pp. xii, 279. \$4.95.

The four witnesses considered in this book—Chambers, Miss Bentley, Budenz and Lautner—all experienced misery and tension. Chambers secured the indictment and conviction of Alger Hiss for perjury in denying charges of minor espionage committed while Hiss was an outstanding young New Deal lawyer in the '30's. Professor Packer agrees with me, if I understand him, that Hiss has built a "very cogent case . . . against Chambers' veracity." (p. 42; and see pp. 22, 41) He considers that Hiss and his lawyers in their final efforts for a new trial raised substantial doubts, at least, about the typewriter evidence which was the most effective corroboration of Chambers' story. (pp. 32-41) On the other hand he thinks that what seems to me the rather inconclusive testimony of Hedda Massing at the second trial and, more particularly, Nathaniel Weyl later, "tends to support the conclusion that Hiss was involved to some extent in Communist activities." (p. 41) Weyl's testimony, before a Senate committee in 1952, referred to the question of Hiss's "membership" in what is variously spoken of as a "study group," an "apparatus," or a "cell" of from seven to four members, for a few months in 1933-1934, or early 1934. (pp. 43-44) At that time Hiss and others named as members of the group were, as we may remember, giving a good part of their attention to American agriculture and other pressing daily problems. It is by no means clear to me just what Professor Packer's chapter on Chambers says, but he seems to me to have accepted, and not only as he says "arguendo" (p. 42), the inconclusiveness of the evidence of espionage, or perjury, and to be directing our attention to the issue, not tried, of involvement in "Communist activities." I read with a bias against his witnesses, expressed publicly now for some years, and it may be that I misunderstand him, but I was startled to find Professor Packer saying, in his conclusion, that "Chambers emerges, for me at least, as a largely convincing witness." (p. 222) The careful and critical analysis which distinguishes much of his chapter on Chambers did not prepare me, at least, for this conclusion.

Miss Bentley is a Vassar graduate, a student of languages, and a humanitarian, who became, about the beginning of the Second World War, the

companion of a Russian agent, Golos, a worker with him for the Russian cause, and, some time after his death in 1943, an informer, and then a Catholic convert. She claimed association with two espionage rings in Washington and with individual spies there.

In the principal ring, which is supposed to have operated from 1941 until 1944, she concededly knew only the Silvermasters and Ullman (and perhaps Silverman), though she named other members of some eminence, particularly Harry Dexter White, ultimately Assistant Secretary of the Treasury. (pp. 57, 64) Moreover, Professor Packer observes that Miss Bentley "has been consistently vague about the precise nature of the material that was submitted through her," and "the record" (primarily of committee hearings) "therefore remains barren on this issue." (p. 117)

Contrary to Professor Packer's suggestion (p. 8, and by silence on the matter elsewhere), the three-year period of limitations for lesser wartime espionage had not run against offenses committed in 1944, when Miss Bentley reported to the FBI, at the latest by November 1945. (p. 72) The more serious types of wartime espionage were capital offenses and not subject to limitations at any time in question here, including the much later time when the government had the aid of the Immunity Act. Nothing in the attitude of President Truman toward the Hiss case, where the espionage charge appeared late and is still very questionable, suggests that his administration would have blocked prosecution for any of the kinds of espionage to which Miss Bentley may conceivably be referring. A number of those charged by Miss Bentley have, moreover, denied her testimony under oath and thus laid themselves open to perjury indictments. (p. 114) Professor Packer speaks of the difficulties created by the two-witness rule; but whatever the odd history of the rule it seems to perform a useful function in situations such as these. (pp. 114-15)

