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Partisanship within the American Civil Liberties Union: the Board of Directors, the struggle with anti-communism, and Elizabeth Gurley Flynn

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Partisanship within the American Civil Liberties Union: the Board of Directors, the Struggle with Anti-communism, and Elizabeth Gurley Flynn, 1938-1940. By Douglas Colin Post. Master of Arts in history. University of Richmond. May 1996. Professor R. Barry Westin, thesis director.

The American Civil Liberties Union and an overwhelming majority of its historians have maintained that the organization has devoted its efforts solely to the protection of the Bill of Rights. This thesis examines that claim, focusing on the events that culminated in the expulsion of Elizabeth Gurley Flynn from the Union's Board of Directors. Relying primarily on the organization's own publications and archives, as well as several insiders' accounts, the analysis concludes that the issue of communism increasingly polarized the Board and, in a gross violation of its nonpartisan commitment to the defense of civil liberties, led ultimately to the Communist Flynn's removal.

Approval Page

I certify that I have read this thesis and find that, in scope and quality, it satisfies the requirements for the degree of Master of Arts.

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Partisanship within the American Civil Liberties Union: the Board of
Directors, the Struggle with Anti-communism, and Elizabeth Gurley Flynn,
1938-1940

By

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B.A., University of North Carolina at Chapel Hill, 1991

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Introduction:

The American Civil Liberties Union and the Conception of Civil Liberties

The 1988 Presidential Campaign

In 1984, Ronald Reagan won reelection to the presidency in a landslide victory over Democratic candidate Walter Mondale. Four years later, he was vacating the White House with his enormous popularity still intact. While Reagan suffered no shortage of critics during his tenure in office, few would dispute that he had presided over a period in which there had been a dramatic revival of a formerly slumping economy, a palpable cooling of Cold War tensions, and a striking rejuvenation of the nation's self-confidence. By 1988, Reagan's supporters lamented his retirement as the close of the "Reagan Revolution"; he even was earning favorable comparisons with one of the greatest of American presidents, Franklin D. Roosevelt.

The contest to determine Reagan's successor pitted Republican Vice-President George Bush against Democratic Massachusetts Governor Michael Dukakis. Although Dukakis held an early lead in the campaign polls, Bush had the election well in hand by October. His November victory surprised few. Soundly defeating his opponent, George Herbert Walker Bush captured the electoral vote of thirty-eight states and fifty-four percent of the popular vote to become the fortieth President of the United States.

In the post-election analyses, political experts identified a score of factors that had propelled Bush to the White House. Certainly the most popular interpretation credited Bush's win to the legacy of the Reagan presidency and his association with that administration. Yet such simplistic analyses did not reveal the entire story. Some pundits posited that the election represented a repudiation of the Democratic candidate, rather than a victory for the Republican. Governor Dukakis, these persons contended, had wounded his campaign with feckless attempts to convince the electorate of his leadership qualifications. First, Dukakis had touted his budgetary management skills, which did not withstand the ensuing examination of his record as governor. Second, the Democrat's foreign policy experience was non-existent. Last, Dukakis's personality contrasted noticeably with the charismatic leadership to which Americans had grown accustomed. Charitable descriptions referred to Dukakis as reserved and stoic; less flattering portrayals described him as passionless and hopelessly wooden.

Other analysts credited the Bush campaign with defining Dukakis better than the Democrat had defined himself. On the issue of crime, Dukakis had appeared "soft" with the notorious story of Willie Horton's parole. The Republicans questioned Dukakis's patriotism by highlighting the governor's veto of a bill mandating the recitation of the Pledge of Allegiance in public schools. And not to be forgotten was the attempt to portray Dukakis as a far-left "liberal," a foe of the values that Middle America held dear: seizing upon the Democrat's admission as a "card-carrying member of the American Civil

Liberties Union (ACLU)," Bush hammered his opponents time and time again, declaring that Dukakis's association with the organization demonstrated his un-Americanism.

The ACLU in the '88 Campaign

Overall, it remains impossible to gauge the effect of each separate issue on the electorate's consideration of the candidates. Nevertheless, Bush officials undoubtedly sensed that Dukakis's ACLU connection tilted the balance in their favor, which was the reason for the issue's visibility in the late stages of the campaign.

Whether or not the Republicans were correct about the Union's "un-Americanism" was not entirely clear. On the one hand, Bush's attack resulted in a dramatic increase in the membership of the ACLU: the organization reportedly gained 10,000 new members by December of 1988. Yet a reliable public opinion poll--a joint The New York Times/Columbia Broadcasting System survey in October 1988--revealed that, among persons who felt qualified to comment on the ACLU, only thirty-nine percent held a favorable opinion, while the remaining sixty-one percent took an unfavorable view.¹ Bush's campaigners, in addition, insisted that even moderates responded favorably to their

¹The poll's results were as follows: of 1,136 registered voters surveyed, seventy-one percent were either undecided or did not feel qualified to comment, seventeen percent disapproved, and eleven percent approved. E. J. Dionne, "ACLU Studies Its Image and Finds It Intact," The New York Times, 14 May 1989, p. 23.

candidate's denunciation.²

How Republican strategists developed and exploited the issue of Dukakis's ACLU membership proved to be one of the interesting stories of the campaign. Dukakis first trumpeted his membership during a May 1987 speech in Los Angeles; he later repeated it while stumping for his party's nomination in Spencer, Iowa. When focus groups--assembled by the Republicans to gauge public attitudes--responded negatively to the mention of the Union, Bush campaigners "concluded that attacks on the organization could be part of an arsenal" of issues to level against Dukakis.³

Bush, however, did not embrace the strategy initially. According to newspaper accounts, he balked, not desiring his campaign "to become a referendum on a 250,000-member body that is also widely seen as an effective defender of civil rights." Furthermore, Bush demurred because of conflicting personal feelings: although he considered many of the ACLU's positions radically liberal, he also saw it as an effective guardian of individual rights.⁴

²Maralee Schwartz and Paul Taylor, "More People Carrying ACLU Cards," The Washington Post, 18 December 1988, p. A3; E. J. Dionne, "Latest Poll Finds Dukakis Is Closing the Gap," The New York Times, 5 October 1988, p. A1 and A14; and Gerald Boyd, "Bush Takes New Tack on the A. C. L. U.," The New York Times, 30 September 1988, p. B6.

³Joe Klein, "Ready for the Duke?" New Yorker, 17 August 1987, p. 30; Jeffrey Leeds, "Impeccable Judgments or Tainted Policies?" The New York Times Magazine, 10 September 1989, p. 72; and Boyd, p. B6.

⁴Ibid.

Nevertheless, Bush grudgingly went ahead with his campaigners' advice. Derisively referring to his opponent as a "card-carrying member of the ACLU," the Republican's attack was an immediate success; reportedly, calls of support flooded Bush's campaign headquarters. Thereafter, whatever his initial reservations, Bush did not hesitate to invoke the ACLU in his electioneering. During a presidential debate in Winston Salem, North Carolina, Bush linked his opponent to the organization's stands on movie ratings, the Pledge of Allegiance in public schools, drug legalization, and the distribution of pornography--thereby intimating that Dukakis opposed the film rating system and Pledge of Allegiance and supported drug legalization and pornographic distribution. In St. Louis, Missouri, Bush characterized the ACLU's agenda as "way out in deep left field." Early in September, he declared, "I am not a card-carrying member of the A. C. L. U. I am for the people." Then, in October, Bush accused the Union of "always coming down on the side of the criminal and never on the side of the victim."⁵

Public Reaction

Supporters of the Union complained that Bush unfairly portrayed the group as a zealous, left-wing organization, when in fact the group took great pride in its nonpartisanship. They also accused the Vice-President of taking the ACLU's positions out of context, without emphasizing its organizational commitment to the defense of the

⁵Klein, p. 30; Leeds, p. 72; and Boyd, p. B6.

Bill of Rights. The New York Times denounced the McCarthyite overtones of Bush's "card-carrying" rhetoric as a "shameless smear," for impugning Dukakis's patriotism. Moreover, several columnists delighted in revelations that Richard Thornburgh, the Attorney General under Ronald Reagan and likely candidate for the same position under Bush, had served on the Board of Directors for the Pittsburgh chapter of the ACLU from 1966 to 1969.⁶

Critics of the Union, however, applauded the Republican attack. Daniel J. Popeo, counsel to the conservative Washington Legal Foundation, stridently denounced the organization: "The A. C. L. U.'s clients are dope dealers, terrorists, serial killers, rapists, American Nazis, pornographers, and illegal aliens. Whenever they win, we all lose." Heritage Foundation scholar William Donohue echoed Bush's campaign rhetoric: "The ACLU has, at least in the last 20 years, become an extremist organization . . . [it] is the legal arm of the liberal left." Similar sentiments were voiced by New York lawyer Mark Campisano, a former Supreme Court clerk for Justice William Brennan: "[The Union's] agenda is fundamentally hostile to the processes of American constitutional democracy, and should be rejected by thoughtful democrats of all parties."⁷

⁶"Card-Carrying Smears," p. 22; Anthony Lewis, "Season of Liberty," The New York Times, 9 October 1988, Section IV, p. 23; and Richard Cohen, "Another 'Card-Carrying Member of the ACLU'," The Washington Post, 22 September 1988, p. A25.

⁷Philip Shenon, "A. C. L. U. Reports Rise in Membership Calls in Wake of Bush's Attacks," The New York Times, 27 September 1988, p. B6; Marcus, p. A8; and Mark Campisano, "Card Games," The New Republic 199 (31 October 1988): 10.

Origins of a Hotly-Contested Issue: Constitutional Interpretation

Regardless of one's political orientation, the debate over the ACLU in 1988 illuminated the controversy that surrounds, and has surrounded, the organization since its inception. How could Dukakis's seemingly innocuous comment about his membership be transformed into a major issue in a presidential campaign? The answer ultimately lies in the history of the ACLU, its goals, and its interpretation and protection of the rights enumerated in the Constitution of the United States.

The Union inevitably has encountered much resistance and generated intense controversy throughout its history. At least some measure of this antipathy stems from the ACLU's organizational creed. From its some of its earliest publications, the group defined its objectives thusly: "Our fight is to help secure unrestricted liberty of speech, press and assemblage, as the only sure guarantees of orderly progress." Years later, Associate Director Alan Reitman described the group as a "private, non-partisan organization devoted solely to the protection of the Bill of Rights."⁸

But while these aims appear straightforward, the Bill of Rights and the implications of the freedoms granted therein spark heated debates even today. One

⁸The first quotation may be found on the front page of Seeing Red: Civil Liberty and the Law in the Period Following the War (New York: ACLU, August 1920), reel 90, American Civil Liberties Union, Records and Publications, 1917-1975 [cited hereinafter as ACLU Records] (Glen Rock, NJ: Microfilming Corporation of America, 1977). The second quotation is located in American Civil Liberties Union, Records and Publications, 1917-1975: A Guide to the Microfilm Edition (Glen Rock, NJ: Microfilming Corporation of America, 1977), 1.

source of controversy surrounding the Bill of Rights regards the issue of constitutional interpretation. Some argue that the framers of the Bill of Rights intended for the protection of certain, particular activities and this "original intent" of the document should be observed in its strictest and most literal sense. The history of constitutional law, however, intimates that the Bill of Rights retains an inherent flexibility. As evidence, the United States Supreme Court, the ultimate arbiter in constitutional matters, has reversed itself on several occasions as to the document's meaning. The most famous example, the overturn of the 1896 *Plessy v. Ferguson* decision with the 1954 *Brown v. Board of Education* represents a potent reminder of the ongoing reinterpretation of civil liberties.

Despite the Supreme Court's inconsistent definition of constitutional law, however, critics accuse the Union of lacking an established core of judicial values. As opponents rightly assert, the ACLU forcefully has argued--employing the "literalist" position--for a strict separation between church and state. On the other hand, the Union has employed the "flexible" interpretation--that the Bill of Rights grants certain freedoms that were not mentioned specifically--contending that women's reproductive rights are implied by the Constitution, when those rights are not expressly protected by the document's language.

The ACLU's Influential Legacy and Its Contemporary Implications

To be sure, the critics are correct: the Union's philosophical interpretation has not been consistent. Nevertheless, the ACLU has proved itself remarkably successful in persuading the courts with its arguments, which has been a source of irritation and dismay to the organization's many opponents. Since 1920, the Union has exerted a significant influence on some of the principal legal debates of this century. Even Mark Campisano, one of the aforementioned critics, lists six major cases in which the Union "improved the operation of our constitutional democracy": (1) the 1925 *Scopes* "monkey trial," which defended the teaching of evolution in public schools; (2) the 1933 *Ulysses* case, the challenge against censorship predicated on obscenity charges; (3) 1939 *Hague v. CIO*, which protected the rights of organized labor; (4) the 1944 *Korematsu* case, the fight against the internment of Japanese-Americans during World War II; (5) the 1943 *Barnette* case, in which a state law forcing Jehovah's Witness children to salute the flag was struck down; and (6) 1954 *Brown v. Board of Education*, which ruled educational segregation ("separate but equal") unconstitutional.⁹

Unmentioned, but equally significant, was the ACLU's involvement in the defense of Sacco and Vanzetti; numerous cases opposing the death penalty; the Scotsboro case; the fight for legal counsel for indigent criminals; the federal government's case against Oliver North; countless civil rights trials; the protection of radicals during the two "Red

⁹Campisano: 10.

Scares"; innumerable cases delineating the separation of church and state; the impeachment of Richard Nixon; and the battle for women's reproductive rights. Certainly the Union has not won all of its cases, nor can it claim sole credit for the extension and broadening of civil liberties during this century. But whether one loves or hates the ACLU, it has been effective in convincing the courts.

Naturally, supporters of the Union maintain that the organization's victories have had a positive influence on the defense of civil liberties. Former Chief Justice Warren Burger ruminated that ". . . [i]t would be difficult to appreciate how far our freedoms might have eroded had it not been for the Union's valiant representation." Yet foes of the ACLU frequently counter that the group has offered its services to all sorts, from radicals of all political shades to unrepentant criminals, some of whom represent a threat to the law-abiding citizens of our society. One of the most recent expressions of this attitude came from Ronald Reagan's former attorney general, Edwin Meese, who slammed the Union as a "criminal's lobby."¹⁰

Equal Representation and Public Perception

That the ACLU defends the some of the most marginal elements of society cannot be disputed. Irrespective of its defendants' repugnance or unpopularity--whether they are

¹⁰Annual Report, 1977, front cover, reel 3, American Civil Liberties Union, Records and Publications Update, 1976-1980 (Sanford, NC: Microfilming Corporation of America, 1981); and "Offensive/Defensive," The New York Times, 19 May 1981, p. 14.

Fascists, Communists, white supremacists, and the most contemptible criminals--the Union has granted legal aid to those whom it has deemed have had their constitutional rights violated. The ACLU cites voluminous legal justification for doing so, an excellent example of which comes from an *obiter dictum* in a 1864 Supreme Court decision:

The Constitution of the United States is a law for the rulers and the people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man that any of its provisions can be suspended during any of the great exigencies of government.¹¹

Nevertheless, Americans often have had difficulty in accepting the notion that the Constitution extends civil liberties to all citizens, without exception. A plethora of examples would buttress this claim, but a recent one illustrates the point. In 1990 the Thomas Jefferson Center for the Protection of Free Expression surveyed 1500 adults on the meaning of free speech. The results of the inquiry found "alarming evidence . . . that the First Amendment protects what the speaker has to say, but not so clearly the views of others." In short, a double standard exists: while Americans feel that one should be free to express himself freely, those whom he regards unfavorably necessarily should not be afforded the same right.¹²

¹¹As quoted in Charles Lamm Markmann, The Noblest Cry; a History of the American Civil Liberties Union (New York: St. Martin's Press, 1965), 48.

