
Raids, Deportations, and Palmerism.

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A period of governmental terrorism unparalleled in American history began in August 1919 under the leadership of A. Mitchell Palmer, Attorney General of the United States. Becoming intensified in November it reached its climax in January 1920, then gradually declined under liberal and labor opposition, and may be said to have been finally broken about the month of June [1920]. Its aftermath extended to March 3, 1921, the day before Mr. Palmer ceased to be Attorney General.

On August 12, 1919, W.J. Flynn, Director of the Bureau of Investigation of the Department of Justice at Washington, acting under the instructions of Mr. Palmer, sent out confidential orders to all special agents of the department requiring a vigorous investigation of "anarchistic and similar classes, Bolshevism and kindred agitations," etc., with a special view to obtaining deportation cases. These orders required the return of information of every nature, whether hearsay or otherwise, and directed that special agents should constantly keep in mind the necessity of "preserving the cover of our confidential informants" and "in no case rely upon the testimony of such cover informants during deportation proceedings."

In November 1919 there came the first open results of this policy of anti-"Red" undercover work. In a series of wholesale arrests of unparalleled brutality, the Department of Justice, reinforced by local police, raided the meeting places and homes in various cities of persons suspected of being members of the organization known as the Federated Unions of Russian Workers.† On November 7 [1919], the largest of these raids took place in New York City at the Russian

People's House, 133 East 15th Street. Several hundred workingmen, mostly Russian, were beaten with black-jacks and herded to the local Department of Justice offices, where they were searched and questioned and part of them sent to Ellis Island for deportation proceedings. The furniture in the place was deliberately wrecked.

On December 21, 1919, there were deported to Russia on the transport *Buford* 249 persons whose cases had been rushed through the Department of Labor with little pretense of evidence or process of law.

Meanwhile, other raids were in preparation against the Communist Party and Communist Labor Party. On December 27 [1919], confidential instructions signed by Frank Burke, Assistant Director of the Bureau of Investigation of the Department of Justice at Washington, were sent out calling for wholesale raids to take place simultaneously on January 2 [1920] all over the country. Meetings for that evening were to be stimulated by the undercover agents. Arrests were to be made whenever necessary without warrant. All persons arrested were to be lined up against the wall and searched. All papers at homes or meeting places were to be seized, it being "left to your discretion" how agents were to gain access to such places and whether they should first apply for search warrants.

In point of fact, there was in existence no law giving the Department of Justice any authority whatever to make arrests in deportation proceedings, nor was there in existence any law under which the Department of Justice could lawfully have applied for search warrants to seize radical literature.

Through the night of January 2, 1920, the white

†- The formal name of this anarchist organization was "Federatsii Soiuzov Russkikh Rabochikh Soed. Shtatov i Kanady" — The Federation of Unions of Russian Workers of the United States and Canada.

terror reached its climax. It is impossible to know how many persons, aliens and citizens, were arrested in the raids of that night and detained for periods running from a few hours to many months. It is estimated in the evidence before the Senate Committee, which a year later investigated charges against the Attorney General, that approximately 10,000 persons were arrested, that 6,530 Labor Department warrants were applied for either before or after the arrests (mostly after) and that about 3,000 people among those arrested were actually "fitted up" to the warrants and held for deportation hearings.

As yet no decision had been made by the Secretary of Labor that either the Communist Party or the Communist Labor Party was illegal so as to make its members subject to deportation under the Act of Congress of October 16, 1918. Three weeks after the raids, on January 24 [1920], in the Preis case, the Secretary of Labor, Mr. William B. Wilson, decided that the Communist Party was illegal in that it was an organization which "entertains a belief in, teaches, or advocates the overthrow by force or violence of the government of the United States."

So far, the policy of A. Mitchell Palmer had pursued its way unchecked. The turn of the tide began to appear, however, on January 22 and 23 [1920] when the Rules Committee of the House held hearings on the peacetime sedition legislation (the Graham bill) which was advocated by the Attorney General to suppress radicalism among citizens. Liberal and labor opposition to the bill was organized, and it was killed. At these hearings for the first time public charges of illegal practices were made against the Department of Justice.