Miss Bentley contributed to the conviction of Brothman, a New York engineer, for attempting to obstruct justice, and to some extent perhaps to the conviction of the Rosenbergs and Morton Sobell for conspiracy to commit espionage. Otherwise her only effected indictment or conviction, the only indictment or conviction growing out of her extensive reports about Washington circles and individuals, was the indictment and conviction of a concededly minor figure, an intellectual in the War Production Board, William Remington. He did not dispute the facts of their relationship, but only the restricted character of the information he gave her, and his expectation that it would be used for any purpose except to reassure doubters about the American war effort. The issue was one of interpretation. What Professor Packer says about corroboration of Miss Bentley by Remington's former wife, if read carefully, is of moderate significance. (p. 103) Prosecution for whatever espionage Mr. Remington may have committed was barred by limitations when the critical steps were taken against him and the case

was a perjury case. Remington was sentenced to three years imprisonment. He was killed by an inmate while in prison. Twice Professor Packer observes that the verdict proves little about Miss Bentley's reliability or the accuracy of her story as a whole. (pp. 113, 114)

To my mind the absence of other indictments, for espionage or perjury, seems to be the strongest possible evidence of the unreliability of Miss Bentley. Professor Packer treats it as a "gap," but to my mind it is a "contradiction." (See p. 117; cf. 117-18.)

Professor Packer's chapter on Miss Bentley is full of searching and original criticism of her story, accompanied by arguments the other way which sometimes, as in the treatment of Mr. William Taylor's loyalty case, seem naïve. A word must be said about Harry Dexter White. Both Chambers and Miss Bentley have accused him of espionage. Neither accusation has been tested. Shortly after denying each under oath before a committee Mr. White died of a heart attack. It has already been observed that Miss Bentley did not claim to know Mr. White and did not know what kind of information, if any, she was taking to Golos. Chambers claims only to have gotten information about financial policy from Mr. White. Professor Packer thinks Miss Bentley has corroborated Chambers' charge; (pp. 103-04) but gossip in related circles would be enough to account for a start on the story on her part. In the present state of the record, Mr. White's standing, both intellectual and moral, seems to me evidence of the unreliability of both Chambers and Miss Bentley.

Again, perhaps affected by bias, I found Professor Packer's chapter on Miss Bentley confirming and adding to my doubts about her. It seems clearly fair in this case to say that he is not impressed by the evidence of espionage in the records, largely committee records, that she has made. He seems more concerned with evidence of Communism among government officials. It is still a little surprising to read his remarks in the conclusion: "I would say that Miss Bentley has made out a prima facie case." (p. 223)

I have stopped with the chapter on Miss Bentley partly because it is interesting and partly to make a point about the book. By re-emphasis and rearrangement a reader may work his way to criticism and appreciation of the author's position. Unless he has time to do this for himself, he cannot suppose that he understands what is being said.

Professor Packer's next two witnesses deal with Communism and not espionage. Mr. Budenz was the principal Government witness in the first Smith Act case against Party leaders, and he was a protagonist in the attack before committees on Professor Lattimore. Professor Packer deals with him in the latter capacity, but it is interesting to think of him in the other, as one makes a transition to Mr. Lautner, the principal Government witness in the first successful Smith Act cases against secondary Party leaders, and the last of Professor Packer's witnesses.

In the case of Mr. Budenz, the reviewer is at last in agreement with Professor Packer, whose judgment on him is unfavorable. It therefore seems less useful, for the present, to continue detailed consideration of particular points. Moreover Professor Lattimore is an outstanding example of successful resistance to the ex-Communist witness and the hostile committee alike, both in committee and in court. This is perhaps partly a result of that element in his character which expresses itself in what Professor Packer considers unfortunate animosity. It has served us all well.

The interesting point which comes out clearly in Professor Packer's treatment of Budenz is the persistence of elements in his make-up which we associate with the Communist or any other dogmatic or religious enthusiast. It is not only the attachment to "absolutes," to which Professor Packer refers, and which may be desirable and praiseworthy (for example in the attachment to absolute excellence); it is rather the attachment to patterns made more or less at random and not thought of as subject to a critical test. If Mr. Lattimore and Mr. John Carter Vincent are promoting a policy in China which at the moment seems suitable to Party leaders, they may—or may not—as well be thought of as Communists, without consideration of the motives—in this case anti-Communist—which are determining their judgment, or indications that their judgment is a sound one, in the interests of the United States. A similar preoccupation with random patterns appears in Mr. Budenz's unreal association of Duclos' letter, the Marxist classics, the American Communist Party, and world revolution in his testimony in the first leaders' case.