¹²"Survey: Americans Believe in Free Speech, but Not for Everyone," Durham (NC) Morning Herald, 15 September 1990, p. 5A.

To discriminate in the application of the Constitution's precepts stands as a fundamental violation of the document's spirit--that all citizens are to be treated and judged equally by the law. Thus when the Union is accused of criminal advocacy, the organization responds with the aphorism: "The preservation of the Bill of Rights rests upon the application of its principles to all without discrimination." Or, in its more colorful moments, the ACLU restates this position: "Unless we defend the rights of the sons of bitches, we'll lose our own." The Union, in other words, maintains that the degree of vigilance with which the civil liberties of all marginal groups are protected sets the standard for the rest. This unbiased defense of any and all comers, claims the ACLU, has generated a fair share of the controversy that has dogged the organization.¹³

Partisans of the Left? The Scholars Weigh In

Historians and legal experts have widely divergent opinions on whether or not the Union actually has observed a neutral position in protecting civil liberties. Donald Johnson, author of several analyses of the ACLU, posits that although the organization's "leaders certainly had their own political views in private . . . the organization has never defended any doctrine other than its own credo of unlimited free speech, free press, and free assembly." Historian Charles Lamm Markmann echoes Johnson: "[T]he Union's

¹³Who's Un-American? An Answer to the "Patriots" (New York: ACLU, September 1935), p. 2, reel 91, ACLU Records; and Gertrude Samuels, "The Fight for Civil Liberties Never Says Won," The New York Times Magazine, 19 June 1966, p. 14.

only goal is equal justice and equal freedom for all . . . [and] scrupulously avoids embracing any political or partisan cause in its dedication to furthering the Constitutional rights of all." In his examination of the organization's contributions to changing public attitudes toward individual liberty, Samuel Walker maintains that the ACLU has not concerned itself with its clients' political leanings or moral character; the group, he contends, has observed an "absolutist" stance with regard to the civil liberties. Finally, Barton Bean, in his doctoral dissertation on the Union, concludes that "it is non-partisan, having neither political affiliation nor corporate sympathy with the beliefs of those whose rights it upholds."¹⁴

Yet William Donohue, author of several analyses on the ACLU, supports the opposing viewpoint. He asserts that the history of the organization is replete with examples of partisanship: "The evidence amassed here [his analysis] indicates that the ACLU is no more free from partisanship than the Republican and Democratic parties." Moreover, in the introduction of his second analysis on the Union, Twilight of Liberty, Donohue further impugns the group's conduct: he suggests that the ACLU occasionally offers its services to elements on the right because "it is good for public relations to

¹⁴Donald Johnson, The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union (Lexington, KY: University of Kentucky Press, 1963), vi; Markmann, 426 and 428; Samuel Walker, In Defense of American Liberties: A History of the ACLU (New York: Oxford University Press, 1990), 5; and Barton Bean, "Pressure for Freedom: The American Civil Liberties Union" (Ph.D. diss., Cornell University, 1955), i.

appear nonpartisan, especially when the case in point is sure to garner high visibility."¹⁵

Throughout its history, the ACLU has maintained that critics, like Donohue, are either ill-informed or willfully ignorant of the group's true purpose. The ACLU's response is simple: since groups or persons on the left have been victimized more often than those on the right, the organization has come to their aid. "Our clients are not chosen by us but by those who attack their rights," declares the Union.¹⁶ Buttressing its contention, the Union reminds opponents of its aid to Iran-Contra figure Oliver North, its battle to place ex-Ku Klux Klan member David Duke on the ballot, its attempts to secure marching permits for the Klan and Nazis throughout the United States, and its protection of tobacco industry advertisements. These instances of assistance to big business, conservatives, and extreme elements on the right, insists the ACLU, demonstrates that it has not confined its efforts to traditionally liberal causes.¹⁷

¹⁵William Donohue, The Politics of the American Civil Liberties Union (New Brunswick, NJ: Transaction Books, 1985), 4; and William Donohue, Twilight of Liberty: The Legacy of the ACLU (New Brunswick, NJ: Transaction Books, 1994), xi and 303.

¹⁶Weekly Press Bulletin #778 (20 August 1937), reel 7, ACLU Records. A contemporary defense by the organization may be found in "An Exchange on the ACLU," The New Republic (12 December 1988): 22-23.

¹⁷William Donohue argues that the Union's recent decisions to aid conservative causes are merely window dressing to veil its decidedly leftist agenda. See Donohue, Twilight of Liberty, ix-xxi.

The Extirpation of Communism

Supporters and members of the Union maintain that the organization turns a blind eye to its choice of clients; they assert that the group has no political agenda, and never has. This analysis will examine the ACLU's claims to its unbiased defense of civil liberties. For at least in one case, in 1940, the Union did not observe an impartial position with regard to one of the most divisive political issues of the time; moreover, the incident involved one of its own, a widely respected member and one of the organization's founders.

In May 1940, the ACLU's Board of Directors held a hearing on Elizabeth Gurley Flynn's continued service on the Board. This study, in analyzing the Flynn affair and the factors that precipitated the hearing, will examine the ACLU's putative neutrality in the defense of civil liberties. Throughout the analysis, the reader should keep a single question in mind: in its consideration of Flynn's adherence to civil liberties was the Union betraying its most cherished principle--the unbiased protection of the Constitutional rights of all Americans and all groups, however unpopular they may be--or was the organization trying to ensure that this principle was maintained?

Chapter One

The American Civil Liberties Union and Connections with Radicalism

Martin Dies and the Special Committee to Investigate Un-American Activities

In June 1937, Representative Martin Dies, a Democrat from Texas, introduced House Resolution 282 to investigate subversion within the United States. The resolution called for the creation of a special committee, consisting of seven members, to determine "the extent, character, and object of un-American propaganda activities in the United States" and to recommend suggestions for counteracting such efforts.¹

Although a similar resolution had been defeated in March 1937 and several representatives spoke passionately against Dies's proposal, the House Rules Committee reported favorably on Resolution 282 in early May 1938.² Debate before the full House opened on 26 May and, by voice vote, the Resolution was adopted later in the day.³ The only amendment adopted by the House ordered the newly-created committee to report its

¹Walter Goodman, The Committee: The Extrordinary Career of the House Committee on Un-American Activities (New York: Farrar, Straus and Giroux, 1964), 13-23; and Congress, House of Representatives, 75th Congress, 1st sess. Congressional Record (21 June 1937), 7352.

²It should be noted that Dies served on the exclusive Rules Committee.

³Dies requested a call for the previous question, which ended debate on the resolution, and this parliamentary procedure passed by a vote of 191 to 41. Although this tally is in no way indicative of the margin by which the resolution may have passed, it may give the reader a general idea of the level of support. Goodman, 23.

findings by the opening of the following Congress--3 January 1939.⁴

The Committee, by separate resolution, received an appropriation of \$25,000 for its investigation. William Bankhead, the Speaker of the House, appointed Dies to chair the Special Committee on Un-American Activities; Dies was joined by Arthur Healey of Massachusetts, John Dempsey of New Mexico, John Starnes of Alabama, Harold Mosier of Ohio, Noah Mason of Illinois, and J. Parnell Thomas of New Jersey.⁵ The House Un-American Activities Committee (HUAC), which had escaped the attention of much of the news media, would not toil in obscurity for long.

Predecessors in the Investigation of Radicalism

By no means was HUAC--or the Dies Committee, to which it was commonly referred--the first entity to examine domestic radicalism. The investigation of "un-Americanism" harkened back to a period two decades earlier.

In the aftermath of World War I, the United States' underwent great turmoil in reconverting its wartime economy to the "normalcy" of peace. The reassimilation of returning soldiers into the workforce and the subsequent displacement of the blacks and women who had filled their positions, along with the relaxation of the federal controls

⁴Congress, House of Representatives, 75th Congress, 3rd Session, Congressional Record (10 May 1938), 6562.

⁵"Dies Red Hunt Bill Is Passed by the House," Daily Worker, 27 May 1938, p. 103, vol. 1088, Seeley G. Mudd Manuscript Library, Princeton University, Princeton, NJ [cited hereinafter as ACLU Collection]; and Analysis of the HUAC's 1938 Hearings, 14 December 1939, p. 195-209, vol. 2077, ACLU Collection.

over the economy, resulted in high inflation, a short yet severe depression, and a dramatic slide in the stock market. Laborers, freed of patriotic appeals for increased wartime production, led a spate of postwar strikes for better wages and fewer hours. Socially, a surge of patriotic zeal and heightened fears of domestic subversion accompanied this period of economic turmoil, causing Americans to vent pent-up resentments toward some of its most vulnerable members.⁶

Among the groups most persecuted during this period included those who were perceived to sympathize with or support bolshevism. The Bolsheviks' bloody takeover in Russia, their anti-democratic principles, and their withdrawal from the war had generated a great deal of antipathy domestically. Moreover, the Bolshevik sanction--real or imagined--of atheism, the nationalization of property, the elimination of class distinctions, and "free love" appeared a direct challenge to American values and traditions. The militancy of organized labor in early 1919 first raised the specter of bolshevism's appearance in the United States. International developments, like the establishment of Marxist regimes in Bavaria (April 1919) and Hungary (March 1919) and the formation of the Communist International (March 1919) exacerbated fears to hysteric

⁶Robert K. Murray, Red Scare: A Study in National Hysteria, 1919-1920 (Minneapolis: University of Minnesota Press, 1955), 3-17; Stanley Coben, "A Study in Nativism: The American Red Scare of 1919-20," Political Science Quarterly 79 (March 1964): 53 and 59-75; and Theodore Draper, The Roots of American Communism (New York: The Viking Press, 1957), 202-04.

levels.⁷

Before and during this first "Red Scare," the fledgling National Civil Liberties Union--which renamed itself the American Civil Liberties Union in 1920--actively defended the civil liberties of alleged Bolsheviks, as well as militant unionists and other radicals. In doing so, the organization earned the enmity and opprobrium of those seeking to curb radical activities. Withering attacks rained on the ACLU; frequently opponents charged the organization with sympathy for or even membership in the very groups the Union was attempting to defend.⁸

Outgrowths of the Red Scare: the Overman Committee and Lusk Committee

In February 1919--the early stages of the Red Scare--the United States Senate, bowing to public pressure for an investigation of seditious activities during the war, expanded an ongoing probe by a Judiciary Committee subcommittee to include an inquiry into bolshevism. The subcommittee's final report included testimony on the National Civil Liberties Bureau, in which it was accused of actively engaging in the legal protection of pacifists, conscientious objectors, and members of the International Workers of the World. Seizing upon the report's findings, the organization's opponents claimed

⁷Peter G. Filene, Americans and the Soviet Experiment, 1917-1933 (Cambridge, MA: Harvard University Press, 1967), 39-71; Murray, 33-238; and Draper, 65-79 and 97-113.

⁸Johnson, 26-118.

that the testimony confirmed its Bolshevik sympathies.⁹

Corroborating the testimony compiled by the Overman committee--as the Senate subcommittee was often called--was the determination of a state legislative body. One month after the establishment of the Overman committee, the New York legislature, reacting to a highly publicized report on the pervasiveness of Bolshevik activity in New York City, created a special joint committee to study the issue. Republican state senator Clayton Lusk chaired the body, designated the Joint Legislative Committee of the State of New York Investigating Seditious Activities.¹⁰

In a little over a year the so-called "Lusk Committee" published a report, succinctly entitled "Revolutionary Radicalism, its History, Purpose and Tactics, with an exposition and discussion of the steps being taken and required to curb it."¹¹ In its staggeringly voluminous findings, the Lusk Committee determined:

⁹August Raymond Ogden, The Dies Committee: A Study of the Special House Committee for the Investigation of Un-American Activities 1938-1944 (Washington, DC: The Catholic University of America Press, 1945), 16-19; "Senate orders Reds Here Investigated," The New York Times, 5 February 1919, p. 1; "Senators Tell What Bolshevism in America Means," The New York Times, 15 June 1919, Section III, p. 4; and Congress, Senate, Brewing and Liquor Interests and German and Bolshevik Propaganda, vol. 2, 66th Congress, 1st sess., S. Doc. 62 (Washington, DC: Government Printing Office, 1919), 2254, 2707-08, 2711, and 2730-34.

¹⁰"Plan to Run Down the Bolsheviki in This State," The New York Times, 21 March 1919, p.1 and 2; "Assembly Approves Bolshevik Inquiry," The New York Times, 27 March 1919, p. 8; and "Radicalism Cause Sought, Says Lusk," The New York Times, 26 June 1919, p. 4.

¹¹The report, over 4000 pages long, cost the state of New York more than \$100,000 in publication costs. Murray, 305.

The American Civil Liberties Union, in the last analysis, is a supporter of all subversive movements, and its propaganda is detrimental to the interests of the State. It attempts not only to protect crime but to encourage attacks upon our institutions in every form. Many of the members of its Committee are undoubtedly sincere in their convictions, but the consequences of their activity are injurious to the public interest.¹²

R. M. Whitney's Reds in America and the 1924 Senate Report

By the fall of 1920, the anti-Red hysteria had begun to subside. Nevertheless, the underlying fears of radicalism persisted; as historian Robert Murray asserts, "a high degree of Scare-inspired psychology . . . [remained] down to 1924-25." Hence, the publication of two anti-ACLU documents in 1924 owed their origins--albeit indirectly--to the consequences of the anti-bolshevism following World War I and the concomitant curtailment of civil liberties.¹³

During the Red Scare, as the public's appeals for eradicating the Bolshevik menace intensified, the two branches of the Communist Party went underground to escape persecution. Isolated, plagued by factionalism, and functionally hamstrung, the Party experienced a precipitous decline in membership in the ensuing years.¹⁴

Nevertheless, the unified Communist Party of the United States of America

¹²New York, Legislature, Joint Committee Investigating Seditious Activities, Revolutionary Radicalism: Its History, Purpose, and Tactics, with an exposition and discussion of the steps being taken and required to curb it (Albany: J. B. Lyon, 1920), 1982.

¹³Murray, 239-62, 264, and 269-73.

¹⁴Draper, 205-09.

(CPUSA)--such as it was--managed to survive. In late August 1921 the CPUSA planned a secret convention near Bridgman, Michigan, in the woods surrounding Lake Michigan. The Justice Department's Bureau of Investigation, ever-vigilant of Communist activity, received an anonymous tip about the gathering and, on 22 August 1922, raided the meeting. The operation yielded handsome returns: the Bureau arrested seventeen members of the Party, and unearthed--literally--a wealth of secret Party documents.¹⁵

Within six months of the arrests at Bridgman, the Boston Evening Transcript printed a number of articles by R. M. Whitney, a former reporter and editor for several big-city newspapers and the Associated Press. Whitney, who served as the director of the super-patriotic American Defense Society, focused on the events at Bridgman and the legal maneuverings of the arrested Communists before the trial's outset. As some of his source material, Whitney used the seized Communist documentation, which was graciously made available to him by William Burns, the head of the Bureau of Investigation.¹⁶

The Union, which was defending the Communists' right to assemble freely, received Whitney's close scrutiny in his series. A year later, in February 1924, Whitney combined the pieces into a wider examination of the CPUSA and its allies to form a book, Reds in America. "Definitely link[ing]" the Union to "part of the open, legal

¹⁵Ibid., 368-70; and Donald Johnson, "American Civil Liberties Union: Origins, 1914-1924" (Ph.D. diss.: Columbia University, 1960), 332-40.