Meanwhile, in the Department of Labor itself, sanity was beginning to prevail. It had been popularly supposed that the law vested in the immigration inspector the right to determine conclusively questions of guilt, membership, etc. This was not the fact, though a custom had grown up of giving undue weight to the recommendation of the inspector. The responsibility of determination really rested upon the Secretary of Labor, or the Assistant Secretary acting for him. Mr. Louis F. Post, Assistant Secretary of Labor, who had nothing to do with the arrests, began deciding the 3,000-odd pending cases, and ordering the release of those persons against whom the evidence was insuffi-

cient (about 75 percent). On April 10 [1920], he handed down an important decision in the case of one Thomas Truss. This held in effect, that although membership in the Communist Party was sufficient ground for deportation, certain definite rules of due process of law must be observed, and no one should be deported merely because the Department of Justice called him a Red.

An immediate attack was begun upon Mr. Post in congress and in various newspapers. A resolution for his impeachment was introduced in the House. This was referred to the Rules Committee; Mr. Post retained counsel, and hearings were given, Mr. Post continuing all the while to sit at his desk and winnow out the pending cases, undisturbed by the attacks upon him.

Meanwhile, in the Colyer case in Boston, application for writs of habeas corpus had been made in the Federal Court before Judge George W. Anderson by counsel representing a number of persons arrested, and in April the trial of the case came on, lasting over a number of days and revealing in detail the illegal practices which were being pursued by the Department of Justice. One remark of Judge Anderson in particular caught the attention of the newspapers and flashed across the country, in which the Judge stated that there was evidence before him that the government "owns and operates part of the Communist Party" and that this "means something to anyone who had had experience with spies in private industry."

On May 5 [1920], argument having been had in the test case of Carl Miller, a member of the Communist Labor Party, it was held by the Secretary of Labor that that Party, unlike the Communist Party, was *not* illegal so as to make its members liable for deportation. It is a matter of opinion that the distinction between the two parties rested on pretty thin reasoning, and that the principal difference between them lay in the fact that the Communist Party case was argued at the height of the "Red" hysteria in January [1920] and the Communist Labor Party case 3 months later.

The Miller case was the first substantial victory for the forces of intelligence, although, in its turn, it created a condition approximating fury in the minds of those Congressmen who were bent on supporting Palmerism, notably Mr. Johnson of the state of Wash-

ington, who was chairman of the House Immigration Committee.

The principal blow to Palmerism, however, was dealt by the "Twelve Lawyers' Report," as it came to be called. This appeared in Washington while the Post hearings were going on and was caught up by the newspapers of May 28 [1920] and reported at great length across the country.

The idea of this pamphlet originated in a meeting of various lawyers, editors, and congressmen, held at the office of the Popular Government League in Washington on the evening of April 14 [1920], where it was decided "that the time has come for non-socialists, progressive Americans to make a strong stand against the illegal and brutal practices of the Department of Justice," and where, on the suggestion of Mr. Frank P. Walsh, it was resolved that "the Popular Government League should appoint a committee of distinguished lawyers to make a report to the League as to the character of activities of the Department of Justice as regards aliens." Various names for the committee were afterwards discussed, and 12 men were finally chosen and consented to serve, 6 being active members of the bar and 6 professors of law. The investigation of evidence and preparation of the report were delegated to the subcommittee consisting of Mr. Jackson H. Ralston, general counsel in Washington of the American Federation of Labor, and the writer of this article, who had several trained investigators and lawyers helping them in the field. The report and evidence went through 4 drafts from April 24 [1920] on, being submitted to the entire committee, and appeared on May 28 [1920], under the title *Report upon the Illegal Practices of the United States Department of Justice*, with the signatures of the following lawyers: R.G. Brown, Memphis, Tenn.; Zechariah Chafee, Jr., Cambridge, Mass. (Harvard Law School); Felix Frankfurter, Cambridge, Mass. (Harvard Law School); Ernest Freund, Chicago, Ill. (University of Chicago Law School); Swinburne Hale, New York City; Francis Fisher Kane, Philadelphia, Pa.; Alfred S. Niles, Baltimore, Md. (Maryland Law School); Roscoe Pound, Cambridge, Mass. (Dean, Harvard Law School); Jackson H. Ralston, Washington, DC; David Wallerstein, Philadelphia, Pa.; Frank P. Walsh, New York City; Tyrell Williams, St. Louis, Mo. (Acting Dean, Washington University Law School).

