

FOWLER VINCENT HARPER

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FOWLER HARPER was a man of many interests, many talents, and many appeals. But I speak here only of one aspect of them — his work in civil liberties.

It was here that I knew him best. Fowler and I lived through a quarter of a century of civil liberties together. We were on the same letter-heads, we signed the same petitions, we were attacked (libelled, Fowler would say) by the same people. At times the going was rough. But Fowler never faltered, never retreated, never thought of giving in. Quite the contrary, the more violent the controversy the greater was his delight.

It was in just such a situation that I first came to know Fowler. In Washington, in the late 30's and early 40's, the local chapter of the National Lawyers Guild was a hard-pressed organization. Founded a few years before, it was beset with trouble. First the conservative lawyers among us, including most of the higher government officials, had resigned with a public blast against radical elements in the Guild. Then the moderate liberals had withdrawn, more quietly. Then the small group of socialists pulled out, in protest against "Communist domination." In these circumstances I headed a delegation to wait upon Fowler Harper, Solicitor of the Department of Interior, to ask him to become president of the chapter. Not knowing Fowler very well then, I felt our mission was a forlorn hope. No one in his right mind would have taken the job. But Fowler accepted without hesitation. It was vital, he said, to have an organization of liberal lawyers which would bring the talents of the profession to a solution of the difficult problems of the day. Fowler served with distinction, and under his leadership the Washington chapter performed many a valuable service.

Actually, it was Fowler's interest in civil liberties which was the occasion for his coming to Yale. His activities at the University of Indiana, including the signing of a petition to put the Communist Party on the ballot, had aroused the fury of benighted elements in that State. At the Law School here we heard that Fowler was "available," as they say, and the faculty hastened to invite him to visit. The following term, in the fall of 1947, he accepted a permanent post.

Throughout his career Fowler engaged in countless battles on the civil liberties front. He was constantly trying to abolish the House Committee on Un-American Activities. Even as a visiting professor he had drafted a statement, which virtually every member of the Yale Law faculty signed and which received nation-wide publicity, calling for termination of the Committee. He

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urged repeal of the McCarran Act, he fought against the death sentence for the Rosenbergs, he opposed legislation to allow wire-tapping, he supported the right of citizens to leave the country and aliens to visit. He made speeches, he signed petitions, he wrote letters to the editor. He was one of the country's best and most belligerent watch-dogs.

Fowler also found time to work on civil liberties at a more scholarly level. Although public law was not his major field, he made a number of important contributions to the literature on individual rights. I mention only two examples. During the McCarthy period, when many lawyers were reluctant to represent unpopular clients and when those who did were badgered by some of the courts and harassed by the public, Fowler wrote an influential article on the obligations and rights of advocacy. And his last book, just published, is a comprehensive analysis of the views of Mr. Justice Rutledge on the Bill of Rights, considered in the light of recent developments.

In civil liberties philosophy, Fowler was a purist. He believed firmly and completely in the mandates laid down in the Constitution, and he would not yield an inch. We often had long arguments over fine points of law and practice. At times I thought he was quixotic; he thought I was a compromiser. And he lived his theories in action. I remember well a long controversy beginning in 1948 when a civil liberties organization was founded in New Haven. The question arose, largely academic, as to whether Communist Party members should be admitted. After an intensive struggle, the group voted not to exclude anybody. By then the organization was so shaken that it decided to seek respectability through affiliation with the American Civil Liberties Union. Under A.C.L.U. rules, however, an affiliate had to incorporate in its constitution a provision that members of Communist and Fascist organizations could not hold office. When the New Haven group reluctantly acceded to this requirement, Fowler resigned. To him, it seemed intolerable that a civil liberties organization should impose a loyalty oath, and he would have none of it.

In his basic approach to civil liberties activity, Fowler was strongly independent. He did not join many organizations, though he stuck with those he did join, regardless of attacks or defections by others, so long as he agreed with their fundamental position. But his unorthodox nature did not take kindly to organizational routine or compromise. His great joy was to express his views, to any audience that would listen, whether it be of the right, left, or center. And he did not care whose toes he stepped upon.

Fowler's interest in individual rights ranged widely, often beyond conventional patterns. When two law students — a married couple — came to him in 1958 complaining against Connecticut's ban on birth control, Fowler was outraged at this governmental intrusion into the private sector of life. He went to work with characteristic verve. He organized a barrage of law suits to test the constitutionality of the Connecticut statute at every vulnerable point. Defeated in the Connecticut courts, he argued the matter in the United States Supreme Court in the spring of 1961. In *Poe v. Ullman* that Court refused to

decide the issues on the merits. Fowler started over again. Typically, at the time of his death, he was back again in the Supreme Court.

The impact on the nation of Fowler's activities in the civil liberties field was profound. Like Alexander Meiklejohn, he stood out as unafraid and incorruptible. He gave courage and renewed faith to countless of his fellow Americans. And he carried on a great tradition in the best fashion of the Founders.

As I looked back over Fowler's career in the civil liberties field I have asked myself, what was the essence of his position. When he was alive I took it for granted, and I was happy to work with him. But now I feel I should try to reduce it to more permanent form.

I think the substance of what Fowler stood for in civil liberties is the same as what he stood for as a person. Why did so many diverse people react to him at once as a friend? And, at the same time, why did he represent so much as a public figure, as a man of thought and action?

I believe part of the answer lies in the ultimate balance which Fowler achieved between those great forces in one's life that press in opposite directions. This appeared in many forms.

Fowler was gentle but Fowler was tough. He believed in persons but he believed in principle. William Buckley was his friend but he sued Buckley for \$500,000. At other times the two positions were more difficult to reconcile. When a student was up before the faculty for cheating or for failure in his studies, Fowler always groped for a way to save him. Yet at the other level, of principle, he would not be moved.

Fowler was a man of ideas and a man of action. He understood the fine points of theory. But he was not trapped by procedures, or forms, or shadows. He had an inner sense of perspective. As a result he did something with his life. He meant something to the world.

Fowler was a friend of all, but he was an individual, not a reflection of others. He was interested in many people, listened to them, found out all about them, and shared their successes and defeats. His heart went out to them. But it was a proud heart, independent and stubborn, and underneath, even fierce.

Fowler was a man in his own right. We do not see many like him.