¹⁶Norman Hapgood, ed., Professional Patriots (New York: Albert & Charles Boni, 1927), 51-56 and 100.

machinery of the Communist party," the book referred to the organization as "a central organization for the defense of radicals and Communists." Whitney, moreover, tied the activities of several ACLU members with radicalism, surveyed the organization's position on various civil liberties issues, and listed several of its cases on behalf of Communists and labor.¹⁷

Also in 1924, the Union suffered an assault from one of its strongest allies: organized labor. The United Mine Workers, which had been experiencing increasing pressure since the Red Scare to distance itself from communism and militant unionists, took the hard-line against the vestiges of radicalism within and outside its ranks.¹⁸

In August 1923, Ellis Searles, editor of the Mine Worker's official publication, produced a series of articles examining Communist infiltration of the labor movement. Searles's pieces, carried by major newspapers throughout the country, eventually were combined into a single report for the United States Senate. In its analysis of the ACLU, the thrust of the report maintained that the organization's coziness with the CPUSA stemmed from the number of "parlor pinks" on the ACLU's governing bodies. Additionally, the report claimed the ACLU "pos[ed] as the champion of free speech and civil liberty, but serv[ed] as a forerunner and trail blazer for the active and insidious

¹⁷R. M. Whitney, Reds in America (New York: The Berkwith Press, Inc., 1924), 117-126.

¹⁸Melvin Dubofsky and Warren Van Tine, John L. Lewis: A Bibliography (New York: Quadrangle/The New York Times Book Company, 1977), 99-100.

activities of the Communists among labor organizations."¹⁹

The Fish Committee, 1930

After the publication of the United Mine Workers' report, the Union enjoyed a six-year respite from organized congressional examination. Yet the lull ended in early May 1930, when the House of Representatives initiated its own inquiry into domestic radicalism. Galvanized by the New York City's police commissioner announcement before the House Committee on Immigration and Naturalization that he had obtained documents connecting the Amtorg trading company with the distribution of Communist propaganda,²⁰ the House overwhelmingly passed Resolution 220 to establish the Committee to Investigate Communist Activities. Hamilton Fish, a conservative Republican from New York, was appointed chairman of the committee.²¹

The ACLU construed Fish's selection as an ominous portent. Fish, a "scion of an aristocratic family," was well-known for his anti-radical sentiments and his animus towards the Union. He had founded the American Legion, an organization which--not

¹⁹Annual Report, January-December 1923, p. 23, reel 87, ACLU Records; "Accuses Red Chief of Mine War Plan," The New York Times, 11 September 1923, p. 23; and Congress, Senate, Attempt by Communists to Seize the American Labor Movement, 68th Congress, S. Doc. 14 (Washington, DC: Government Printing Office, 1924), 33.

²⁰The Amtorg documents have since been convincingly proved to be fakes. Goodman, 6.

²¹Ogden, 20-23.

coincidentally--had targeted the Union continuously in its attacks on "extremists."²² In fact, only the National Civic Federation rivaled the Legion in membership and resources; but the Legion stood second to none in its dissemination of anti-radical literature, which, of course, featured the Union prominently.²³

Thus, when the Fish Committee, as it became known, inevitably invited the ACLU to testify, the organization balked. Even when subpoenaed, the Union complied only with great reluctance, fearing that it already had been prejudged. Nevertheless, the ACLU sent its Director, Roger Baldwin, as its representative. On 5 December 1930, Baldwin declared before the full Committee:

Concerning the work of the Civil Liberties Union, we state to you that we have no connection whatever with Communist organizations except to defend their rights of freedom of speech, press, and assemblage on precisely the same basis as we defend the rights of others. That we have more occasion to defend Communists than others is due solely to the fact that they are the chief victims of attack.²⁴

²²There was no love lost between the organizations. In fact, in 1927 the ACLU announced that the Legion had replaced the Ku Klux Klan as "the most active agenc[y] of intolerance" in its annual report. See Annual Report, 1928-29, p. 4, reel 87, ACLU Records; Annual Report, 1930-31, p. 30, *ibid.*; and Annual Report, 1931-32, p. 36, *ibid.*

²³Richard M. Freid, Nightmare in Red: The McCarthy Era in Perspective (New York: Oxford University Press, 1990), 45; Weekly Press Bulletin #404 (31 March 1931), reel 3, ACLU Records; and "Ham Fish Publicizes A. C. L. U.," Civil Liberties Quarterly, June 1934, p. 1, reel 88, ACLU Records.

²⁴Weekly Press Bulletin #433 (5 December 1930), reel 2, ACLU Records; "Foster and His Aides Put Red Flag First," The New York Times, 6 December 1930, p. 1 and 12; and Weekly Press Bulletin #434 (10 December 1930), reel 2, ACLU Records.

Baldwin's testimony apparently did not persuade its audience, however. To underscore the organization's radical bent, the Fish Committee's 17 January 1931 report included portions of his statement, in which he appeared to sanction assassination and the overthrow the United States Government. As a result, the report found:

The American Civil Liberties Union is closely affiliated with the Communist movement in the United States, and fully 90% of its efforts are on behalf of the Communists who have come into conflict with the law. It claims to stand for free speech, free press, and free assembly; but it is quite apparent that the main function of the American Civil Liberties Union is to attempt to protect the Communists in their advocacy of force and violence to overthrow the government, replacing the American flag by a red flag, and erecting a Soviet government in place of the Republican form of government guaranteed to each state by the Federal Constitution.²⁵

Metastasis of Misinformation

The first Red Scare and the Union's defense of radicals of all stripes during this period set the stage for the next two decades. The reader should be aware, however, that the events recounted in this chapter provide only a brief overview of the ACLU's confrontations with the Communist label. In fact, the Union also waged high-profile battles with the Department of War,²⁶ a host of patriotic organizations,²⁷ the American

²⁵Congress, House of Representatives, Special Committee on Communist Activities in the United States, Investigation of Communist Propaganda Activities, 71st Congress, 3rd sess. (Washington, DC: Government Printing Office, 1939), 47.

²⁶Hapgood, 103-06 and 178-79.

²⁷*Ibid.*, 60, 72, 115, 124, 139, 151, 156, 163, 176, 178-79, and 185.

Federation of Labor,²⁸ Congressmen Thomas Blanton from Texas and Thomas Sosnowski from Michigan,²⁹ the Hearst newspapers,³⁰ columnist Harold Lord Varney,³¹ Jersey City mayor Frank Hague,³² and author Elizabeth Dilling.³³

Yet the five publications cited--the Overman Committee report, the Lusk Report, the United Mine Workers' Senate report, Whitney's Reds in America, and the Fish

²⁸Murray, 106-08; "Challenge to Gompers," The New York Times, 27 May 1923, p. 23; and Who's Un-American?, p. 21-25, reel 91, ACLU Records.

²⁹Congress, House of Representatives, 69th Congress, 1st sess. Congressional Record (19 December 1925), 1215-23; Congress, House of Representatives, 69th Congress, 1st sess. Congressional Record (26 March 1926), 6402-10; Annual Report, 1926, p. 24, reel 87, ACLU Records; and Annual Report, 1927-28, p. 27, *ibid.*

³⁰Annual Report, January-December 1924, p. 31, reel 87, ACLU Records; Press Release (31 October 1935), reel 5, ACLU Records; and Annual Report, 1935-36, p. 42, reel 87, ACLU Records.

³¹See Harold Lord Varney, "The Civil Liberties Union: Liberalism a la Moscow," The American Mercury 156 (December 1936): 385-99; Harold Lord Varney, "The Civil Liberties Union: Political or Nonpartisan?" Forum and Century 99 (April 1938): 207-11; Press Release (15 March 1937), reel 7, ACLU Records; Annual Report, 1936-37, p. 46-47, reel 87, ACLU Records; and Weekly Press Bulletin #836 (1 October 1938), reel 7, ACLU Records.

³²"Mayor Hague Says He Will Keep Up Fight to Bar Red 'Elements' from Jersey City," The New York Times, 10 December 1937, p. 16; "Baldwin Accuses Hague of Tyranny," The New York Times, 15 December 1937, p. 3; Weekly Press Bulletin #795 (17 December 1937), reel 7, ACLU Records; Press Release (4 January 1938), *ibid.*; Weekly Press Bulletin #823 (1 July 1938), *ibid.*; and Annual Report, 1937-38, p. 35-36, reel 87, ACLU Records.

³³See Elizabeth Dilling, The Red Network (Kenilworth: by the author, 1934), 49 and 111; Elizabeth Dilling, The Roosevelt Red Record and Its Background (Kenilworth: by the author, 1936), 133; Who's Un-American?, p. 29-30, reel 91, ACLU Records; and Minutes of the ACLU Board of Directors [cited hereinafter as Minutes], 2 March 1936, reel 6, ACLU Records.

Report--distinguished themselves from the aforementioned foes for several reasons: (1) they established a pattern that would be repeated by ersatz predecessors; and (2) they formed the foundation and served as the reference material for later anti-Union literature.

Moreover, all five, directly or indirectly, originated from the anti-radical hysteria following World War I. The Overman Committee, appointed to investigate wartime propaganda, directly linked the National Civil Liberties Bureau with the defense of radicalism. Established for similar reasons, the Lusk Committee reinforced this connection. The United Mine Workers designed its report to distance the labor union from the militancy of the post-war period. The rise of patriotic organizations and their influence led to the publication and dissemination of Whitney's Reds in America; Hamilton Fish, founder of one the most powerful nationalist organizations after the war, the American Legion, headed the 1930 congressional investigation.

Invariably, all five documents confused the organization's defense of radicals with its support for their philosophies. Yet the similarities between their conclusions and the absence of an easily discernible animus against the ACLU, coupled with a shallow understanding of the evidence behind the charges, tended to lend credence to their findings. Furthermore, by appealing to their readers' basest prejudices and engaging in the grossest exaggerations, the five utilized the most effective tools of demagoguery in their most despicable form. HUAC, the most formidable foe confronted by the Union, would experience little difficulty building on its forebears' mountain of "evidence."

Chapter Two

Struggles Against Well-Orchestrated Smears

The Dies Committee in Historical Perspective

Historical and legal analyses of HUAC have been severely critical of its investigatory procedures. Walter Goodman, August Ogden, and Jerold Simmons--several of the foremost scholars of the Dies Committee--emphasize that, in the absence of normal legal safeguards, a congressional inquiry must evaluate the evidence and sift fact from fiction. All three agree that HUAC thoroughly ignored its responsibilities in this regard. HUAC, they note, relied almost exclusively on the testimony of friendly witnesses for its investigation; it, however, rarely sought any supporting material from its witnesses to corroborate up their allegations, nor did it cross-examine testifiers.

Beyond its failure to sift fact from fiction, the Committee's scholars also condemn its general failure to summon persons who might have offered contrary points of view from previous witnesses or rebut prior testimony. Time after time, HUAC maintained that it did not possess the time or the resources to compel witnesses to appear before it. Yet, as the writers show, many of the unjustly accused actively sought an audience before the Committee, only to be ignored or refused. Consequently, a number of individuals and organizations who were unable to address potentially slanderous charges or confront their

accusers suffered irreparable damage to their reputations.

Last, its critics denounce HUAC for promoting a unique form of accusation and lending credibility to its practice--guilt by association. As its own transcripts show, the Committee allowed witnesses to brand certain persons and entire organizations as Communist merely by linking Communists with their activities. Frequently, the connections amounted to little more than a commonality in purpose or interest: for example, the presence of a single Communist on a membership list could indicate an entire organization's "Red" sympathies. No matter how tenuous the association, however, HUAC did not discourage the practice. And compounding the perniciousness of this procedure, the media carried the charges verbatim, never having checked their veracity.¹

The ACLU and HUAC, 1938

Generally, observers--even those within Congress--assumed that HUAC would devote most of its resources to the investigation of Nazis and nazism, which was experiencing a marked growth in this country. It became apparent, however, that while

¹For detailed criticisms of HUAC and its investigation, refer to Goodman, 26-58; Jerold Simmons, "The American Civil Liberties Union and the Dies Committee, 1938-1940," Harvard Civil Liberties Law Review 17 (Spring 1982): 185-86; and August Raymond Ogden, The Dies Committee: A Study of the Special House Committee for the Investigation of Un-American Activities 1938-1944 (Westport, CN: Greenwood Press, Publishers, 1945), 48-298. For an example of a contemporary observer's critique of the Dies Committee, see Frederick Barkeley, "Dies Raises a Storm Over Communist Issue," The New York Times, 6 November 1938, Sect. IV, p. 10.

HUAC would not ignore fascism completely, "un-American activities" would concentrate on activities on the left of the political spectrum in far greater detail than those on the right. Particularly in its early days, HUAC purposely misdefined "communism" to encompass the broadest range of activities possible, allowing a host of professional patriots and disaffected ex-Communists to inveigh against organized labor, an array of New Deal programs, and a host of liberal and leftist organizations.²

With its long history of purported Communist affiliation, the Union provided an easy target for HUAC's inquiry. The first mention of the Union came from Walter Steele, the managing editor of the conservative monthly, National Republic. Steele, on 16 August 1938, submitted to HUAC a list of 640 national groups--of which the Union was one--that he had determined were affiliated with the CPUSA. He testified that the total membership of these groups totaled over 6.5 million persons and devoted \$10 million annually to subversive causes.³

On 17 August 1938, Homer Chaillaux reinforced Steele's testimony on the ACLU from the previous day. Chaillaux, the head of the American Legion's Americanization Committee, specifically directed HUAC's attention to the personal views of Roger

²Goodman, 19-21.

³"House Inquiry Hunts Officials' Link Bridges," New York Herald-Tribune, 17 August 1938, p. 58, vol. 1090, ACLU Collection; Evidence compiled by HUAC, p. 218, vol. 2181, ACLU Collection; and Congress, House of Representatives, Special Committee to Investigate Un-American Activities and Propaganda in the United States, Hearings, vol. 1, 75th Cong., 3rd sess., 277-518.

Baldwin. Reading from Baldwin's 1935 Harvard class yearbook, Chaillaux stunned HUAC with the following passage:

My chief aversion is the system of greed, private profit, privilege and violence which makes up the control of the world today, and which has brought it to the tragic crisis of unprecedented hunger and unemployment. Communism is the goal.

Whereupon, Chaillaux subsequently disclosed Baldwin's connection to the Garland Fund which, he claimed, financed radical activities throughout the United States.⁴

Steele's and Chaillaux's testimony made an impact on the Committee. A week and a half after their appearances, Martin Dies delivered a nation-wide radio broadcast to discuss the findings of HUAC's preliminary hearings. In the course of his address, Dies declared that the ACLU formed an "integral" role for the "Communist front" organizations in the country.⁵

The Union, momentarily taken aback by the news coverage of Dies's broadcast, defied the Chairman to produce a shred of support for his allegation. In a cable to Dies, Arthur Garfield Hays, the Union's chief counsel, wrote:

Your charge that the Union is Communist-controlled and carrying on the work of the Communist Party under the guise of democracy is wholly without basis. We challenge you to produce any evidence to bear

⁴"Dies Takes Rap at Probe Critics," Washington (DC) Star, 30 August 1938, p. 106, vol. 1090, ACLU Collection.

⁵Ibid.

you out. It is just such irresponsible statements as these which have led to the ridicule of your committee, to which you object. I shall be glad to appear before your committee at any time you set to acquaint you with the real aims and activities of the Civil Liberties Union.

Hays's offer, however, evoked little reaction from HUAC, which gave only "perfunctory acknowledgment" to the letter.⁶

A month-long lull followed before Dies occasioned to mention the Union again. On 8 October 1938, HUAC's Chairman proposed that Congress check the spread of foreign espionage by banning the CPUSA and all Fascist parties. To further ensure the nation's internal security, he also suggested that organizations linked to subversive political parties, "such as . . . the Civil Liberties Union," be required to submit semi-annual reports detailing their revenues and expenditures.⁷

The involvement of several prominent members of the Roosevelt administration in the ACLU also earned the Committee's attention. On 22 November 1938, Alice Lee Jemison, a member of a shadowy organization called the American Indian Federation, testified before HUAC that Communists dominated the upper ranks of the Interior Department's Bureau of Indian Affairs. As evidence, Jemison contended that nine

⁶Weekly Press Bulletin #832 (2 September 1938), reel 7, ACLU Records; Minutes, 12 September 1938, *ibid.*; Civil Liberties Quarterly, September 1938, p. 2, reel 88, ACLU Records; and Weekly Press Bulletin #847 (17 December 1938), reel 7, ACLU Records.