Mr. Palmer's subsequent insinuation that the pamphlet was only a ruse to aid in the defense of Mr. Post was unfounded, nor was there any truth in the insinuation made by a member of the Rules Committee that mysterious money was behind it. No legal fees of any kind were paid, and the entire disbursements for printing and distribution of the first edition of 10,000 copies amounted to less than \$3,000, which was raised by subscription by Mr. Judson King, Executive Secretary of the National Popular Government League, without whose untiring devotion the project could not have been realized.

The opening statement of the Twelve Lawyers' Report was as follows:

TO THE AMERICAN PEOPLE:

For more than 6 months we, the undersigned lawyers, whose sworn duty it is to uphold the constitution and laws of the United States, have seen with growing apprehension the continued violation of the Constitution and the breaking of those laws by the Department of Justice of the United States Government.

Under the guise of a campaign for the suppression of radical activities, the office of the Attorney General, acting by its local agents throughout the country, and giving express instructions from Washington, has committed illegal acts. Wholesale arrests both of aliens and citizens have been made without warrant or any process of law; men and women have been jailed and held incommunicado without access of friends or counsel; homes have been entered without search warrant and property seized and removed; other property has been wantonly destroyed; workingmen and workingwomen suspected of radical views have been shamefully abused and maltreated. Agents of the Department of Justice have been introduced into radical organizations for the purpose of informing upon their members or inciting them to activities; these agents have even been instructed from Washington to arrange meetings upon certain dates for the express object of facilitating wholesale raids and arrests. In support of these illegal acts, and to create sentiment in its favor, the Department of Justice has also constituted itself a propaganda bureau, and has sent to newspapers and magazines of this country quantities of material designed to excite public opinion against radicals, all at the expense of the government and outside the scope of the Attorney General's duties.

Four days later Mr. Palmer appeared in person before the House Rules Committee in the Post impeachment proceedings, and answered these charges. It was significant that, whereas the Twelve Lawyers' Report had received very great publicity, the newspapers reported only scantily the defense of Mr. Palmer, showing that the temper of the country was begin-

ning to change and that the editors had made up their minds that anti-Red hysteria was no longer to be regarded as the popular order of the day.

Congress adjourned on June 5 [1920] without taking any action as to the Post impeachment proceedings, which had pretty well fizzled out. On the last day of the session the Immigration Law was amended so as to look much more stringent, although the amendments did not make much practical difference to aliens or their attorneys. In the Democratic National Convention, Mr. Palmer was defeated for the Presidential nomination, and in the platform adopted by the Republican Convention the malpractices of the Departments of Justice and Laobr were vigorously condemned.

In the Colyer case in Boston, a very long opinion was handed down on June 23 [1920] by Judge Anderson, discharging the relators, and reviewing in great deal the evidence of illegal practices of the Department of Justice.

The months of July to November [1920] were comparatively quiet, Mr. Palmer having become pretty well discredited and public attention being focused on the coming election.

At the reconvening of Congress in December [1920], on motion of Senator Walsh of Montana, the

report of the Twelve Lawyers was referred by the Senate to the Committee on the Judiciary for such action as the committee might care to take. Hearings were had from January 19 to March 3, 1921, in which both sides were heard and the Attorney General, appearing in his own behalf, was cross-examined by Senator Walsh and forced to admit the arrests and seizures without warrant and without law. The sub-committee which heard the evidence has not yet brought in its report.

I quote from A. Mitchell Palmer's testimony before this committee:

"I apologize for nothing that the Department of Justice has done in this matter. I glory in it. I point with pride and enthusiasm to the results of that work; and if, as I said beofre, some of my agents out in the field, or some of the agents of the Department of Labor, wer a little rough and unkind, or short and curt, with these alien agitators, whom they observed seeking to destroy their homes, their religion, and their country, I think it might well be overlooked in the general good to the country which has come from it. That is all I have to say."

So passed from office the man who most, since our Constitution was founded, has tried to substitute alien autocracy for American principles, and anarchic ruthlessness for due process of law.

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