This brings us to Mr. Lautner. He was born in Hungary and he maintained intermittent connections with Hungary and Hungarians. A charge of Titoism related to Hungarian affairs contributed, at least, to his expulsion from the American Communist Party in 1950. He had been a steady worker in Party affairs. He has testified that his expulsion was preceded by an inquisition in a Cleveland cellar.

Lautner turned to his career as a witness against the Party and its secondary leaders. In the cases against the leaders the Government was concerned with showing that they conspired to teach and advocate the violent overthrow of Government. Professor Packer recognizes (p. 11) and Lautner was in the end led to concede (pp. 200, 211-13) that Marx, Lenin and Stalin had to be relied on to prove the revolutionary purposes of the American Communist Party. Lautner, as he was pressed in successive cases, conceded further that the American Communist Party had no present plans for revolution; and that "it had not been teaching revolutionary techniques and otherwise was not equipping its members for anything but an ideological struggle." (pp. 211-213, 201, Professor Packer's quoted summary)

The way was being prepared for the turn marked by the *Mesarosh* case and more particularly by the *Yates* case. In the latter the Supreme Court

first considered a Communist Smith Act record free from perjury, and first interpreted the Smith Act in its application to such a record. (In the *Dennis* case the record and the interpretation of the act were excluded from consideration; in the *Mesarosh* case there was perjury; and in the other intervening cases certiorari was denied.) The Court held that the act did not apply to "abstract" advocacy, or what I should call idle academic dreams, but only, as I understand it, to specific plans and their advocacy. Since the *Yates* case, and the application of a similar test to membership in the *Noto* case, the Government has won no Smith Act case except the rather peculiar *Scales* membership case. Including the *Mesarosh* and *Yates* cases, more than a dozen "cases" involving some ninety defendants, charged with advocacy or membership, have been dismissed on motion by the Justice Department or by judicial action independent of the Department. When I last inquired, in May of 1962, the Colorado case was the only secondary leader case still pending.

Somewhat oddly, Professor Packer's comment on the effect of the test in the *Yates* case is: "At a conservative estimate at least 40,000 pages of testimony and countless man-hours of prosecutorial time went for naught." (p. 13) Moreover in his conclusion it may be that Professor Packer means to support Lautner when he says: "[V]iewed in the total context of his testimony, the inconsistencies appear relatively minor, and the net impression is of a conscientious effort to recall the details of his past." (p. 225)

In his chapter on Miss Bentley, Professor Packer observes, though rather in passing: "One of the most impressive aspects of Miss Bentley's testimony is its detail." (p. 92) He is doubtless impressed by the same feature of Chambers' testimony and he expresses his respect for the same feature of Lautner's testimony. (See, *e.g.*, pp. 224-25.) Each of the witnesses has one frequent advantage of the ex-accomplice. He has a story of activity which saves him from the difficulties of simple creation and which needs only to be varied, more or less, sometimes no doubt in his own mind, to create a sinister or incriminating effect. Each of the witnesses has also, in varying degree, the motives of the ex-accomplice: the removal of a cloud, fear, self-protection, self-advancement, hatred of the former associates. In addition these witnesses have their old Communist love for patterns, for drama, and for reform. In *Witness* Chambers speaks of the use of Communists methods against Communists and of his willingness not only to die but to be damned for his new cause. The detail of contradiction in these cases is at least as impressive as the detail of testimony. No doubt the testimony gives some clue to something that happened—but what? Perhaps there was Communist activity in the disputed events about which Chambers and Miss Bentley testified, but if American Communists are the dreamers which they appear to be in the cases where the Smith Act has been properly applied, their threat is one that can be controlled without extreme measures.

Professor Packer disclaims any considerable interest in conclusions on such matters. His subject, he says, is the defects of the committee hearings, loyalty proceedings, and prosecutions which he discusses as means of getting information on public issues. Though we have perhaps learned more than he recognizes, and though the problem of subversion has peculiarities, his conclusion includes a well reasoned analysis of the defects of the procedures as means of helping us frame policies. It includes also an effective argument for use of the special kinds of agencies available in England, to serve American needs.

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