⁷"Dies Urges Ban on 'Ism' Groups to Curb Spying," Philadelphia Inquirer, 9 October 1938, p. 163, vol. 1088, ACLU Collection.

separate officials in the Bureau belonged to the ACLU.⁸ To which, Dies, in a rejoinder to her statements, intimated that such high-level infiltration had been condoned by the Interior Department's Secretary, Harold Ickes. Ickes, noted Dies, also belonged to that "Communist-front" organization, the Union.⁹

Four days after the Chairman's smear of Ickes, HUAC heard a former correspondent for the Socialist newspaper, The Call, deny that either the Union or Baldwin harbored Communist sympathies. Dies, naturally, rehashed previous testimony to refute the reporter's comments.¹⁰

The final episode involving the ACLU occurred on 7 December. On this occasion, a self-professed expert on the Union, retired Army Colonel Lantham Reed, accused the organization of defending atheists, strikers, and aliens. Naturally, although Reed did not say so specifically, he intimated that such activities constituted its

⁸Not coincidentally, during his 1934 confirmation hearings as the Indian Bureau's Commissioner of Indian Affairs, John Collier had withstood tough questioning from a Senate committee for his membership in the Union. Collier, who defended the Union vigorously, was confirmed and still served as commissioner in 1938.

⁹Chesly Manly, "Ickes Is Irked; Admits He's in with Red Front," Chicago Tribune, 24 November 1938, p. 205, vol. 1090, ACLU Collection; "Name-Calling Led by Ickes and Dies," The New York Times, 24 November 1938, p. 1 and 32; [Untitled], Philadelphia Record, 24 November 1938, p. 187, vol. 1088, ACLU Collection; and [Untitled], New York Post, 25 November 1938, p. 194, *ibid.*

¹⁰[Untitled], New York Telegram, 28 November 1938, vol. 1088, p. 200, ACLU Collection; and "Calls Marcantino Red Front Leader," The New York Times, 29 November 1938, p. 9.

Communist influence.¹¹

HUAC concluded its 1938 hearings on 16 December. With the fanfare and headline-grabbing news surrounding the Committee's investigation, the Union logically anticipated that Chairman Dies would seek a renewal of his committee in the upcoming Congress. To persuade the Congress against such a measure, the ACLU wrote William Bankhead, Speaker of the House of Representatives, and urged him to end the Committee's "unsavory career."¹²

Surprisingly, considering its refusal to answer previous correspondence, the Dies Committee replied to a copy of this letter. Robert Stripling, the secretary of HUAC, apologized for ignoring the previous letters, but blamed insufficient funding for the Committee's inability to summon the Union. To rectify this wrong, Stripling requested that the ACLU submit an affidavit denying charges of Communist affiliation, which he promised would be included in HUAC's final report.¹³

Although Stripling's offer did not square with its original request to appear before the Committee, the ACLU nevertheless decided to prepare affidavits denying all linkage

¹¹"Says Baldwin Unit Backs Revolt Talk," The New York Times, 9 December 1938, p. 9; and Congress, House of Representatives, Special Committee Investigating Un-American Activities, Investigation of Un-American Activities and Propaganda, 76th Cong., 1st sess. (Washington, DC: Government Printing Office, 1939), 84.

¹²Arthur Garfield Hays, Letter to William Bankhead, 10 December 1938, p. 246-47, vol. 1090, ACLU Collection.

¹³Robert Stripling, Letter to Arthur Garfield Hays, 22 December 1938, p. 275, *ibid.*

with the CPUSA. Ultimately, it submitted two, one on its own behalf and the other a personal deposition by Roger Baldwin. The Union's nine-page affidavit, in part, stated:

. . . The American Civil Liberties Union has never been a front or part of a united front for the Communist Party. . . . The American Civil Liberties Union has no direct or indirect connection with any political movement. . . . The Board of Directors and the National Committee are opposed to any form of government, whatever its economic basis, which seeks to impair the Bill of Rights.¹⁴

Continuing, the ACLU emphasized that only one Communist, Elizabeth Gurley Flynn, sat on either the National Committee or the Board of Directors. Furthermore, the organization stressed that the number of its cases involving Communists had dropped sharply in the preceding years and that on several recent occasions the organization had opposed the CPUSA. In closing, the affidavit quoted a federal judge's ruling in a case in which the defendant, Mayor Frank Hague of Jersey City, had leveled charges of communism at the ACLU. Judge William Clark of the District Court of New Jersey had ruled: "There is no competent proof that the plaintiffs [the ACLU] . . . incited or advocated the overthrow of the government by force and violence."¹⁵

Affidavits and the Final Report

¹⁴Minutes, 3 January 1939, reel 7, ACLU Records; Weekly Press Bulletin #850 (7 January 1939), *ibid.*; and Affidavits submitted to HUAC, undated, p. 308-10, vol. 1090, ACLU Collection.

¹⁵*Ibid.*

The Union mailed the affidavits on 4 January 1939. What the organization failed to understand from Stripling's correspondence, however, was that HUAC, by resolution, had to present its final report on the day of or before the convocation of the 76th Congress--3 January 1939. Thus the final report did not carry any mention of the Union's depositions.

Whether Stripling intentionally misled the organization into submitting the affidavits late is not known; the evidence suggests that Stripling knew what he was doing. His reply to the Union's 10 December letter to the Speaker was not dated until 22 December--right before the Christmas holidays. Stripling, with only a minimum of effort, could have ascertained that the ACLU would not be able to return the required documentation in time. First, the Board had to meet in order to decide whether or not it would respond; then, it had to draft and approve the language of the affidavit; third, the affidavit required notarization. In the best of circumstances, the Union would have had difficulty reacting within the given time frame; that HUAC did not make mention of the affidavits until several months later and then buried that mention in over three thousand pages of transcripts shows the reluctance with which it intended to honor its promises.

Therefore, the ACLU, unaware that it had prepared the affidavits in vain, was stunned by HUAC's report. The Committee found:

. . . Some witnesses listed this organization as communistic while other witnesses denied its was communistic. . . . From the evidence before us, we [the Committee] are not in a position to definitely state whether or not

this organization can properly be classed as a Communist organization. . . .
[W]e strongly urge that this organization be thoroughly investigated.

Immediately following this refusal to identify the ACLU in its opening paragraph, however, the report presented five full pages of evidence that linked the organization and its members to the CPUSA, radicalism, militant unionism, and un-Americanism. In short, HUAC's final report clearly intimated that the Union was Communist, while purporting to not be in possession of all the facts.¹⁶

Aftermath

The public proved highly receptive to HUAC's report on the pervasiveness of communism and fascism. One notable exception proved to be The New York Times, which editorialized: ". . . [I]t [HUAC] has sometimes brought itself into deserved ridicule, and in doing so has endangered the very cause to which it supposes itself to be devoted." Overall, though, HUAC enjoyed overwhelming popular support. The release of an 11 December Gallup poll revealed that two out of every three voters expressed familiarity with the Committee's investigation and, of those, seventy-five percent believed that the

¹⁶Special Committee Investigating Un-American Activities, Investigation of Un-American Activities and Propaganda, 82-88. The five pages for support revealed the carelessness with which HUAC compiled its evidence. Excerpts from the 1924 Senate report by the United Mine Workers deliberately omitted an entire paragraph from the earlier report to distort the allegations of linkage between the ACLU and the CPUSA. In addition, selections from the 1931 Fish Committee report repeated verbatim the same misquoted testimony by Roger Baldwin from 1930. Unfortunately for the Union, though, few paid close enough attention to notice.

hearings should continue. In addition, Martin Dies had profited enormously from his role as Chairman: in a list of outstanding public figures by the Chicago Advertising Club, the Texas Democrat ranked fifth, one place ahead of President Franklin Roosevelt. Even Sam Rayburn, a powerful Texas Democrat and future Speaker of the House, admitted: "Martin Dies could beat me right now in my own district."¹⁷

Naturally, with this reservoir of goodwill and support, Dies lobbied assiduously for HUAC's renewal. The ACLU, in turn, launched an all-out effort to thwart his designs. Its bid met with little success. The organization's intensive lobbying blitz on Capitol Hill fell flat. Nationwide radio addresses by Roger Baldwin and ACLU counsel Morris Ernst failed to generate the anticipated public response. In the end, even reluctant congressmen were afraid to vote against HUAC's extension. The reauthorization measure, which received bipartisan support, passed by a landslide, 344 to 35.¹⁸

Thoroughly dismayed by the outcome, the Union took some comfort that Dies's original request of a two-year extension and \$150,000 had been pared to a single year and \$100,000. In addition, the organization's disappointment was tempered somewhat by signs that the Committee had improved. First, HUAC hired skilled investigators from the

¹⁷"Mr. Dies Reports," The New York Times, 5 January 1939, p. 22; George Gallup, American Institute of Public Opinion, 11 November 1938, p. 211, vol. 1088, ACLU Collection; "Mr. Dies Scores," The New York Times, 5 February 1939, p. 22; and as quoted in Fried, 49.

¹⁸"Should the Dies Committee Die?," 24 January 1939, p. 21-22, vol. 2079, ACLU Collection; "Dies Inquiry Wins Year's Extension in House, 344-35," The New York Times, 4 February 1939, p. 1; and Simmons: 190.

Justice Department to gather evidence. Second, Congressman Jerry Voorhis, a liberal Democrat from California and frequent critic of HUAC's investigative techniques, replaced a member who had been defeated in the November elections. The hiring of a new chief counsel, Rhea Whitley, also promised to lend some balance and professionalism to its investigations. Last, HUAC's early hearings focused more on Fascist activities than they had during the previous year.

Internal Problems

Signs of HUAC's reform, however, did not allow the ACLU to return to business as usual. In fact, the respite ignited an internal controversy that had been festering for nearly a decade.

Crucial to the understanding of this episode of the ACLU's history is the effect that HUAC had upon the organization. To be sure, the Union had been attacked on three previous occasions by investigative bodies--the Overman Committee, the Lusk Committee, and the Fish Committee. Yet all three, for a variety of reasons, either had undermined public confidence with wild, exaggerated charges, or not been able to galvanize widespread public interest. In contrast, HUAC had captured and held the attention of even its staunchest foes.¹⁹

HUAC's widespread public support disconcerted many within the ACLU, who

¹⁹Comments on HUAC, p. 195-209, vol. 2077, ACLU Collection.

could not understand why Americans did not see through the Committee's machinations. What the Union failed to realize was that HUAC's investigation and the press's reporting of the hearings did not appear as unfair and biased in print as they actually were. Additionally, even when news reports did carry criticisms of HUAC, they almost always balanced their accounts with praise for the Committee's dramatization of the Communist and/or Fascist menace within the United States. Even The New York Times, never an admirer of HUAC, conceded that "the committee [HUAC] has undoubtedly performed a useful and important service."²⁰

But if HUAC's popular support was unsettling, its congressional support thoroughly unnerved the Union faithful. During the ACLU's campaign to kill the Committee, congressmen whom the Union considered to be "friendly" to its cause confessed that they would be risking their popularity by going on record against HUAC. When its allies pleaded political expediency, the ACLU knew that it faced an uphill battle.

Even within the Union, members unquestionably felt that, while HUAC purposely had harried the organization with spurious allegations, the ACLU also suffered a serious public image problem. One indication, in particular, worried members: in fiscal year 1938, the organization's total revenues dropped by eighteen percent. Not surprisingly,

²⁰"Mr. Dies Reports," p. 22. Prevailing opinion held that the Dies Committee had contributed to the defeat of several prominent liberals and supporters of workers' rights in the previous election.

Union faithful attributed the decrease to HUAC's vendetta against the organization.²¹

Consequently, to rehabilitate its battered image, the ACLU initiated a public relations campaign to lay the matter of the organization's Communist sympathies to rest. It came in the form of a seemingly innocuous resolution, which emphasized the Union's opposition to all foreign totalitarian regimes, while, at the same time, reaffirmed the organization's defense of citizens who supported those governments. On January 1939, the Board of Directors passed this measure by a vote of eight to four.²² Unbeknownst to the Board, it was an action that had far greater implications than the participants ever could have predicted.

²¹Annual Report, 1938-39, p. 57, reel 87, ACLU Records. Of course, the drop in funding could have been attributable to the fact that the economy had experienced another sharp downturn.

²²Minutes, 23 January 1939, reel 7, ACLU Records.

Chapter Three

Hamstrung by Factionalism

The Board of Directors

In 1929, the ACLU became incorporated in the state of New York. To comply with state law, the Union modified its organizational structure slightly. First, it created a Board of Directors as its highest governing body. Second, the National Committee was relegated to a purely advisory role, although all decisions referred to it by the Board were binding upon the higher body.¹

Incorporation imposed an organizational structure on the ACLU that heretofore had been lacking. Previously, the National Committee, comprised of persons living across the United States, had set policy by mail-in voting; over time, this arrangement had proven extremely unwieldy and time-consuming. Thus, for efficiency's sake, the creation of the Board centralized all policy-making among persons living in or around New York City, where the Union was headquartered.

By early 1939, twenty-three persons sat on the Board. Its members represented a diverse, yet prominent group of persons. Among the most important were Harry F. Ward, the ACLU's Chairman and professor of Christian ethics at Union Theological Seminary;

¹Annual Report, 1928-29, p. 32, reel 87, ACLU Records.

Osmond Fraenkel, a lawyer and specialist on matters pertaining to free speech; John Haynes Holmes, a minister and founder of the Community Church in New York City; Arthur Garfield Hays, a nationally recognized lawyer; Elizabeth Gurley Flynn, the sole Communist and a well-known labor activist; Norman Thomas, a leader in the Socialist Party and frequent presidential candidate; Corliss Lamont, a professor of philosophy at Columbia University; Elmer Rice, a critically acclaimed playwright; and Mary Van Kleeck, a respected social worker.²

Gastonia

Members of the Board clashed in the very first year of its existence over a dispute with the CPUSA. In early 1929 the Board resolved to assist the legal defense of five Communists who had been charged with the murder of a local sheriff and two deputies during a textile strike in Gastonia, North Carolina. It quickly became apparent, however, that the Union's meager budget could not sustain the projected expenses of what was anticipated to be a protracted trial. To help shoulder the enormous costs of the defense, the controlling board of the Garland Fund--upon which a number of ACLU members sat--allocated \$18,000 for the Communists' bonds.³

²Roger Baldwin, as director of the organization, did not sit on the Board.

³Justice--North Carolina Style (New York: ACLU, May 1930), reel 90, ACLU Records; "Court Opens Action on Gastonia Mob," The New York Times, 12 August 1929, p. 7; and Weekly Press Bulletin #367 (29 August 1929), reel 2, ACLU Records.

National attention focused on the Gastonia trial, and the ACLU did not fare well in the defense. After a lengthy trial, all five were found guilty. The defendants appealed the decision and eventually earned a hearing before the North Carolina Supreme Court. There, they lost again, and, having exhausted all other avenues, confronted the likelihood of spending the rest of their lives behind bars.⁴

Yet the Communists, perhaps in anticipation of this outcome, were not present when the final verdict was read. Speculation swirled about their whereabouts, until reports confirmed that they had skipped the country and fled to the Soviet Union. Having jumped bail, the Communists cost the Garland Fund a total of \$28,000--\$18,000 for the five's bonds and an additional \$10,000 because one of the five also was a defendant in an unrelated case in Michigan.⁵

ACLU Board members fumed at the Communists' flight; they were doubly so after the CPUSA sanctioned the bail-jumping. Even though the lost funds did not affect the ACLU's budget directly, \$28,000 in losses to the Garland Fund, which often served as a *de facto* bank account for the Union, was a difficult pill to swallow. Exacerbating matters, the bond-jumping in this case was predicted to increase bonds in similar

⁴"High Court Upholds Gastonia Verdicts," The New York Times, 21 August 1930, p. 5; and Weekly Press Bulletin #418 (21 August 1930), reel 2, ACLU Records.

