

North Carolina's Gag Law And The University

The text of an address, entitled "The Law and the University," delivered Thursday night, Nov. 21, before the Greensboro Bar Association. Mr. Aycock is Chancellor of the University at Chapel Hill.

By WILLIAM B. AYCOCK

I hope what I say to you tonight will be understood as coming from a member of the Bar to the members of the Greensboro Bar Association. Should my position in the University preclude such individual identification, I remind you that traditionally, on controversial issues, the University speaks with many voices.

Every lawyer in North Carolina has been called upon time and again to defend the basic freedoms of the citizens of this state. It is routine to advise a client accused of a crime of his right either to speak or to remain silent. Many people, irrespective of their educational achievements, fail to understand (unless their families or friends are involved) why a lawyer should fight for the rights of an accused believed to be guilty by a majority in the community. The basic concept that every accused is deemed innocent until proved guilty is still not widely understood outside the legal profession. Yet, through the years, lawyers have steadfastly defended this fundamental principle of Anglo-American law, undaunted by criticism of those who do not comprehend it. Also, lawyers are under a duty to advise a witness of the circumstances under which he cannot be compelled to testify against himself and thus may remain silent under protection of the Fifth Amendment of the Constitution of the United States. In a larger sense lawyers have often defended freedom of speech, freedom of press and freedom of religion as a public service. This has been done whether to do so was popular or unpopular and with or without compensation. Most lawyers have developed a keen insight in recognizing the existence of fundamental issues in a maze of complicated facts. Moreover, they know the importance of going forth to battle on such issues even though they realize that victory cannot be achieved easily or quickly. Deservedly, lawyers more than any other group or profession are looked to by responsible citizens everywhere to speak for freedom and to seek justice for all. This is why I am proud to be a member of the Bar of North Carolina.

In this context I have chosen to talk about the law and the University. Woodrow Wilson observed that "the worst enemy of the law is the man who knows only its technical details and neglects its generative principles . . . and the worst enemy of the lawyer is the man who does not comprehend why it is that there need be any technical details at all." Although it is inevitable that some laws have defects, rarely is it possible to get a law passed which ignores the generative principles of the law and at the same time contains so many ambiguities that its technical details are woefully lacking. Unfortunately, the North Carolina Visiting Speakers Law of 1963 epitomizes both of these deficiencies. The manner in which it was conceived, drafted and passed is not in keeping with the traditions of a representative form of government. Nevertheless it is a law. We must not pick and choose the laws we shall obey. Whether wise or unwise we must abide by them to the best of our ability. For example, I have advised many individuals and groups that the trespass laws must be obeyed. I have rejected demands that the University of North Carolina at Chapel Hill boycott businesses because they were exercising a legal right to choose customers. Assertions have been made that the officials of the University have ignored a 1941 Act of the General Assembly which is a criminal statute making it unlawful for "any person, by word of mouth or writing, willfully and deliberately to advise or teach a doctrine that the Government of the United States, the State of North Carolina or any political subdivision thereof shall be overthrown or overturned by force or violence or by any other unlawful means." This statute prohibits the use of any public buildings for such purposes. I do not know of any person who has come to the campus and advised or taught that the government should be overthrown by force or violence or some unlawful means. If any citizen has such information, he is derelict in his duties if he fails to share his information with the law enforcement authorities. On the other hand, I cannot accept the proposition that failure to institute criminal proceedings where there is a lack of evidence is tantamount to ignoring a law. It could be, of course, that there is a difference of opinion regarding the meaning of the 1941 Act. If so, there are legal forums to settle these differences. More recently, University officials have been accused of violating the 1963 Visiting Speakers Law. Perhaps it would be helpful to focus on this law (House Bill 1395—Chapter 1207 of the 1963 Session Laws) before dealing specifically with this accusation. This Act prohibits any person to whom it applies from speaking on any subject on the campus of any college or university which receives any state funds in support thereof. Unlike the 1941 Act it does not apply to all public buildings in the State but only to facilities on college and university campuses. Unlike the 1941 Act it does not provide any sanction against the forbidden speakers. Unlike the 1941 Act it does not specify any penalties for violation of its provisions. However, there is a law on the books (General Statutes 14-220, which goes back at least as far as 1901 which states: "If any . . . official of any of the State institution . . . shall willfully omit, neglect or refuse to discharge any of the duties of his office for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a misdemeanor." Presumably this latter statute would apply. If so, the 1963 Visiting Speakers Law is a criminal law. Although this is probably accidental rather than in-

tended, it could well serve a good purpose. Those who charge violations of the 1963 Law can call on the courts to prove validity of their charges.

