

# BOOK REVIEW

**THE GOLDMARK CASE.** By William L. Dwyer.

*Seattle and London, University of Washington Press, 1984. 291 pages. Price about \$16.00.*

Reviewed by John N. Rupp\*

This is a good book, one that you should buy. If you think the price is high, buy it anyway. And what, after all, is a "high price"? Does not the answer lie in the observation of the perspicacious fellow who remarked, "If they keep raising the price of whiskey, pretty soon they'll get it up to about what whiskey's worth."

The book is about a libel case tried to a jury in the Superior Court for Okanogan County, Washington. You will not find it in the law reports, for it was not appealed. It ended twenty-one years ago, so it is an old case. Yet in the author's mind it is as fresh as the dawn breeze; and, as the wine people say, it has cellared well.

The author is a good man and good lawyer who was lead counsel for the plaintiff. He takes us through the background facts and through the fascinating detail of the many tough decisions that daily went into the preparation and the trial. He tells us of the jury verdict for the plaintiff and of the elation that accompanied it; and then he relates the strange irony that resulted in the verdict's having to be set aside.

All this you will learn when you read the book. If you read what others have written about the book, you will encounter some conclusions about it that may divert your attention. Be warned. I illustrate the point by anecdote.

Some schools for actors stress not only the importance of understanding the play and the various parts in it, but also an assumed necessity for the actor to delve into the deeper psychological motivations which, those schools assume, underlie the nature and the development of every main character in any play.

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In a 1977 newspaper interview Jimmy Stewart told of an incident that stemmed from that sort of teaching. The picture was "Vertigo," directed by Alfred Hitchcock. One day on the set the leading lady, Kim Novak, piped up, "Mr. Hitchcock, what is my character feeling in relation to her surroundings?" Hitchcock stared at her incredulously, and there was dead silence. Then he said, "It's only a movie, for God's sake!"

That attitude—the approach of the hardheaded professional—is also exemplified in the colloquy between George Bernard Shaw and a young author who sought Shaw's advice on a literary career. "Write plays," said Shaw. Seeking elucidation, and perhaps expecting Shaw to rhapsodize about the great value of the drama form in delineating and developing characters, the young man asked him why. Shaw replied, "They will keep you in your old age."

I thought of those anecdotes when reading the comments on Bill Dwyer's book made by reviews and the writers of the dust-jacket blurbs and the foreword. All these good people purport to find great social significance in *Goldmark v. Canwell*. They call it a "morality play," they speak of "fear and prejudice born of ignorance" and of "the clashing values of our complicated society," they tell us of evil "McCarthyism," and of the great wisdom of the "jury of rural westerners," and so on. And yet all the time I kept thinking, "It's only a lawsuit, for God's sake."

Lest you yield to that which is likely your first thought on reading that paragraph and say to yourself, "That guy John Rupp is getting remarkably crusty in his old age" (or perchance, "just as crusty as he always was"), ask yourself two questions: (1) Where would all the social significance be if the jury, as juries have been known to do, had voted the other way? (2) Aren't all these commentators missing the point when they say hardly a word about the remarkable performance of Goldmark's lawyers, Bill Dwyer and R.E. Mansfield—where might that fine "jury of rural westerners" who "renewed our faith in the jury system" have gone without Dwyer and Mansfield to show them the way?

To my mind the significance of the book is that it is an exemplar of the good that comes from wise and careful preparation of a lawsuit and from patient, courteous, and skillful presentation in the long days in the courtroom.

In short, ladies and gentlemen, read this book. You will enjoy it and you will learn from it. But read it as an account of a

lawsuit because that's what it is. And that's enough, is it not? A well crafted lawsuit, like a fine production of a good play, is a noble thing in itself. It is a soundly built tub which stands on its own bottom. It need not be wrapped in blankets of oleaginous praise and saluted with French horns and oboes as a great landmark, or a morality play, or as the inevitable triumph of good over evil. The realistic Mr. Hitchcock meant no denigration when he remarked, "It's only a movie, for God's sake".

It is not a book reviewer's function to tell all about the book. One who does so is like the clumsy master of ceremonies who introduces a speaker by telling the audience what the speaker is going to say. Still, I must tell you enough of the salient facts to introduce you to the drama of the lawsuit and to its difficulties.

The protagonist was John Goldmark, an Okanogan County rancher. His main antagonists were Al Canwell, Ashley Holden, Loris Gillespie and Don Caron, all members of what the book calls "the radical right." They, however, viewed themselves simply as fighters against Communism. The libels were published during Goldmark's campaign for a fourth term in the State House of Representatives in which Goldmark was soundly defeated for the Democratic nomination. None of the publications said that Goldmark was actually a Communist, but the implications and the innuendoes were to that effect. For example, he was called "a Communist tool," and the American Civil Liberties Union (ACLU), of which he was said to be a prominent member, was flatly called "a Communist front." If false, the statements were quite clearly libelous. The defense would have to be that they were true or, at least, that they were "fair comment."