⁵Weekly Press Bulletin #426 (16 October 1930), *ibid.*

circumstances.⁶

Therefore, in a divided vote, the Board suspended bail allocations for all Communists until the CPUSA offered guarantees that the occurrence would not be repeated. Some on the Board protested vigorously that this should not become official policy, but their objections did not prevail.⁷

Rioting in Madison Square Garden

Gastonia, however, proved a minor dispute among the Board when compared to a violent clash in Madison Square Garden. On 16 February 1934, Communists and Socialists convened in the Garden to demonstrate against the rise of Austrian fascism. From the outset, the Communists, determined to make their presence felt despite the Socialists' overwhelming numbers, began to chant and sing; in the process, they succeeded in drowning out the first six Socialist speakers. Meanwhile, fistfights erupted throughout the auditorium where Socialist-affiliated ushers had frisked the Communists and confiscated their banners and noisemakers. The climactic event occurred when Clarence Hathaway, the editor of the Daily Worker, a Communist daily newspaper, took the stage to request that the Communists stop their disruption. The Socialists, however, interpreted Hathaway's presence as an attempt to incite the Communists further. In their

⁶"Ends Bonding Reds Due to Bail Jumping," The New York Times, 11 October 1930, p. 20; and Weekly Press Bulletin #424 (2 October 1930), reel 2, ACLU Records.

⁷Ibid.; and Weekly Press Bulletin #426, *ibid.*

determination to prevent the Communists from "stealing the show," the Socialists forcibly removed Hathaway from the stage, beat him, and ejected him from the Garden.⁸

The ACLU's Board appointed a Commission of Inquiry to determine the cause of the brawl and how to avoid such confrontations in the future.⁹ In its analysis, the Commission found that the riot stemmed from long-standing hostility between the Socialist Party and the CPUSA. It condemned the Communists, laying the bulk of the blame on them for disrupting the meeting: "Both from the standpoint of the rights of those who organized the meeting, of public interest in orderly assemblages, and of the effect on united action against Fascism, this official interference by the [Communist] Party was a catastrophe." Yet the Commission did not exculpate the Socialists, who had exacerbated underlying tensions by: (1) employing untrained and aggressive ushers to maintain control of the meeting; (2) searching the Communists and confiscating their banners, musical instruments, and copies of the Daily Worker; and (3) attacking Hathaway.¹⁰

While no one disputed the Commission's description of events surrounding the incident, one Board member took issue with its apportionment of the blame. The Commission's mild rebuke of the Socialists enraged member Norman Thomas. Thomas,

⁸Report on Interference with Madison Square Garden Meeting against Austrian Fascism (New York: ACLU, March 1934), reel 91, ACLU Records.

⁹Why the Union was so concerned about a non-organizational dispute is not clear.

¹⁰*Ibid.*

who also served as a leader in the Socialist Party, claimed that the reprimand was designed solely to mollify the Communist sympathizers within the organization. Consequently, he drafted a minority dissent, of which he was the only signatory, to the Commission's report. Moreover, from that day forth, Thomas embarked on a "remorseless vendetta against alleged Communist infiltration," according to fellow Board member Corliss Lamont.¹¹

Lamont, Thomas, and the Litmus Test

The single best source for recounting the Union's internal struggles with the issue of communism is Corliss Lamont. But by no means may Lamont, who joined the Board in 1932 and served until 1954, be regarded as a completely objective observer. After leaving the ACLU, he wrote two books, The Trial of Elizabeth Gurley Flynn by the American Civil Liberties Union and Freedom Is As Freedom Does, that harshly criticized

¹¹Ibid.; and Corliss Lamont, Freedom Is As Freedom Does (New York: Horizon Press, 1956), 266. Whether or not Lamont was correct in his appraisal of Thomas's anti-Communist sentiment is unclear, since he provided no proof of Thomas's anti-Communist bias. Biographies of Thomas carry conflicting evidence. Bernard K. Johnpoll quotes Thomas declaring in 1934, "We [the Socialists] cannot have a formal united front with the official Communist Party--so long as the chief aim of the Communist Party is to destroy the Socialist Party by lies and slander and even violence." Yet Murray Seidler, another biographer, maintains that Thomas vacillated on the issue of communism, believing in a limited cooperation between the CPUSA and the Socialist Party on certain issues and then bitterly criticizing aspects of the CPUSA's doctrine. Seidler asserts that Thomas did not resolve his feelings until 1938, when he became completely disillusioned with the CPUSA. As quoted in Bernard Johnpoll, Pacifist's Progress (Chicago: Quadrangle Books, 1970), 115; and Murray Seidler, Norman Thomas: Respectable Rebel (Syracuse: Syracuse University, 1967), 185.

the organization for sacrificing the cause of civil liberties to anti-Communist posturing. Thus his analysis must be handled carefully.

That having been said, Lamont should not be dismissed as just another disgruntled critic of the Union. For one, he argues forcefully and effectively. Lucille Milner, longtime Secretary of the ACLU, described Lamont as one who "had a way of bringing out embarrassing facts at the most opportune or inopportune moment, depending upon which side of the table you were seated on."¹² Two, Lamont provides unique insight--one that has never been disputed by another member of the organization--to the Board's struggle with the issue of communism.

Of no small importance to Lamont's analysis is the mutual dislike that he and Thomas shared for each other. Their animosity would become increasingly apparent in the years that followed the Madison Square Garden riot and peaked during the tumultuous years of 1939-1940. Thomas considered Lamont to be one of the Board's closet Communists.¹³ In turn, Lamont, even though he listed Thomas as an outstanding member of the Board, claimed that Thomas "constantly put partisan politics above civil

¹²Lucille Milner, Education of an American Liberal (New York: Horizon Press, 1954), 286.

¹³The writer has come across several sources indicating that Lamont secretly belonged to the CPUSA. This seems extremely doubtful, but, even if it were true, hard evidence would not be available. The CPUSA has always maintained its membership rolls with the utmost secrecy.

liberties."¹⁴

Worsening interpersonal relations among Board members were not limited to Thomas and Lamont, however; and, more often than not, the precipitating factor boiled down to his or her stand on communism. In the aftermath of the Madison Square Garden riot came the first grumblings from several Board members that the Union should make a public declaration condemning communism. Thomas spearheaded this drive in 1936 and received backing from Board member John Haynes Holmes, who requested the expulsion of Communists from the organization. Other members, however, did not share Thomas's and Holmes's sentiments and tabled their resolution.¹⁵

Rights of the Rich and Powerful

The next Board controversy focused on a 1937 judgment by the National Labor Relations Board (NLRB). Yet the origins of the dispute actually had begun two years earlier.

In 1935, the United Auto Workers of America, emboldened by the passage of the National Labor Relations Act (the "Wagner" Act), aggressively targeted the Ford Motor

¹⁴ Walker, 119; and Lamont, Freedom Is As Freedom Does, 264.

¹⁵Walker, 101. Holmes, a founding member of the ACLU, had been ordained a minister in the Unitarian Church, but broke from the fold. He eventually established a community church, the Community Church of New York City. Holmes had revealed his views on communism back in 1934 when he wrote that Communists were "a group of savages, who like their Nazi competitors, make war upon all members of the human race, excepting themselves."

Company for its next unionization drive. The underlying symbolism escaped few persons: not only was Ford one of the world's largest manufacturers, but its owner, Henry Ford, was an unabashed foe of organized labor.

Ford fought a vicious campaign against the United Auto Workers. To achieve his objectives, he resorted to outright intimidation and violence: the company formed vigilante groups and hired goons to harass, assault, and beat union officials and Ford employees; it discharged all employees who were suspected of joining the union; and it distributed anti-union literature to all in its employ.¹⁶

Such tactics played right into the Auto Workers' hands. In late 1937, the NLRB sided with the union, ordering the company to cease its "coercion"--the intimidation, physical violence, and dissemination of anti-union pamphlets. Thereafter, Ford Motor Company reluctantly complied with the first two directives, but continued to circulate anti-union material.¹⁷

On this final issue, the Union entered the fray. No one on the Board disputed that the Ford Company had harassed its employees, physically and psychologically, nor was there doubt about Henry Ford's complicity. The point of contention centered on whether or not the NLRB could prohibit Ford from publishing anti-union views. Some on the

¹⁶The National Labor Relations Board and Freedom of the Press (New York: ACLU, December 1937), reel 92, ACLU Records; and Policies Concerning Civil Rights in Labor Relations (New York: ACLU, August 1938), *ibid.*

¹⁷*Ibid.*

Board insisted that the distribution of literature represented another element in Ford's pattern of coercion and interfered with the employees' right to self-organize. Yet others felt that Ford, regardless of his views on unionism, reserved the right to speak and publish freely--just like anyone else. After extensive and acrimonious debate, a majority of the Board decided that the distribution of literature did not constitute "coercion" as defined by the NLRB and petitioned the NLRB to amend its ruling. The NLRB refused, but when Ford appealed the case to the Supreme Court, the Court reached similar conclusions.¹⁸

According to Corliss Lamont, the minority refused to concede their side of the argument. Since its inception, the Union had defended the rights of labor; now, some Board members had great difficulty in siding with an employer. The minority argued passionately that labor's rights consistently had been abridged by employers, especially by ones as rich and powerful as Henry Ford, and, in this case, Ford's opinions on unionism necessarily would have a chilling effect on workers' ability to organize. The majority countered that Henry Ford's wealth and power was not the issue; rather a blanket injunction abridging a person's First Amendment rights was patently unconstitutional, unless that speech was followed by actions.¹⁹

¹⁸Ibid.; "Liberties Union Again Aids Ford," The New York Times, 24 April 1939, p. 3; Weekly Press Bulletin #866 (29 April 1939), reel 7, ACLU Records; and Walker, 103.

¹⁹Lamont, Freedom Is As Freedom Does, 266-67. For the record, Lamont sided with the majority.

The Ford Case in Perspective

Lamont neglects two crucial aspects of the Ford case: (1) the severity of the dispute among the Directors; and (2) how it related to the issue of communism. On the first count, it appears that the Ford controversy polarized the Board. Roger Baldwin referred to it as "the greatest controversy we have had ever of free speech in the organization." Lucille Milner, the ACLU Secretary, remembered:

No other single issue I can recall ever before generated such heated discussion in the Board. After all arguments were exhausted and the members had sufficiently released their pent-up feelings in other ways they took to hurling accusations at one another.²⁰

At the root of the controversy was a dispute over what direction the Union should take in the New Deal era. Undoubtedly, the plight of labor had improved dramatically since the ACLU's founding. In addition, the passage of the Wagner Act, which granted employees the right to bargain collectively with employers, had marked a watershed in labor relations. Thus, by 1937, labor had gained some measure of public acceptance and legal protection, however tenuous both were. The overriding question at the time was, did the labor movement still require the unwavering defense of the ACLU, or did recent legal safeguards level the field to the extent that labor could defend itself in some situations?

²⁰Transcript of Roger Baldwin's deposition before HUAC, 31 March 1939, p. 133, vol. 2075, ACLU Collection; and Milner, 254.

Obviously for some Board members, old habits and causes die hard. Several of them had devoted their efforts tirelessly for labor's advancement; they wore the scars, had suffered the jailings, and been victimized in labor's battles. Elizabeth Gurley Flynn, in particular, since the age of fifteen had been involved intimately with many of the most violent strikes across the United States.²¹ Hence, to members like Flynn, Mary Van Kleeck, Nathan Greene, Robert Dunn, and Abraham Isserman, forsaking the cause of labor meant repudiating some of the very reasons that they had become staunch defenders of civil liberties in the first place. It was unthinkable to them that Henry Ford should be afforded protection when he had menaced his employees so thoroughly.

Other Board members, led by John Haynes Holmes, did not have such fierce ties to labor. The Ford controversy confirmed their growing concerns that the pro-labor faction (Ward, et al.) were becoming knee-jerk advocates and subordinating the cause of civil liberties to their own personal agendas. In Holmes's assessment,

... we [the Union] are allowing ourselves to become mere advocates of the rights of labor to the denial of those who are against labor. . . . More reluctantly than I dare confess, I find myself believing that our enemies have good reason for charging us with being partisan in the labor struggle, and using the civil liberties principle as a means of fighting labor's battles and the cause of radicalism generally.²²

²¹Mary Heaton Vorse, "Elizabeth Gurley Flynn," The Nation 122 (17 February 1926): 175-76.

²²As quoted in Alan Reitman, ed., The Pulse of Freedom, American Liberties-1920s to 1970s (New York: W. W. Norton & Company, Inc., 1975), 85-86.

How the issue of communism coincided with the Ford case has never been entirely clear. Lamont's description of the affair certainly suggests that certain persons who defended Ford's right of free speech construed the pro-labor faction's recalcitrance as an outgrowth of their Communist sympathies. If Lamont's inference indeed was accurate, this may have been the most pernicious consequence of the controversy. For now, the attacks did not originate only from outside of the organization; they came from within.

Fast Forward

Only with the background into the Board's disputes over Gastonia, the Madison Square Garden riot, the Ford case, and then HUAC do the occurrences of early 1939 become more comprehensible. As noted at the end of the second chapter, on 23 January 1939 the Board had approved, by a vote of eight to four, a resolution condemning all totalitarian regimes.²³ The Board declared:

The American Civil Liberties Union is opposed to all totalitarian governments--Fascist, Nazi, or Communist--as the antithesis of civil liberties, but will support and defend the right of persons to express or advocate peacefully these economic and political theories.²⁴

Passage of this resolution resulted from the efforts of Norman Thomas and staunch anti-Communist Board member Morris Ernst, a successful New York attorney.

²³Four Board members in attendance abstained from the vote.

²⁴Minutes, 23 January 1939, reel 7, ACLU Records.

Ostensibly, Thomas and Ernst had acted to put the ongoing questions about the Union's Communist sympathies to rest. But both had more than just the organization's well-being in mind when pushing for their anti-totalitarian resolution. They wanted the organization to take a stand--a stronger stand than was adopted--that reflected their own personal feelings about civil liberties. Specifically, they had desired a listing of the foreign dictatorships that engaged in wholesale violations of civil liberties, particularly the Soviet Union. Nevertheless, recognizing that more detailed language would jeopardize the resolution's passage, they relented.²⁵

After the resolution's approval, however, members of the Board began to rethink their position. Opponents of the resolution argued, with increasing success, that the sole purpose of the ACLU was to defend civil liberties in the United States; the observance--or lack thereof--of civil liberties in other countries should not be of any concern to the *American Civil Liberties Union*. On 6 March 1939, the Board rescinded the 23 January resolution by a vote of seventeen to six.²⁶

A month later, the Board reiterated its continued defense of domestic radicals and disinterest in international affairs. Entitled Why We Defend Free Speech for Nazis, Fascists, and Communists, the ACLU's stated unequivocally:

²⁵Lamont, Freedom Is As Freedom Does, 267; and Milner, 262. The Moscow show trials of 1937-38, in particular, had offended them to their very core.

²⁶Minutes, 6 March 1939, reel 7, ACLU Records.