On the surface the 1963 Act appears to be a simple one to enforce. But to anyone charged with its enforcement it is soon evident that it is worded in extremely vague terms. A few examples will suffice. A known member of the Communist Party cannot use the facilities of a college or university for speaking purposes on any subject. What is the Communist Party within the meaning of this Act? American Communist Party only? Communist Party of Great Britain? France? Italy? Greece? Does it apply to all citizens of Russia whether or not they are members of the Party? Does it include all citizens in the Russian Bloc?

Another section of the Act applies to any person who has pleaded the Fifth Amendment in refusing to answer any question, with respect to communist or subversive connections before any duly constituted legislative committee, any judicial tribunal, or an executive or administrative board of the United States or of any state. This section does not state that the invited speaker must have been known to have pleaded the Fifth Amendment. It is possible under the terms of the act that the invitor violates the law if it is not known that the speaker pleaded the Fifth Amendment in the forbidden manner until after the speaking occurred. The Executive Committee of the Board of Trustees on July 8, 1963 adopted a policy statement in an effort to reconcile some of the ambiguities of the law. However, it was not possible then nor now to anticipate all of the situations which might arise under this law. For example, when does one plead the Fifth Amendment with respect to communist or subversive connections? This question arose recently and out of it grew a charge that University officials were violating the Act. Looking for a friend, a June 1963 graduate of the University at Chapel Hill recently appeared in Everett Dormitory where he resided last year. By chance another acquaintance saw him and inquired about the recent trip to Cuba which had been made in violation of a State Department ban on travel to that country. The Cuban traveller was in a hurry but agreed to return to the dormitory later in the evening and discuss his trip with anyone who was interested. In the interim the question arose—was he a forbidden speaker? He had taken the Fifth Amendment in an investigation to determine whether a certain citizen of the United States had violated a law requiring registration as a foreign agent for handling foreign money to purchase airline tickets for those persons who made the trip to Cuba. This, so I had been informed, was the scope of the investigation in which the Fifth Amendment was taken. Assuming that a law is valid which deprives a person of his right of free speech simply because he exercised a constitutional right, should the broadest possible interpretation be made in the application of this law? If so, how is such a speaker precluded from going about the campus responding to invitations by students who want to hear what he has to say? I was not sure then and I am no more certain now that this person was a forbidden speaker under the 1963 law.

There are equally troublesome questions which have not yet occurred to those persons who are prone to make charges but at the same time are quite unwilling to follow through. For instance, Channel 4, the Television Station of the University is a facility. Is it a facility within the meaning of the 1963 Act? If so, is it legal to let a member of the Communist Party say a single word on any subject on Channel 4? What about news programs? Would it make any difference if the programs were live or taped? Would it be all right to telecast Communist speakers over Channel 4 so long as all the sets on the campus were off? Another question presents itself in connection with telecasting Communist speakers or Fifth Amendment takers over a University owned television receiving set in the Carolina Inn, for example, even though the program originated on a commercial station. Would this violate the 1963 Act?

Quite apart from the difficulties involved in trying in good faith to enforce the 1963 law is the purpose of the law. Why such legislation in the first place? No one really knows—the usual hearings and debate which normally provide essential information about legislative intent is totally lacking. Certainly any legislation which both meets our constitutional requirements and combats communism is desirable. If this legislation meets these tests why isn't it good for all of North Carolina? I have been wondering why the few radio, television stations and newspapers who proclaim the virtues of the 1963 legislation do not voluntarily bring their operations under the ban now and also start a campaign to get the law extended. Do they dare? Obviously not. In the first place they would not know how to apply the law. They would find it impracticable to enforce it, and moreover, they would be the first to scream that they should not be required by law to deprive their audiences, listeners and readers of a fundamental right to hear all sides of all questions. At the same time, they could not seriously assume that their audience have more education and more capacity to discriminate between democracy and communism than the audiences who hear speakers on college and university campuses.

There is supposed to exist, however, particularly in Chapel Hill, an evil which must be met. This legislation is said by many to be the remedy for the evil. If there is an evil, be assured that this legislation is highly ineffective in meeting it. It is not good to deceive our people into a sense of false security by extolling a remedy which is no remedy at all. First, however, let us examine the supposed evil. The University