Now, why would even the most "wild-eyed Communist fighter" suppose that an Okanogan rancher was a Communist or a Communist tool or a "fellow traveller"? Well, to begin with, he was a New Yorker, he was part Jewish, he was a graduate of Harvard Law School, he was a member of the ACLU, he was a "liberal Democrat," and his son went to Reed College. Wow! And not only that; he had never practiced law, but had come way out to the Okanogan country and, of all things, bought a ranch. Why did he do that? Who put up the money? Then pretty soon he got into the Legislature and became a leader of his party there. Before he came West after World War II he had served in the Navy in the Pacific as a bomb-disposal officer. (I,

at least, always admired those bomb-disposal folks. The thing that set them apart from the rest of us was that, if we made a mistake, it might have serious consequences, but a bomb fellow's mistake was sure to have an immediate and personal bad result—one might have trouble finding even his dog tags.). And in what does a bomb-disposal man become expert? Why, bombs, of course, all kinds of bombs. Then, too, he had learned to fly and he had an airplane and an air strip on his ranch. He could come and go swiftly and surreptitiously. It all fit together in their minds: obviously this mysterious Mr. Goldmark was a secret Communist plant acting under the carefully chosen cover of a rancher.

Then there was a real "clincher." Mrs. Goldmark had been an actual Communist, the real dues-paying article! And not only that—she was a Communist when they were married in 1942, and the "experts" on Communism said that the party would never have let her marry Goldmark unless they approved of him. Moreover, she didn't use her real given name, Irma. She said she didn't like it so she renamed herself "Sally." She had joined the party in 1935 while working in a government job in Washington, D.C., and she stayed on for eight years, until 1943. She said she had dropped out then, but the "experts" said you couldn't just "drop out" of the party. The Goldmarks had not told any of this to the general public of Okanogan County.

Right in the middle of the trial President Kennedy was assassinated by Lee Harvey Oswald. Who was Oswald? Why, he was a Marxist who had been to Russia and was an admirer of Castro in Cuba. He was a member of the ACLU and said he wanted an ACLU lawyer to defend him. See? "They" are everywhere and will stop at nothing.

I tell you all this not "for the truth of the matters asserted therein" but to show you that this was a tough case. It was hard to prepare and hard to try.

The Goldmarks' Complaint alleged a conspiracy by the defendants, so there had to be considerable pre-trial discovery. The defendants were represented by able counsel: Glenn Harmon of Spokane, Ned Kimball of Waterville, and retired Judge Joseph Wicks of Okanogan. The judge was the highly respected Theodore S. Turner, visiting from Seattle. The trial itself took two months. Witnesses for both sides came from all over the United States. Many reputations were at stake—not only those of the parties, but those of the ACLU and of several witnesses.

The case received considerable attention from the news media—local, state, and national. Dwyer's book takes us through the trial, step-by-step and in detail. He is as good a book-writer as he is a lawyer.

Finally the verdict came in, ten-to-two for the plaintiffs and a total award of \$40,000, which was a large amount in 1964. The Goldmarks' good name was restored, and the ACLU was vindicated. There was relief and joy in the hearts of the Goldmarks and their lawyers. To be sure, the defendants would probably appeal, but it seemed fairly certain that the verdict would stand up on appeal. Anyway, the verdict certainly restored the Goldmarks' good name.

But now nine new and unexpected actors stalked onto the stage. Before Judge Turner could hear the usual post-trial motions and enter judgment on the verdict, the Supreme Court of the United States handed down its opinion in *New York Times v. Sullivan*, 376 U.S. 254 (1964). Suddenly, we learned a new doctrine of the law of libel and we learned, too, that it was not only a new rule—it was a principle of constitutional law. Thus, it was both prospective and retroactive in its application. Ironically, this new rule had been strongly urged on the Court by the ACLU.

Under the new rule, if you are a "public figure," a person can say or write even the most outrageous lies about you so long as he does not do so with malice or with a reckless disregard of whether the statements are true or false. Since you must now prove not only the falsity of the statements but also the subjective element of the presence of malice or "reckless disregard" in the mind of your defamer, you have a heavy burden indeed. As a member of, and a candidate for, the legislature, Goldmark was obviously a "public figure."

Had he borne this burden, newly thrust upon him? The matter was briefed and argued at length before Judge Turner. Finally he concluded, as the jury had concluded, that Goldmark was not a Communist nor a pro-Communist, that the ACLU was not a Communist front, and that the charges against Goldmark were false. Then, however, he went on to conclude, with some reluctance I bet, that the rule of the *New York Times* case required him to set aside the verdict and enter judgment for the defendants.

So he did that, and there the case ended.