The Union does not engage in political controversy. . . . It [the ACLU] takes no position on any political or economic issue or system. . . . It defends, without favoritism, the rights of all-comers, whatever their political or economic views. . . . It is wholly unconcerned with movements abroad or with foreign governments.²⁷

Nevertheless, relations among members had degenerated to the extent that even a restatement of policy produced acrimony. Debate over the leaflet's wording evoked one particularly telling, and bitter, exchange. Commenting on the inclusion of Communists with Nazis and Fascists in the title, Mary Van Kleeck asserted that the title reflected Norman Thomas's desire to redress "Socialist scores against Communism." Countering, Elmer Rice counterattacked: "If a disruptive force exists [in the ACLU], it consists of those members of a tiny bloc who are Communists first and civil libertarians second."²⁸

HUAC and the ACLU, 1939

While infighting over totalitarianism preoccupied the Board, HUAC subtly shifted its attentions from Fascist activities back to the Communist "menace." HUAC--partly because it wanted to appear as if it followed its own recommendations about investigating the Union and partly to deflect the Union's persistent requests to appear before the

²⁷Why We Defend Free Speech for Nazis, Fascists and Communists (New York: ACLU, April 1939), reel 92, ACLU Records.

²⁸As quoted in Walker, 128; Minutes, 27 March 1939, reel 7, ACLU Records; and Frank L. Hayes, "Civil Liberties Leadership Split on Political Issues," Chicago News, 21 April 1939, p. 59, vol. 2101, ACLU Collection.

Committee--arranged for Roger Baldwin to give a deposition to its counsel, Rhea Whitley, and its research director, Dr. J. B. Matthews.

The transcript of Baldwin's testimony revealed HUAC's particular interest in the sources and expenditure of ACLU funds, the influence of Communists in the organization, and the Union's cooperation with and defense of Communists. Interestingly, Whitley and Matthews never once suggested that the ACLU was a Communist-front organization; their focus dealt with Popular Front organizations with which the Union occasionally associated.²⁹

Baldwin's report before the Board on the deposition diverted--at least temporarily--the Board's attention away from its own internal conflicts. Recounting details of the interview, Baldwin related that HUAC had retained the services of J. B. Matthews in its information-gathering.³⁰ This news promptly spurred the Board into action. The employment of Matthews, the Board agreed, violated Dies's pledge to observe the impartial compilation of evidence. Therefore, Chairman Ward and chief counsel Hays wrote Dies, reminding HUAC of its promise. Like many of the Union's previous letters,

²⁹Transcript of Roger Baldwin's deposition before HUAC, 31 March 1939, p. 125-42, vol. 2075, ACLU Collection.

³⁰Matthews was well-known to the Board as a former Communist who, upon quitting the CPUSA, had become a professional consultant on Communist activities for superpatriotic organizations. Because of his unique status as a former insider, Matthews attracted an unusual amount of attention, even when he leveled the most outrageous of charges. In one instance, Matthews had captured nationwide attention for linking famous entertainers, most notably actress Shirley Temple, with radicalism. See Weekly Press Bulletin #864 (15 April 1939), reel 7, ACLU Records.

however, the correspondence was ignored. Undeterred, the Board sent a second letter to HUAC a month later, admonishing it for its "unfair methods of investigation." HUAC, nevertheless, still refused to acknowledge the communication. Frustrated by these futile efforts, the ACLU subsequently redirected its energies to other matters of civil liberties.³¹

Then, without warning or justification, HUAC launched its most serious broadside yet against the ACLU. On 20 August 1939, Chairman Dies announced that he had written the Department of Justice, requesting that criminal charges be brought against the CPUSA and other organizations for their failure to register with the State Department as agents of foreign governments. Associated Press reports, which carried full passages from Dies's letter, read:

The evidence before our committee clearly shows that the Communist party [sic] of the United States is an agent of the Communist Third International, which has its headquarters in Moscow. The evidence also indicates that certain "front" organizations of the Communist party, such as . . . the Civil Liberties Union . . . , [is] likewise [an] agent of the Communist party.³²

Outraged and demanding a retraction of this "false charge," Arthur Garfield Hays

³¹Minutes, 3 April 1939, *ibid.*; Milner, 258; Dr. Harry F. Ward and Arthur Garfield Hays, Letter to U.S. Representative Martin Dies, 7 April 1939, p. 56, vol. 2078, ACLU Collection; and Weekly Press Bulletin #864, reel 7, ACLU Records; Dr. Harry F. Ward, Letter to U.S. Representative Martin Dies, 25 May 1939, p. 211-13, vol. 2075, ACLU Collection; and Weekly Press Bulletin #871 (3 June 1939), reel 7, ACLU Records.

³²"'Ism' Groups Face Courts, Dies Says," The New York Times, 21 August 1939, p. 6; and Weekly Press Bulletin #883 (26 August 1939), reel 7, ACLU Records.

wired Dies on the day the story broke to insist that the Union be given an opportunity to appear before HUAC and clear its name. Dies replied on the following day, denying that he had spoken to the press about the ACLU. Although, technically, he did not lie, Dies clearly was splitting hairs, since he had released the letter to reporters. The Union, in response, decided it would not play Dies's game of comparing what he had said with what he had written; instead, the organization issued a press statement suggesting that Dies had made a full retraction, when in fact he had not.³³

The ACLU came under attack again a mere two weeks later, when Earl Browder, the General Secretary of the CPUSA, reportedly characterized the Union as a "transmission belt" for the Party. Detailed accounts of Browder's testimony, however, showed that he actually had not said what had been attributed to him. During his appearance before HUAC, Browder was asked for his definition of a "transmission belt." Browder replied that it was an organization that had mass membership, connections with the masses, *and/or* shared common aims with the CPUSA. Whereupon, Representative Parnell Thomas, a Republican from New Jersey, read a list of organizations, in which the Union was included, and questioned whether or not they satisfied Browder's criteria as transmission belts. Although Browder emphasized that the aforementioned groups necessarily did not have close ties or even Communist members within their ranks, he

³³Ibid. While the ACLU privately acknowledged that two wrongs did not make a right, it rationalized the deception, citing the litany of Dies's blatant mischaracterizations about the organization. Jerome Britchey, Letter to Morris Ernst, 21 October 1939, p. 165-66, vol. 2076, ACLU Collection.

could answer only in the affirmative because, at the very least, all qualified as either an organization with a mass membership or connections with the masses.³⁴

National Civil Liberties Conference

On the heels of the Browder's testimony, the ACLU, in late September 1939, announced a two-day national conference to address what it perceived as an increasingly threatening atmosphere to civil liberties. Entitled "Civil Liberties in the Present Emergency" and sponsored primarily by the Union, the meeting would cover all major areas of civil liberties--blacks' rights, censorship, labor rights, academic freedom, religious freedom, current legislative proposals concerning civil liberties, and aliens' rights. The Union enlisted a series of notable speakers for the conference, including Attorney General Frank Murphy, Senator Robert Wagner, Senator Elbert Thomas, and Neville Miller, the president of the National Association of Broadcasters. Sixteen national organizations pledged to attend the meeting, which was scheduled for 13-14 October.³⁵

Chairman Dies, upon hearing of the various attendees, promptly denounced the conference on the grounds that three of the sixteen groups were "Communist fronts." In

³⁴Frederick R. Barkley, "Calls New Deal Communist 'Front'," The New York Times, 7 September 1939, p. 26; Earl Browder, Telegram to Roger Baldwin, 8 September 1939, p. 76-79, vol. 2076, ACLU Collection; and Weekly Press Bulletin #886 (16 September 1939), reel 7, ACLU Records.

³⁵Weekly Press Bulletin #888 (30 September 1939), *ibid.*

response, the Union did not dispute Dies's numbers, perhaps because it feared that such efforts would be fruitless. Rather, Arthur Garfield Hays telegraphed Dies to explain that barring any of the participating groups for their political beliefs would defeat the conference's very purpose. To assuage Dies's concerns, Hays extended an invitation to Dies or any member of HUAC to the conference to observe the goings-on. Dies, not surprisingly, did not accept; HUAC member Jerry Voorhis, however, did.³⁶

Intimations of a Backroom Deal

During the civil liberties conference episode, Martin Dies touched off yet another controversy among the Board. It began with Dies's release of what many regarded as an unusual statement: Dies remarked that he would be interested to see if the conference would adopt a resolution that condemned communism. The comment piqued Corliss Lamont's interest in particular, since it would take on greater significance with the events that followed.

A week after the conference's close, on 22 October 1939, ACLU counsel Morris Ernst met with Martin Dies to discuss a legislative proposal requiring private organizations that engaged in propaganda to disclose their membership and financial information. Ernst, who sincerely believed that this measure would quell popular fears of communism, hoped that he could persuade Dies or another member of Congress to

³⁶Weekly Press Bulletin #890 (14 October 1939), *ibid.*

introduce the proposal. What--if anything--else the two discussed remains unknown, but on the following day Dies announced before a HUAC hearing:

This committee found last year, in its reports, there was not any evidence that the American Civil Liberties Union was a Communist organization. That being true, I do not see why we would be justified in going into it. I mean, after all, they have been dismissed by unanimous report of the committee as not a Communist organization.³⁷

Dies's exoneration caught the Union completely off guard, although it was the vindication that the organization had been seeking for the past fourteen months. Jubilant, the ACLU issued a collective sigh of relief--at least initially. There had been many dark days for the organization in recent months. Topping the list was the July 1939 release of The Public Opinion Quarterly, which had carried an analysis of HUAC's influence on popular opinion. The article revealed that the Union's disapproval ratings had soared nearly twenty-one percentage points as a result of HUAC's hearings from 1938. And with all the negative exposure the ACLU had attracted during the months of August, September, and October 1939, few expected that the organization's numbers had improved any.³⁸

³⁷"Transcript of Testimony before the Special Committee to Investigate Un-American Activities-October 23, 1939," 31 October 1939, p. 231-34, vol. 2076, ACLU Collection; and Simmons: 196.

³⁸Steuart Henderson Britt and Selden C. Menefee, "Did the Publicity of the Dies Committee in 1938 Influence Public Opinion," The Public Opinion Quarterly 3 (July 1939): 449-57.

Yet once the relief subsided, Dies's sudden absolution aroused suspicion. Rumors abounded within the Union, particularly after the Daily Worker carried a story with intimate details of a meeting between Ernst, Arthur Garfield Hays, Dies, and HUAC member Jerry Voorhis. According to the piece, Dies, Ernst, and Hays had spoken on the day after the white-wash of the organization and agreed that, in return for Dies's exoneration, the Union would aid HUAC in its exposure of Communist activities. In addition, independent sources circulated stories similar to the article, which were convincing enough to prompt five prominent members of the ACLU to write a letter to the Board requesting a detailed account of Hays's and Ernst's version of the meeting.³⁹

By far the most distrustful person, however, was Corliss Lamont. In Freedom Is as Freedom Does, Lamont reveals that his personal inquiry into the Hays-Ernst-Dies-Voorhis meeting uncovered some troubling discrepancies. Hays and Ernst reported to the Board that they had spoken only about securing an opportunity for the ACLU to testify before HUAC.⁴⁰ Yet Dies, in a letter to Lamont, revealed an altogether different story:

The real purpose of the meeting was to explore the possibility of united action on the part of liberals and conservatives to investigate and expose

³⁹Adam Lapin, "Alliance between Dies and Jittery Liberals Grows at Cocktail Party," Daily Worker, 24 November 1939, p. 283, vol. 2071, ACLU Collection; and Gardner Jackson, Walter Gellhorn, Sidney Schlesinger, H. Howe Bancroft, and John P. Davis, Letter to Board of Directors, 14 December 1939, p. 220-22, vol. 2077, ACLU Collection.

⁴⁰Roger Baldwin verified Hays's and Ernst's claims they did not discuss any other matters. See Roger Baldwin, Letter to Gardner Jackson, 16 December 1939, p. 227, *ibid.*

Communists in the United States. . . . At the meeting I suggested that if we worked together, we could destroy the Communist apparatus and influence within a few months, and that the liberals would share in the credit. Unfortunately, the meeting was not productive of any fruits.⁴¹

Despite Dies's account, Lamont fully believed that some sort of an agreement *had* been made. Examine the evidence, he writes. First, Dies suggests that the Union might issue a statement condemning communism during the civil liberties conference. Then, Ernst and Dies discuss a proposal to monitor private organizations, but the details of their conversation remain unknown. Dies, on the day following this meeting, shockingly clears the ACLU, even though HUAC had referred to the organization as Communist on two separate occasions in the past two months. The coincidence, Lamont points out, certainly gives one pause. One's suspicions only mount, he declares, when hearsay evidence asserts that an informal agreement was reached, but the participants--all of whom maintain that a deal was not made--cannot agree on what was discussed.⁴²

Machinations or Coincidence?

In many regards, Lamont presents a persuasive case. First, Dies's comment before the civil liberties conference does appear oddly timed. Furthermore, the meeting between Ernst and Dies does have sinister overtones, especially when one considers that Ernst

⁴¹As quoted In Lamont, Freedom Is As Freedom Does, 269.

⁴²Ibid., 269-70.

eagerly wished to contribute to the investigation of communism. Third, although the Daily Worker article does not name its sources, the details of the meeting are detailed enough to suggest that they either are accurate or the product of a detailed imagination. Fourth, nearly every person who has analyzed whether or not the ACLU made a deal with HUAC allows that Ernst certainly was capable of engaging in such machinations; as historian Jerold Simmons declares, "his preference for moving behind the scenes and making deals was well known." Last, there can be no doubt that either Hays and Ernst or Dies did not tell the truth about their talk.⁴³

Yet Lamont's scenario suffers from several glaring weaknesses. While there may be doubts as to Ernst's character, no one, either within the Union or outside of it, has impugned the integrity of Arthur Garfield Hays.⁴⁴ To suggest that he participated--which he undoubtedly must have if it indeed occurred--was not consistent with his character. Second, Lamont's willingness to accept Dies's version of the meeting with Hays and Ernst begs the question: why would Lamont take the word of person who had a history of mendacity and deception over two of his colleagues? Most importantly, if Dies did exonerate the ACLU in return for a promise to purge the organization of Communists and sympathizers, then he must have believed, or at least received assurances, that the anti-Communists had the means and resources to fulfill their part of the bargain. Yet the anti-

⁴³Walker, 104 and 129; and Simmons: 197.

⁴⁴Walker, 129-30.

Communists on the Board, while stronger as a result of international events, had not accumulated enough power to be able to guarantee that they could purge the "Reds." When taking these factors in mind, it appears highly unlikely that a secret deal was made. Lamont's theory remains extremely revealing nevertheless: it bares the level of mistrust and suspicion that had festered; now, Lamont suspected even his own colleagues of conspiring against him and others on the Board.

The Nazi-Soviet Nonaggression Pact

While the battle with HUAC ended with Dies's white-washing on 23 October, the Union's internal battle over the issue of communism continued to rage. The debate renewed in intensity after the signing of the Nazi-Soviet Nonaggression Pact on 23 August 1939.

Publicly, although parallels had been drawn between the Nazi and Soviet regimes for nearly a decade, the Pact still stunned observers worldwide. Particularly among those who had sympathized with the Soviet "experiment" or championed the Popular Front's opposition to fascism, many of these persons now proclaimed to have been betrayed and misled. In fact, in the popular mind, the two totalitarian regimes became largely indistinguishable from each other: both had rejected democracy and capitalism; monopolized power in the hands of a single, brutal dictator; silenced all domestic opposition; exercised complete control over public information; and ruthlessly terrorized

their populations. American commentators, particularly the press, reinforced this analogy; as columnist Eugene Lyons wrote, "It [the Pact] exposed Hitler's Brown Bolshevism and Stalin's Red Fascism as aspects of the same totalitarian idea."⁴⁵

Furthermore, after the Pact, whatever distinctions that could have drawn between Nazi Germany and Stalinist Russia diminished rapidly. In September 1939 Germany and the Soviet Union mutually invaded, and subsequently dismembered, Poland. Then, the Soviet Union evidenced its own Nazi-like rapacity by incorporating the Baltic Republics and launching an unprovoked attack on Finland. Such developments prompted the Wall Street Journal to editorialize: "The American people know that the principal difference between Mr. Hitler and Mr. Stalin is the size of their respective mustaches."⁴⁶

The Pact's Ramifications

The treaty's effects on the Board of Directors, and the organization as a whole, cannot be overstated. It, more than the conflict with HUAC and the accumulated ill-will from Gastonia, Madison Square Garden, and the Ford case, transformed the entire debate about communism.

