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THE SCHOOL ADMINISTRATOR AND SUBVERSIVE ACTIVITIES, by E. Edmund Reutter, Jr., Bureau of Publications, Teachers College, Columbia University, New York, 1951. Pp. xii, 136. \$2.85.

According to J. Edgar Hoover's latest census there are only 31,600 Communist Party members in the United States. Nevertheless, the deep subversiveness of school teachers seems to require the most extraordinary preventive measures. For example, the school authorities in Los Angeles felt called upon to require their employees, who had already taken a loyalty oath prescribed by the legislature, to take another oath to prove that they really meant it. Some of Los Angeles' satellite towns, to lessen any stigma in having teachers take two oaths, proposed that everyone else in the community take an oath at the same time. Thus the teachers, their loyalty doubly reinforced, were left only one oath ahead of those laymen who have to confine themselves to subverting their own children.

Though Southern California's "reaffirmation of loyalty" represents a perhaps extreme instance of the measures described in Dr. Reutter's monograph, it indicates well enough why school administrators must be prepared to trim their sails to the prevailing winds of mistrust. His little book is, I take it, addressed chiefly to administrators, but lawyers will find it well-documented, and, within its narrow field, a useful description of one set of loyalty programs.

It would be unfair to Dr. Reutter not to emphasize the narrow scope of his work. He does not undertake to decide "whether a given restraint is necessary or desirable." His purpose is only "to develop guiding principles for administering restraints on alleged subversive activities of public school personnel." What kinds of activities are alleged to be subversive? Those "unreconcilable to American democracy as locally interpreted," is the diffident suggestion.

If this definition seems naive and inexact, look at the statutes and local regulations that the author has collected from thirty-odd states and tabulated in his opening chapters. They are the restraints that have to be administered. The bulk of them still consist of requirements of simple loyalty oaths, or prohibitions against employing persons advocating the forcible overthrow of the government. Two trends are apparent. One is to elaborate the oaths and related declarations of political purity, making them at once more offensive and more effective (because of the

possibility of bringing criminal charges for false swearing). The second is to strengthen the ban on employment of "subversives" by setting up tougher enforcement agencies. The Maryland Ober Law of 1949 combines both these features and has had the flattery of imitation by the legislators of Mississippi.

Dr. Reutter also surveys the court decisions that have dealt with the legislation under discussion. His summaries and selections seem adequate. A few years ago one would have been skeptical of his uncritical inclusion of decisions stemming from the wave of anti-Red activity following World War I; now they have become respectable authority again. Of less interest to lawyers are two chapters dealing with the policies of professional associations of educators, and with loyalty problems in higher education and in the federal civil service. The second of these chapters deals with important subjects to be sure, but since they are collateral to the main theme they are superficially treated.

After describing in earlier chapters both the regulations and their current administration, the author in his concluding chapters turns to desirable standards of administration. For this he draws on an extensive poll of school superintendents, board of education chairmen and other educational dignitaries. Majority responses to the questionnaires, and Dr. Reutter's own opinions, indicate preferences running contrary to legislative trends. Specifically, loyalty oaths are considered much less useful and desirable than simple reliance on the judgment of supervisors and sponsors. The administrators would similarly prefer not to have special machinery for rooting out subversives. Indeed, the author, in one of his rare displays of strong feeling, asserts that, "A formal loyalty check system would be devastating to the morale of school personnel." Once charges have been brought, however, he thinks that the procedures should be quite special and elaborate, with the aim of protecting the teacher.

The recommended mechanics of advisory and appellate boards are if anything too elaborate. As in other loyalty programs, attempts at improvement tend toward a multiplication of hearings, when the primary emphasis, I submit, should be on the question of proof: what must be established, and who has the burden of establishing it? It is not fair to ask Dr. Reutter to say what is proof of subversion, when as we have seen he understandably ducks defining it. But I wish he had given some hint of the importance of giving the accused the right to subpoena

witnesses, to cross-examine, and to be confronted with all the evidence against him. Practically, the charged employee has the difficult burden of proving a negative—that he is *not* subversive. In the federal programs this burden is worsened by the respondent's inability to compel the attendance of witnesses, and by the proposition that security considerations make it fair to withhold information, and its source, not only from the accused, but even from his triers.

It may be that only the national government and its investigating arms can sustain a position so at variance with traditional concepts of due process of law. In the recent Louisiana act covering all public employees, I note that the employee facing charges has the all-important rights of subpoena, of confrontation, and of cross-examination (Act 284 of 1950, Section 6). One can hope that this is universally the case in the states.

The critical character of proof is underlined by the New York Feinberg law, recently blessed by the Supreme Court of the United States, and thus all too likely to be widely copied. It employs the technique of making membership in organizations found to be subversive *prima facie* evidence of the employee's subversiveness. This throws the burden on the employee of adducing, the New York court said, substantial evidence. Once he has done so the presumption is to disappear; but the initial problem of proving a negative persists. Those to whom this procedure is acceptable may want to consider two administrative regulations that buttress it. Dr. Reutter says that the New York questionnaire for applicants contains an "are you now or have you ever been" question; and the Regent's rules under the Feinberg law use past membership as the basis for another presumption, one of *continuing* membership unless the employee proves his good faith withdrawal from the organization. This formidable combination certainly simplifies the problem of proof—for the prosecuting authorities.

Dr. Reutter, in expressing a preference for state rather than local control of the grounds for dismissal of "subversives," takes a position superficially at variance with his desire to de-emphasize these cases. Support for his view, however, comes from a further look at what has been going on in New York City. There the authorities have apparently preferred to avoid the direct issue of subversiveness. Once the suspected employee is sufficiently enmeshed in oaths, questionnaires, and interrogations, it often

becomes possible to bring him up on charges of "conduct unbecoming a teacher," based on misstatements that may or may not amount to perjury, or on refusals to answer questions. I do not mean to suggest that such behavior may not merit discipline including dismissal, but the harsh impact of these New York proceedings is indicated by reports that teachers there are now demanding that the authorities proceed in accordance with the hated Feinberg law, which they think protects them better than the current practice.

Such episodes may leave one with the feeling that the procedures carefully outlined by Dr. Reutter, or any other safeguards that may be devised, will be useless when administrators are pliant and the public is inflamed. It is more pleasant to be writing in one state, for publication in another, and to be able to note that neither commonwealth has seen fit to impugn the integrity of its teachers by legislating specifically against them.

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PUBLIC ADMINISTRATION AND POLICY DEVELOPMENTS; A CASE BOOK, edited by Harold Stein. Harcourt, Brace and Company, New York, 1952. Pp. xlv, 860. \$5.00.

Our ability to know what kind of government we are getting, to decide whether or not we like what we are getting, and to take steps which promise to change the character of government we live under—all of these things depend on the kind of information we have about what goes on in government. We have, in court reports, a good record of what higher courts decide and order, but little printed evidence about how business is carried on in courts. Some of the acts of our elected chief executives (for example, veto messages and executive orders) are printed, but most of the crucial decisions of the president, the governor, the mayor are expressed verbally or on paper which never gets into print. State legislatures record their principal decisions in the statute books and provide us with some indications of their procedure in a printed journal; Congress treats us much better, reporting debates in full, printing committee reports, and also printing a full record of many of the hearings of its committees.

As government pervades more and more of our affairs, administrative organizations grow in number and in size, and make

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