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Bill of Rights Reader. By Milton R. Konvitz. Problems in Freedom. By Peter Bachrach.

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an investigation into "dangerous thoughts" has failed to degenerate into a witch hunt.

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BILL OF RIGHTS READER. By Milton R. Konvitz. Ithaca, N. Y.: Cornell University Press, 1954. Pp. 591. $6.50.

PROBLEMS IN FREEDOM. By Peter Bachrach. Harrisburg, Pa.: The Stackpole Company, 1954. Pp. 468. $5.00.

The publication of these two books, both directed toward the non-lawyer, reminds us that the Bill of Rights is more than a legal document. It is a declaration of certain premises for a free society which go far beyond the bare words of the document. The fate of freedom depends not only on legal enforcement of the words, but also upon public adherence to the spirit of liberty. In the words of Mr. Justice Frankfurter,

> Only a persistent and positive translation of the faith of a free society into the convictions, habits, and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit.[1]

This faith can be translated into action only when the members of the community understand clearly the premises of freedom and the conduct which they command. Both books are dedicated to promoting such an understanding in order that we may meet more wisely the present threats to freedom. Though directed toward the layman, these books are even more important to the lawyer, for he bears a special responsibility to interpret to the community the deeper meaning of legal rights and also to express the convictions of the community into workable legal rules. Here are presented materials which will better enable a lawyer to fulfill his proper role as citizen.

The body of material in both books consists of carefully selected extracts from leading Supreme Court decisions (predominantly recent ones) dealing with the whole range of civil liberties, including freedom of speech, press and religion, separation of church and state, fairness of procedure, and freedom from racial discrimination. Professor Konvitz has included nearly twice as many cases as Professor Bachrach, but the latter has in-

1. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 671 (1943) (dissenting opinion).

cluded other illuminating materials, such as excerpts from lawyers' briefs in certain cases, committee reports, legislative debates, speeches, and public statements of private groups. He has also, at the end of each section, posed provocative questions and problems which compel the reader to reexamine his own presuppositions.

The most remarkable quality of both books is their internal integrity. They remain true to the premises of freedom of thought, for there is no attempt to gloss over the hard problems or to weight the material in favor of claimed freedoms. The cases selected are the borderline ones which have divided the court because they cut to the heart of the conflict between the liberty of the individual and the felt needs of the state. Majority and dissenting opinions contest the issues with equal vigor, each laying bare the platitudes and assumptions of the other. The objective is to compel a searching analysis of the competing premises, their precise limits, and their application to concrete situations. This does not mean that the authors are indifferent or are engaged in a sterile intellectual game. On the contrary, it reveals their deepest conviction in freedom, for they have acted on the confidence that "the ultimate good desired is better reached by a free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market."[2]

The process of free inquiry and open debate applied to the problems of freedom itself may give us insight sufficient to the task before us. Threats to freedom now take new forms which fall outside the literal terms of the Bill of Rights. Today those who voice unpopular views need not fear the jailor; they need fear only the security officer. Guilt by association can not pave the path to prison, but it can insure unemployment and economic ruin. The presumption of innocence, the right to trial in open court, and the right to confront one's accuser belongs to every rapist, smuggler or pickpocket, but it does not belong to the government lawyer, typist, or janitor. No man can be compelled to be a witness against himself, but one who claims this constitutional right may be driven from his job, denied unemployment benefits, and made a social outcast. The issue is not whether the words of the Constitution reach these matters, nor whether prior court decisions provide a precedent. The issue is whether these practices violate the underlying premises of a free society. If so, then it is the duty of the citizenry to wipe them out as a blight upon our freedom.

2. Mr. Justice Holmes, dissenting in *Abrams v. United States*, 250 U. S. 616, 630 (1919).

The use of new scientific devices likewise requires us to look beyond the words of the Bill of Rights to its deeper meaning. Search warrants are replaced by electronic snooping. Wiretapping has become so common as to make the telephone a trap for the unwary. The walls are given ears, and "stool pigeons" are wired for sound with hidden microphones to broadcast to the police the personal confidences spoken by ones who think them friends. Police, in the name of preserving public order, even hide microphones in bedrooms to record the private conversations of man and wife. Mr. Justice Brandeis described the Fourth Amendment as incorporating "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."[3] If beyond the bare words of "unreasonable search and seizure" lies the premise that every man is entitled to protection of the sanctity of his home and the privacies of his life, then these practices ought to be viewed not merely as "dirty business",[4] but as encroachments on our personal liberties. It is for the public to insist that the police be the protectors not the destroyers of personal security.

There is a danger that we shall view the Constitution as meaning only what a transient majority of judges hold in a particular case. We may thus shrink our freedoms to fit the decisions of a court which is stunted by precedent and ennervated by self-restraint. This danger is particularly great where new forms of coercion have come into use and where new police methods have circumvented old legal rules. Protection against these encroachments must rest mainly on our recognizing their conflict with the premises of freedom. Professor Konvitz and Professor Bachrach have both provided materials from which both layman and lawyer can gain the insight needed for this task.

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3. *Olmstead v. United States*, 277 U. S. 438, 478 (1927) (dissenting opinion).
4. Mr. Justice Holmes' characterization of wire tapping in the *Olmstead* case, *supra* note 3 at 470.