at Chapel Hill has had as a student the founder of the John Birch Society and, also as a student, a one-time leader of the Communist Party of North Carolina. Last June the University at Chapel Hill graduated 2344 students and one of them went to Cuba. If we were in the business of producing John Birchers, or Communists or Progressive Labor Party Members, we have failed. For each one of these strange individuals we produce ten thousand solid American citizens who provide sound leadership in all walks of life. There is no evidence that any speaker on the campus ever influenced any of the handful of students who either went astray or continued the path they had chosen before enrolling to adopt or to continue their extreme positions. The fact of the matter is that the overwhelming majority of speakers on the campus are conservative in their views and in general students today are more conservative than their predecessors of the 1930's. To be other than conservative is news and a few students deliberately seize this opportunity to make news. So it is with speakers who are not conservative. Let me explain. Two years ago there was a Progressive Labor Group organized in Chapel Hill. The organizer lives in North Carolina but he does not have any connections with the University. He has never made a speech on the campus. He could enlist only eight members from the student body. He arranged for his high boss to come down to help in recruiting and his audience consisted of fourteen persons. Included in this number were a news reporter, a photographer and a member of the Chapel Hill Post of the American Legion. The Progressive Labor Club in Chapel Hill has never been recognized by the University. The 1963 Speakers Law in no way helps us in dealing with this group. The national leader of the Progressive Labor Party who spoke on the campus is not covered because he was kicked out of the Communist Party two years ago. Therefore, to the extent there is an evil, this law is in no way a remedy for it. On the other hand it is serving to cause great injury to the University. We are being deprived of the opportunity to learn from visiting scientists who have something worthy to offer us in areas in which we need to catch up. We are in the process of losing our reputation as being a great insti-

tution, unafraid of the free flow of ideas.

Dr. James Bryant Conant in his book "The Citadel of Learning" points out that the technical training of scientists and engineers in the countries under communist control differs little from the training in these areas provided by the nations of the free world. But he goes on to say:

The nature of the general education is different as white from black. We in the free world through our schools, colleges and universities seek to perpetuate that tradition of Western culture which emphasizes diversity, controversy, and tolerance. The Soviets seek uniformity and strict adherence to the dogmas of the creed of Marxism-Leninism.

We have made the first step toward emulating the narrow dogmas of the enemy we all abhor. This is not intended but nevertheless it is true. Leaders have a duty to inform a sufficient number of people that the 1963 Visiting Speakers Law is a departure in every respect from our traditional practice of freedom—its conception, its drafting, its passage, its application and its effect. It is important to recall that over two centuries ago Montesquieu said that "in a republican form of government . . . the whole power of education is required." It may take years for the whole power of education to exert itself. It will require much time and great effort on the part of many people.

Finally, there is no member of this audience who, if informed that some foreign power was about to take over and strip us of our fundamental freedoms of

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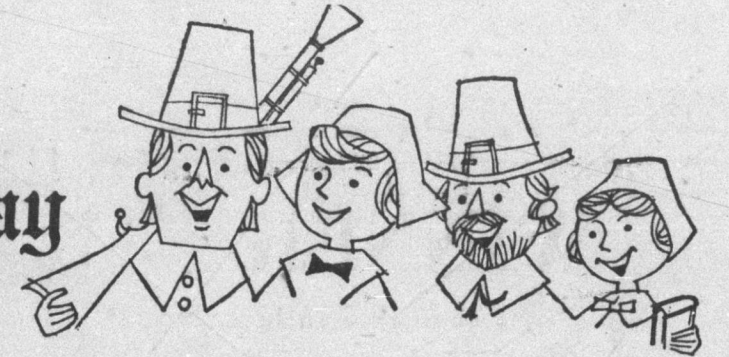
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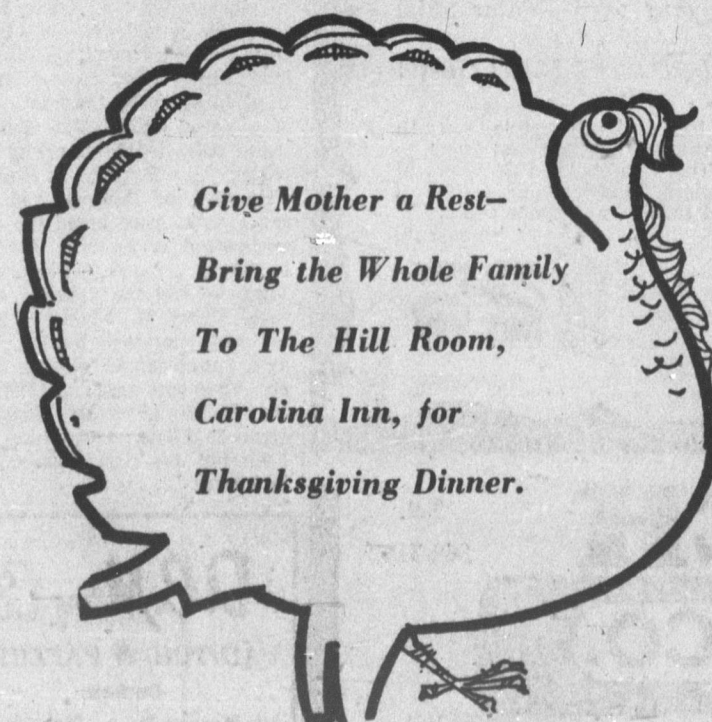
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