⁴⁵Eugene Lyons, "Europe on Our Horizon," American Mercury (November 1939): 352-56.

⁴⁶As quoted from Les K. Adler and Thomas G. Paterson, "Red Fascism: The Merger of Nazi Germany and Soviet Russia in the American Image of Totalitarianism-1950's" American Historical Review 75 (April 1970): 1051; and Thomas R. Maddux, "Red Fascism, Brown Bolshevism: The American Image of Totalitarianism in the 1930s," Historian 40 (November 1977): 85-103.

Like many of the commentators of that period, several ACLU members viewed the Pact as the merging of the Nazi and Soviet regimes into a monolithic, totalitarian entity. The realization so stunned Roger Baldwin that he remarked to his biographer:

I think it [the Pact] was the biggest shock of my life. I never was so shaken up by anything as I was by that pact. . . . [It] made you feel that suddenly the Communists were different people. They had abandoned us and got into bed with Hitler.

Others echoed Baldwin's disenchantment. Reverend John Haynes Holmes declared:

"I am sick over this business as though I saw my father drunk and my daughter on the street. And all the more, since I feel that I have deceived myself as well as been deceived."⁴⁷

The Pact greatly weakened the influence of Board members who sympathized with Popular Front causes. Corliss Lamont, Harry F. Ward, and Mary Van Kleeck suffered a huge embarrassment when, in early August, they were among four hundred intellectuals who signed an open letter entitled, "To All Active Supporters of Democracy and Peace." Declaring that "Soviet and Fascist policies are diametrically opposed," the letter listed ten of the most fundamental differences between the Nazi and Communist

⁴⁷As quoted in Peggy Lamson, Roger Baldwin: Founder of the American Civil Liberties Union (Boston: Houghton Mifflin Company, 1976), 201; and as quoted in Robert Moats Miller, American Protestantism and Social Issues (Chapel Hill: University of North Carolina Press, 1958), 105. This latter quote apparently contradicts Holmes's staunch anti-Communist attitudes. Perhaps Holmes, like Baldwin, had problems with the Soviet Union's totalitarianism but nevertheless held high hopes for the Soviet Union until the Pact.

political systems and insisted that Soviet socialism was progressive, pacifistic, and democratic. Unfortunately for the signatories, though, the letter appeared alongside the announcement of the treaty in the September publication of The Nation. Consequently, Lamont, Ward, and Van Kleeck seemed to be little more than arch-apologists for the Soviet regime.⁴⁸

Meanwhile, the Board's anti-Communists experienced a palpable shift of opinion in their favor. As indicated earlier, some Union members publicly bemoaned their previous support for the Soviet regime. Roger Baldwin, disgusted by the unwillingness of Popular Front organizations to condemn the Nazi-Soviet treaty, resigned his national committee post from one of the largest Popular Front organizations, the American League for Peace and Democracy (ALPD). Perceptibly, he gravitated towards Thomas, Holmes, Rice, Ernst, and Riis.⁴⁹

The Chairman, Harry F. Ward

Baldwin's revulsion with the Popular Front mirrored other liberals'. In fact, the Popular Front collapsed quietly, as most groups suffered mass defections of disillusioned members. The ALPD, for one, folded soon after its chairman, Harry F. Ward,

⁴⁸"To All Active Supporters of Democracy and Peace," The Nation (26 August 1939), 228.

⁴⁹"Peace League Lets Soviet Pact Alone," The New York Times, 29 October 1939, p. 27.

withdrew.⁵⁰

During the period between the Pact's announcement and his resignation from the ALPD, Ward's dual chairmanship of the ALPD and the ACLU directed a great deal of attention to the diminutive, wizened Methodist minister. Ward, a professor of Christian ethics at Union Theological Seminary, stood second only to Baldwin in reputation in the ACLU; he had served as its Chairman since 1920. Corliss Lamont, one of his many admirers, remarked that Ward was a "sensitive teacher, an excellent presiding officer, and one of America's greatest crusaders for freedom." Generous with his time and energies, Ward had received an honorary doctorate of law for his significant public service. He also was world-renown for his intellect; among his regular correspondents was Mohandas Gandhi.⁵¹

Ward's political alignment is a matter of some dispute. He never considered himself a Communist, although he definitely sympathized with the Soviet Union. Eugene Link, Ward's biographer, described Ward as a "constant defender of the Soviet Union . . . though his mind was never tethered by dogmatic absolute." In contrast, historian Robert Moats Miller wrote: "If ever it is justifiable to designate an individual a true 'fellow

⁵⁰"Dr. H. F. Ward to Quit Peace League Post," The New York Times, 24 January 1940, p. 9. Ward cited his age and ill-health as his reasons for resigning.

⁵¹Ibid.; Lamont, Freedom Is as Freedom Does, 264; and Eugene Link, Labor-Religious Prophet (Boulder, CO: Westview Press, 1984), 168.

traveler' that individual is Dr. Ward."⁵²

Regardless of Ward's political inclinations, though, his dual chairmanship became a concern only after a disastrous appearance before HUAC on behalf of ALPD, in which he stridently had defended the Popular Front and Communist participation in the League. In a sense, despite his devotion and unquestioned defense of civil liberties, Ward had become a symbol among some influential ACLU members of what had gone wrong with the organization. In October 1939, Board members Margaret DeSilver, Roger Riis, Norman Thomas, and John Haynes Holmes indicated to Roger Baldwin that Ward needed to step down. At that time Baldwin declined to lend his support to this group, arguing that such a measure was too drastic. Yet Baldwin's authorship of a press release on the matter intimated that the "purge" group's arguments may have struck a chord within the ACLU Director. The statement, at best, gave a tepid endorsement to Ward's continued leadership, declaring that the Board saw "no reason for taking any action at this time."⁵³

The "Wise" Report

Although HUAC had enjoyed nearly unbroken success in capturing headlines, the

⁵²Ibid., 106-107; Robert Moats Miller, Bishop G. Bromley Oxnam: Paladin of Liberal Protestantism (Nashville, TN: Abington Press, 1990), 550.

⁵³"Peace League Dies in Secret Session," The New York Times, 2 February 1940, p. 1 and 8; William H. McIlhaney II, The ACLU on Trial (New Rochelle, NY: Arlington House Publishers, 1976), 140; and Weekly Press Bulletin #898 (9 December 1939), reel 7, ACLU Records.

Nonaggression Pact thrust the Dies Committee back into the limelight. As the treaty signalled the coming war in Europe, it also underscored the need for vigilance of Nazi and Communist activities within the United States. Capitalizing on the heightened public interest in its investigation, HUAC conducted a string of highly-publicized hearings, for which it received very favorable comments. The New York Times commented:

Undoubtedly the Dies committee has thrown considerable light on the activities, extent and objectives of the Communist and Nazi forces in the United States, and brought out, according to many observers here, that both groups are inspired by the Soviet and Nazi regimes respectively."⁵⁴

Despite the developments internationally and public's support for HUAC, though, did not mitigate its violations of civil liberties in the ACLU's eyes. Once again, HUAC was due for reauthorization in the House of Representatives in early 1940. This time the Union vowed to be better prepared for the fight. Instead of repeating its previous mistakes, the organization decided to build its campaign around a single position paper outlining HUAC's repeated unconstitutional practices.

Normally, the responsibility of forming the committee to draft this paper should have fallen on Harry Ward. Ward, however, missed the Board meeting at which the committee members were to be appointed; in his stead, the acting chair, John Haynes Holmes, did the choosing. Holmes selected Raymond Wise, who headed the effort, and

⁵⁴Frederick R. Barkeley, "Nazi-Red Pact Bolsters the Dies Investigation," The New York Times, 15 October 1939, Section IV, p. 6.

staunch anti-Communists Ernst, Riis, and Florina Lasker.⁵⁵

A month after appointment, the Wise committee presented the initial draft of its report. It opened by praising the function of congressional investigations, asserting that they had proved useful in educating the public in the past. Yet the report maintained that HUAC had abused its prerogatives by admitting hearsay as evidence, failing to cross-examine witnesses, preventing the accused an opportunity to rebut, and promoting guilt by association. In its conclusions, the committee recommended that the House should reject HUAC's reauthorization; however, it also allowed that HUAC had "performed a useful and important service" and had compiled "a valuable and lengthy documentary record of much activity and the spreading of considerable propaganda which are the proper subjects of investigation and exposure."⁵⁶

The report's favorable assessments of HUAC appalled several ACLU members. To these persons, HUAC's wholesale violations of civil liberties could not be diminished by its "worthy" intentions. Board member and noted expert on the First Amendment, Osmond Fraenkel, deemed the report "an unworthy attempt to curry favor with Mr. Dies." Abraham Isserman protested, calling it "superficial, inaccurate, and misleading."

⁵⁵Simmons, 198.

⁵⁶Report of the Special Committee of the Board of Directors of the American Civil Liberties Union on the Special Committee of the House of Representatives on Un-American Activities, 14 December 1939, p. 1-9, vol. 2077, ACLU Collection; and Raymond Wise, Letter to Roger Baldwin, 30 November 1939, p. 246, vol. 2181, ACLU Collection.

National Committee member Gardner Jackson mused:

... I cannot understand how logic ... will permit you to praise any part of the findings of a committee whose operations you condemn in such large degree. ... [It is] like approving a judge who has been proven corrupt or incompetent in a case or two but who, his friends claim, has been straight and competent in others."⁵⁷

Nevertheless, the Wise report was not without its supporters. Raymond Wise, not surprisingly, urged that the tone be "carefully preserved." Additionally, Norman Thomas lent it his "hearty endorsement." John Haynes Holmes defended the Wise committee's efforts unequivocally: "This report ... was an able document, which we might well have been proud to present to the public."⁵⁸

Objections to the report were so vociferous, however, that the entire Board voted to postpone the report's final draft in order to provide time to consider its critics' views. To temper the remarks about HUAC, three additional members were added to the committee--Osmond Fraenkel, Abraham Isserman, and Arthur Garfield Hays. Nevertheless, the delay failed to spawn an acceptable revision for the critics, and the end

⁵⁷As quoted in Corliss Lamont, ed., The Trial of Elizabeth Gurley Flynn by the American Civil Liberties Union (New York: Modern Reader Paperbacks, 1968), 23; Abraham Isserman, Letter to Board of Directors, 6 January 1940, p. 327-28, vol. 2181, ACLU Collection; and Gardner Jackson, Letter to Board of Directors, 7 January 1940, p. 325-26, *ibid.*

⁵⁸Raymond Wise, Letter to Board of Directors, 16 December 1939, p. 225-26, vol. 2077, ACLU Collection; Norman Thomas, Letter to Roger Baldwin, 16 December 1939, p. 224, *ibid.*; and John Haynes Holmes, Letter to Roger Baldwin, 3 January 1940, p. 305-06, vol. 2181, ACLU Collection.

result found little upon which anyone to agree. Although the enlarged committee expunged nearly all of the favorable references to HUAC, the anti-HUAC minority still refused to accept these concessions. Furthermore, those who had favored the original draft resented the accommodations made for the minority. Regardless, after contentious and exhaustive debate, the Board accepted the revised report on 8 January 1940.⁵⁹

Ultimately, the Wise report proved a fiasco, accomplishing none of its intended purposes. With seventy-five percent of Americans in favor of HUAC, the report stood little chance of derailing the Dies Committee's reauthorization; the reappointment measure sailed through the House with overwhelming support. What was more, the report--instead of uniting the Union against its common foe--shook the organization to its very core.⁶⁰

Attacks on the Chairman

Wounds incurred during this latest dispute were given no opportunity to heal. John Haynes Holmes, exasperated with the cohesiveness of the "fellow-travelers,"

⁵⁹Minutes, 18 December 1939, reel 7, ACLU Records; Minutes, 2 January 1940, reel 8, ACLU Records; Minutes, 8 January 1940, *ibid.*; and Report on the Dies Committee by a Special Committee of the American Civil Liberties Union (New York: ACLU, January 1940), reel 93, ACLU Records.

⁶⁰"Dies Inquiry Found Favored by Voters," The New York Times, 15 December 1939, p. 21; Dr. Harry F. Ward, Letter to Richard Childs, 19 December 1939, p. 16-17, vol. 2162, ACLU Collection; and John F. Finerty, Letter to Richard Childs, 19 December 1939, p. 24-25, *ibid.*

complained that he was "in a state of complete disgust" over the modifications of the Wise report. He blamed the dispute on the influence of one person: "Today we seem to be under the strange control of a minority, headed by the Chairman, which is primarily concerned not with civil liberties at all, but with the interests of [the CPUSA]" ⁶¹

By no means was Holmes the first to accuse Chairman Ward of plotting a Communist course for the ACLU. After the flap over Ward's dual chairmanship, Board member Margaret DeSilver, the wife of former Union director Albert DeSilver, submitted her resignation, citing a loss of "confidence . . . in the leadership of the Board." Although Roger Baldwin pleaded for DeSilver to reconsider, she did not budge. Norman Thomas also was as adamant as Holmes about Ward's removal. In October 1939 he had threatened that "if . . . Dr. Ward does not want to offer his resignation, . . . [I and others] are under obligation to press for action." Two months later, he targeted Ward again. In the 16 December edition of the Socialist Party's newspaper, The Call, Thomas included Ward among the "six to seven" Communists and fellow travelers who currently sat on the Board.⁶² Moreover, Thomas referred to Ward as one who "would drop [his] support of civil liberty the instant Communists were in . . . [a] position to deny . . . [civil liberty] in

⁶¹John Haynes Holmes, Letter to Roger Baldwin, 3 January 1940, p. 305-06, vol. 2181, ACLU Collection.

⁶²The fact that Thomas could not determine the exact number reveals the difficulty in discerning what constitutes "fellow traveling."

the name of some cause dear to them."⁶³

While Holmes may not have been alone in his sentiments, he certainly was one of the most vociferous of the Chairman's critics. On 4 December 1939 Holmes delivered a stinging indictment of Ward's leadership, maintaining that Ward had "sacrificed this cause [civil liberties] to other and alien interests." To remedy the problem, Holmes recommended that Ward voluntarily resign his post, but intimated that official action was unnecessary:

It would be easy to recommend a purging of our Board, beginning with the Chairman. But I am not interested in purges; I am too conscious of my own failures and deficiencies, to urge any attack upon my associates. What I would urge is that we come to terms with ourselves, and recognize what we are doing. It is an inner purge of our prejudices and partialities, our hatreds and hostilities that we need⁶⁴

Despite Holmes's comments, it quickly became apparent that once Ward refused to leave voluntarily, an "inner purge" necessitated the actual removal of problematic members. Holmes, however, did not spearhead this "purge" drive. Roger Baldwin, the most esteemed of civil libertarians, led the way.

⁶³Margaret DeSilver, Letter to Roger Baldwin, 8 December 1939, p. 161, vol. 2164, ACLU Collection; Norman Thomas, Letter to Lucille Milner, 27 October 1939, p. 103, vol. 2064, ACLU Collection; and Norman Thomas, "Your World And Mine," The Call, 16 December 1939.

⁶⁴Dr. Harry F. Ward, Letter to Richard Childs, 2 January 1940, p. 16-17, vol. 2162, ACLU Collection.

Chapter Four

The 5 February Resolution

The Qualifications Test

In January 1939 the Board passed--then rejected--a resolution condemning all totalitarian movements. Eleven months later, the anti-Communists, buoyed by the impact of the Nazi-Soviet Pact and the weakening of the Board's leftists, tested their strength again. In a letter to Board member Richard Childs, Baldwin--a new and powerful addition to the anti-Communist ranks--offered his solution to the Board's festering dilemma. He proposed "a resolution to the effect that it is inappropriate for any person to serve on the Board . . . who holds membership in any organization engaged in curtailing anybody's civil rights."¹

Conceptually, Baldwin's reasoning for the resolution was simple: a Board candidate failed the test of consistency if he supported totalitarian theories or forms of government abroad while purporting to defend the Bill of Rights within the United States.

