

THE GOLDMARK CASE: AN AMERICAN LIBEL TRIAL. By William L. Dwyer.¹ Seattle: University of Washington Press. 1984. Pp. xi, 291. \$16.95.

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This book, written over a period of seventeen years, is ostensibly about a libel case. As the author acknowledges, its value as an exposition of defamation law is purely historical; *New York Times v. Sullivan* and its progeny have radically altered the doctrinal landscape. The book has independent significance, however, as a chronicle of an event which happened to culminate in a libel trial. It provides the reader with a brief, personal glimpse of two strong, principled, and very human individuals at an important time in their lives. It also provides an interesting—and somewhat ironic—look at the American Civil Liberties Union in a situation in which the ACLU was a target rather than a defender of the “free speech” it so resolutely espouses. But most of all, this book is a labor of love by a trial lawyer who became totally immersed in a significant case, and, because he cared so much, felt compelled to share his experiences and feelings about the individuals and issues involved.

In 1962, John Goldmark, a 45-year-old honors graduate of Harvard Law School, a cattle rancher in a rugged and sparsely populated area of Washington State, and a respected three-term state legislator, was defeated for reelection following a vigorous campaign against him that included accusations and innuendoes associating him with the Communist Party. At that time and particularly in that area of the country, such accusations aroused considerable fear. But they rested on a rather flimsy factual foundation. In the late 1930's and early 1940's, Goldmark's wife, Sally, had been a member of the Communist Party. Shortly after her marriage to John in 1942, and partly because of his lack of sympathy for communism, she quit the party. After John's service in the Navy during World War II, the Goldmarks moved west, settling in Washington. They said nothing about Sally's former Communist membership, but for years afterwards, particularly around election time, there were vague rumors that Goldmark was a Communist.

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In 1961, a group of citizens formed the Okanogan County Anti-Communist League, issuing dire warnings that "the United States will be Communist by 1973 unless most Americans wake up to the full extent of Communist infiltration in the U.S. today." One of the founders of the group began writing a column on the Communist danger for a local weekly paper, and other anti-Communist literature began to appear. The rumors of Goldmark's Communist affiliation grew more pronounced; and in 1962 they blossomed into a full-scale campaign questioning the loyalty of the Goldmarks and attacking the American Civil Liberties Union, of which John Goldmark was a member. Goldmark was assailed, directly or by innuendo, in articles, leaflets, a tape recording, and finally, indirectly, at an American Legion meeting devoted to an attack on the ACLU as a Communist front organization. Washington State ACLU letterheads were passed out identifying John Goldmark as a member of the Washington Committee of the organization.

Two weeks after his resounding election defeat, Goldmark and his wife brought a libel suit against four individuals, a newspaper, a publishing company, and the John Birch Society, which was the employer of one of the individual defendants. Goldmark's opponents formed defense committees to raise funds across the country. Interestingly, considering the role of the ACLU, these committees labelled the suit a "plot to gag the free press." The John Birch Society was dismissed from the lawsuit, but the remaining defendants were held for trial, which began in early November 1963.

The trial was dramatic, with numerous "expert" witnesses from across the country expounding on the purported threat of Communism and the discipline of the Party at the time Sally Goldmark belonged to it. Other witnesses testified about the activities and goals of the ACLU, stressing the ACLU's support of free speech. One ACLU witness testified that the nation's political system rested on

a faith in the ability of people to judge for themselves when that speaker is telling the truth and when that speaker is not. And every time we are so afraid one speaker is going to misinform or will issue propaganda that we cut him down, we exhibit lack of faith in that ability and we deprive ourselves of one of the means of distinguishing truth from falsehood, the ability to hear both sides and choose for ourselves which is true.

Ironically, in John Goldmark's try for reelection, that theory had not worked, resulting in the lawsuit which is the subject of this book.

In late January 1964, the jury returned a verdict for John Goldmark, awarding him a total of \$40,000 on various counts. Dwyer tells us that Goldmark's vindication was complete: "The

jury had resoundingly confirmed his loyalty and patriotism. All four [individual] defendants were held liable in varying degrees; none escaped." Further, "the ACLU's victory was equally dramatic. Four of the claims involved 'communist front' charges against the Union; Goldmark won on all four."

The defendants filed routine motions for judgment notwithstanding the verdict. But before the motions were argued the Supreme Court issued its landmark libel decision in *New York Times v. Sullivan*, holding that a public official, such as John Goldmark, must prove that the false statements about him were made with knowledge that (or reckless disregard whether) the statements were false. Once again, the ACLU's role was ironical, for it had urged the Court in *Sullivan* to adopt a rule protecting defamatory speech. The verdict in the Goldmark case was silent on the issue of malice. Accordingly, though writing that the verdict "established that the plaintiff John Goldmark was not a Communist, nor a pro-Communist . . . and that the American Civil Liberties Union, of which plaintiff John Goldmark was admittedly a member, was not a Communist front organization" the trial judge ruled that nothing in the record proved that the defendants actually knew that the statements were substantially false or had recklessly disregarded whether they were false. He therefore set aside the jury's verdict. Feeling he had been vindicated by the jury's finding that the statements attacking his loyalty were false, Goldmark decided not to appeal.

Dwyer ends his book by telling us of two messages that the Goldmark case sends us. The first is that we should rid ourselves of unreasoning fear of communism, and act in keeping with our democratic values. The second lesson relates to the value of the jury system. Dwyer believes that trial by jury is at the heart of our system of justice and should not be abandoned for the sake of efficiency or on the theory that jurors cannot understand complex cases.

Dwyer may be right about trial by jury, but the Goldmark case provides scant support for his position. Most serious proposals for abolition of juries in civil cases are limited to unusually complex litigation, which the Goldmark suit was not. Furthermore, a significant number of defamation verdicts are overturned on appeal, indicating that jurors have difficulty following the courts' instructions in such cases. There is little more in the Goldmark case to validate the jury system than would be found in any other important case in which the client and lawyer feel vindicated by the jury's verdict.

Nonetheless, the book is worth reading. It provides an unusual look at the ACLU, and important insight into a historical period

that many would rather forget. Dwyer has provided an interesting account of the toll that McCarthyism took on two individuals. The book also reminds us that defamation suits sometimes serve to protect, and not merely to endanger, our political liberties.