¹Roger Baldwin, Letter to Richard Childs, 30 December 1939, p. 31-32, vol. 2162, ACLU Collection. This analysis categorizes the antagonistic elements on the Board into the imprecise "anti-Communist" and "leftist" groups, even though an investigation by the Board concluded that it could not "prove or disprove" whether there was any organized grouping among Board members (see ACLU Records, Minutes, 18 January 1940, reel 8). Nevertheless, the Board members themselves utilized similar terminology when referring to their internal disputes.

The time had arrived, wrote Baldwin, for the Union to adopt a membership test specifying that, while the defense of the Bill of Rights may be contained to the United States, the ideals were applicable worldwide.²

Baldwin's position overjoyed the anti-Communists. Although as an appointee he did not wield a vote among the Board of Directors, his influence within the organization and among the Board exceeded all others'. Undeniably, Baldwin's change of heart signalled that the momentum had shifted in favor of the anti-Communists. As was evident by a noticeable change in their rhetoric, the anti-Communists became increasingly confident. "I say without any reservation whatever," declared Elmer Rice, "that any person who condones the dark and bloody crimes of the Stalin government and who fails to condemn the outrageous invasion of Finland is disqualified, per se, to sit on the board [sic] of the A.C.L.U. . . . [M]y conversations with various members . . . convince me that many, if not most, of them feel as I do."³

Machinations

Regardless of the anti-Communists' perceived strength and their opposition to Ward, however, they did not constitute an outright majority. Only five could be counted safely among this group: Holmes, Rice, Riis, Thomas, and Dorothy Bromley; others, like

²Roger Baldwin, Letter to Richard Childs, 15 January 1940, p. 24-25, vol. 2162, ACLU Collection.

³Elmer Rice, Letter to Roger Baldwin, 12 January 1940, p. 19-20, *ibid.*

John Finerty and Raymond Wise, were sympathetic. Thus, the anti-Communists, undoubtedly aware of their uncertain strength, orchestrated one of the most unprincipled maneuvers in ACLU history. On 15 January 1940 National Committee members across the country received the following resolution, upon which their vote was requested:

The National Committee of the American Civil Liberties Union regards it as inappropriate for any person to serve on the governing committees of the Union, of its affiliated bodies or on its staff, who is a member of any organization which supports totalitarian dictatorship in any country, or who by his public declarations and connections indicates his support of such a principle. Within this category we include organizations in the United States supporting the totalitarian governments of the Soviet Union and of the Fascist and Nazi countries, such as the Communist Party, the German-American Bund and others; and native organizations with obvious antidemocratic objectives or practices, such as the Ku Klux Klan, the Silver Shirts, Christian Front and others.

While the American Civil Liberties Union does not make any test of opinion on political or economic questions a condition of membership, and makes no distinction in defending the right to hold and utter any opinions, the personnel of its governing bodies and staff is properly subject to the test of consistency in the defense of civil liberties in all aspects and all places.⁴

According to the ACLU's by-laws, the Board of Directors reserved jurisdiction over all matters pertaining to policy initiatives: only if a measure was approved by the Board, did the National Committee vote and then, if approved, was it incorporated into the organization's bylaws. Yet the aforementioned resolution had never come before the Board for consideration; in fact, few even knew of its existence.

⁴John Nevin Sayre, Letter to members of the National Committee, 15 January 1940, p. 24-25, *ibid.*

The Board did not remain in the dark for long, though. When it eventually learned that it had been circumvented, it acted decisively. On a motion by Abraham Isserman, Chairman Ward ruled that the Nominating Committee,⁵ which had approved the resolution and mailed it to the National Committee, had acted without authorization and that the results, whatever they may be, were not binding on the Board. The Board, with the exception of John Haynes Holmes, upheld Ward's determination.⁶

The Showdown

How exactly the qualifications resolution bypassed the normal process for consideration remains unknown. Nevertheless, several facts were irrefutable: (1) Roger Baldwin and Morris Ernst admitted that they had drafted the resolution; and (2) a majority of the Board, including Ward, were unaware of the goings-on until Richard Childs, head of the Nominating Committee, informed the Board of his committee's action. In addition, it appears almost certain that Holmes, the Union's Vice-Chairman, had known of Baldwin's and Ernst's activities.⁷

It immediately became apparent that this latest imbroglio would not pass without a major fight. Harry Ward, a week after the 18 January Board meeting, announced to the

⁵The Nominating Committee was comprised--with the exception of its chairman--of select members of the National Committee.

⁶Minutes, 18 January 1940, reel 8, ACLU Records.

⁷Lamson, 234; Reitman, 93 and 98; and Milner, 265..

press that, although he had planned to take a nine-month sabbatical from the Union for health reasons, he now would not step down as Chairman. The anti-Communists quickly grasped the significance of his announcement: Ward, who had indicated in early 1939 that he would relinquish his post after his term expired in February 1940, was signalling his intention to stay on and defeat any resolution affixing qualifications for candidates. As a result, the anti-Communists publicly declared their plan to oust him.⁸

The 5 February Resolution

The boldness with which the anti-Communists announced their intention to purge Ward was not mere bluster. At the 28 January Board meeting, they had evidenced their strength with their first significant victory. By a vote of seven to six, the Board defeated a motion by Mary Van Kleeck that stipulated the one and only qualification for eligibility on the ACLU's governing bodies was the consistent support for the Bill of Rights. For the first time ever, the Board intimated that it had established a different standard for its members.⁹

Rejection of the Van Kleeck motion proved a harbinger of what was to come. At the Union's 5 February annual meeting, the National Committee tallied the results for the qualifications provision. The following resolution passed by a vote of thirty to ten:

⁸"Liberties Union in Row on Soviet," The New York Times, 25 January 1940, p. 23.

⁹Minutes, 18 January 1940, reel 8, ACLU Records.

While the American Civil Liberties Union does not make any test of opinion on political or economic questions a condition of membership, and makes no distinction in defending the right to hold and utter any opinions, the personnel of its governing committees and staff is properly subject to the test of consistency in the defense of civil liberties in all aspects and all places.

That consistency is inevitably compromised by persons who champion civil liberties in the United States and yet who justify or tolerate the denial of civil liberties abroad. Such a dual position in these days, when issues are far sharper and more profound, make it desirable that the Civil Liberties Union make its position unmistakably clear.

The National Committee of the American Civil Liberties Union therefore hold it inappropriate for any person to serve on the governing committees of the Union or on its staff, who is a member of any political organization which supports totalitarian dictatorship in any country, or who by his public declarations indicates his support of such a principle.

Within this category we include organizations in the United States supporting the totalitarian governments of the Soviet Union and of the Nazi and Fascist countries, such as the Communist Party, the German-American Bund and others, as well as native organizations with obvious anti-democratic objectives and practices.¹⁰

The National Committee's approval prompted the Board to convene a special session. Even though the National Committee's decision had been termed "advisory" only, the unambiguous support for the resolution swung many of the undecided voters into the pro-qualifications camp. Fourteen members--Richard Childs, Carl Carmer, Morris Ernst, John Finerty, Walter Frank, Quincy Howe, Ben Huebsch, Thurgood Marshall, William Nunn, Elmer Rice, Roger Riis, Norman Thomas, and Dorothy Bromley--backed the resolution; six--Abraham Isserman, Osmond Fraenkel, Corliss

¹⁰ACLU, Minutes, 5 February 1940, *ibid.*

Lamont, Lester Granger, William Spofford, and Elizabeth Gurley Flynn--opposed it.¹¹

The National Committee promptly re-adopted the resolution, whereby it was incorporated into the Union's bylaws.¹²

External Praise

The adoption of the 5 February Resolution capped an extraordinary turn of events. The Board, however, downplayed its significance. Its press release attributed the need for the Resolution to the Nonaggression Pact, which had signified communism's capitulation to fascism. While admitting that the Resolution "appeared" to establish a test of personal opinion, the statement insisted that the Resolution merely reiterated what heretofore had been the ACLU's unspoken policy with regard to totalitarian ideologies. In this vein, the Board maintained that no Communist or Fascist ever had been elected to the Board; rather, all members who had joined the CPUSA had done so after their original appointment.¹³

¹¹Several Board members could not attend this meeting to cast their vote. Instead, they were permitted to register their votes at the following meeting on 19 February. There, John Haynes Holmes, Harold Fey, Eliot Pratt, Roger Seymour, and Richard Wise supported the resolution; Robert Dunn and Nathan Greene rejected; and two, Arthur Garfield Hays and Mary Van Kleeck declined to vote. Therefore, the final tally was: nineteen for, eight against, and two "present." See Minutes, 19 February 1940, *ibid.*

¹²Minutes, 5 February 1940, *ibid.*

¹³"Supplementary A.C.L.U. Statement to the Press of February 5, 1940," 5 February 1940, *ibid.*

Adoption of the 5 February Resolution made national news and received widespread comment. Generally, the response was overwhelmingly positive. The New York Times penned: "There is an issue of freedom in this world and in the United States, and the American Communists have chosen the side of slavery. Let them abide by their decision. Liberty and communism don't mix." Lauded the Austin (TX) American: "Nothing the American Civil Liberties Union has done in years has so commended it to public favor." The Macon (GA) Telegraph put it succinctly: "The organization is to be congratulated." Major newspapers like The Washington Post, the San Francisco Chronicle, and the Wall Street Journal made similarly complimentary remarks. Thus, for the first time in recent memory, the Union had garnered some favorable press.¹⁴

Ward's Exit

If there were any doubts about whether or not the Resolution would be enforced, they were dispelled with the election of a new Chairman. John Haynes Holmes won unanimously, despite the lingering ill-will about his role in the troubles of the past year. In Holmes's first address to the Board, he vowed: "The Resolution passed by our annual meeting involve [sic] certain implications of action, which, it seems to me, must be

¹⁴"Liberties Union Bars from Office Reds and Fascists," The New York Times, 6 February 1940, p. 1 and 3; "They Don't Mix," The New York Times, 7 February 1940, p. 20; "Liberty of Choice," Austin (TX) American, 7 March 1940, p. 101, vol. 2162, ACLU Collection; and "Driving Out the Radicals," Macon (GA) Telegraph, 25 March 1940, p. 100, *ibid.*

fulfilled if those Resolutions [sic] are to be regarded as anything more than an idle gesture." Then, in a comment that would take on greater meaning in the coming months, Holmes promised "to perform the duties of this office with scrupulous impartiality, with friendship as true for those with whom I may disagree as for those with whom I may agree"15

The outgoing Chairman became the Resolution's first casualty. Submitting a lengthy letter of resignation, Harry F. Ward attributed the adoption of the Resolution as his reason for his departure. From the outset, he challenged the Board's assertion that the Resolution merely rehashed an unspoken policy. Time and time again, wrote Ward, the ACLU had renounced all interest in foreign civil liberties issues or tests of personal opinion. Second, Ward contended that the Resolution, by implication, demanded that members embrace anti-communism. Simply put, he said, the Resolution required members "to conform to its views or get out," when in fact such orthodoxy was anathema to a civil liberties organization. As a final point, Ward again challenged the notion that the Resolution always had been the implicit policy of the organization. If indeed this were so, he asserted, then why had three different Communists been re-elected to the Board when their Party membership had been common knowledge?16

¹⁵Minutes, 26 February 1940, reel 8, ACLU Records.

¹⁶Crisis in the Civil Liberties Union (New York: privately printed, June 1940), reel 93, ACLU Records.

The Resolution's Ramifications

Ward's arguments against the Resolution were powerful ones and resonated within many members and non-members; later, a bloc of six Board members and, then, Elizabeth Gurley Flynn would borrow heavily from his letter. For those reasons, his letter requires further elaboration. To begin with, despite what the Board claimed, the Resolution did not square with the Union's previous policies. An abundance of recent ACLU policy statements directly contradicted the Resolution. The April 1939 pamphlet Why We Defend Free Speech for Nazis, Fascists and Communists had declared: "It [the Union] takes no position on any political or economic issue or system." In addition, the Board as recently as December 1939 had reaffirmed its commitment to members' freedom of speech: "Members of the Union differ sharply in their political and economic views, and all are free to express them without involving the Union." And just two weeks before the Resolution's passage the Board had determined that "[i]t is the sense of the Board that there is no occasion to adopt a resolution setting up standards of qualification for membership. . . ." ¹⁷

Ward also contributed several thoughts to the ongoing debate over whether or not the Resolution examined members' personal opinions. According to Ward, the Resolution clearly did what it said it did not do. How else, he said, could the Board determine if a candidate sympathized with totalitarian movements without first

¹⁷Minutes, 4 December 1939, reel 7, ACLU Records; and Minutes, 18 January 1940, reel 8, ACLU Records.

examining and then judging if his views were appropriately anti-totalitarian? If this did not qualify as a "test of opinion," declared Ward, then by what other criteria could the Board assess candidates? To this, the Board had no response.

Continuing, Ward pointed out that, since the Resolution disqualified persons for either their writings or speech, it in fact penalized candidates even if the speech and writings were unaccompanied by actions. Historically, Ward asserted, the ACLU always had opposed the penalization of mere opinion. Abundant evidence buttressed Ward's contention. For example, the Union's 1919 Annual Report maintained that "there is no membership in the Union in the sense of committing those who join to any dogmatic statement of principles." Ironically, twenty years later Roger Baldwin would paraphrase this very position in a letter to Dr. Joseph Ayd, a professor of political science at Columbia University: "We [the ACLU] do not throw people off because of political beliefs." The 1939 publication of American Civil Liberties Inc., echoed Baldwin: "The punishment of mere opinion without overt acts is never in the interest of orderly progress."¹⁸

But perhaps the Board's most outlandish claim, which Ward exposed, was that the ACLU had never originally elected a Communist to its governing boards. Technically, this was accurate: no Communist had ever served his inaugural term on the Board or

¹⁸Annual Report, 1919, p. 35, vol. 15, ACLU Collection; Roger Baldwin, Letter to Joseph Ayd, 9 February 1939, p. 37, vol. 2147, ACLU Collection; and American Civil Liberties Inc. (New York: ACLU, 1939), reel 93, ACLU Records.

National Committee having already been a member of the CPUSA. Yet this certainly did not apply to re-elections: William Z. Foster joined the Party in 1921 and won re-appointment to the National Committee three times thereafter; Communist Anna Rochester was re-nominated to the Board in 1928; and Elizabeth Gurley Flynn won unanimously in 1939, having revealed her Party membership two years beforehand. Such embarrassing revelations did not faze the Board, however, which absurdly persisted in its contention that re-elections were mere formalities and inaugural ones were the only true elections.

Organizational Response to the Resolution

Ward did not stand alone in his protest.¹⁹ Thirty-six other ACLU members eventually resigned. In addition, by the Union's admission, five of the "most active" local committees voiced their disapproval and, of fifty letters regarding the Resolution, twenty-seven expressed opposition.²⁰

Even among the Board of Directors, the Resolution continued to generate protest.

¹⁹The Union received many comments from non-members also. Fifty-five letters were critical of the Resolution. The most notable one was signed by seventeen liberals, including Robert Morss Lovett, Franz Boas, I. F. Stone, and Theodore Dreiser, who urged the Board to reconsider. Crisis in the Civil Liberties Union, reel 93, ACLU Records.

²⁰Minutes, 25 March 1940, reel 8, ACLU Records; Minutes, 27 May 1940, *ibid.*; and A Statement to Members and Friends of the American Civil Liberties Union (New York: ACLU, May 1940), *ibid.*

Six Board members, all of whom voted against the Resolution, released a minority report outlining their objections. Enumerating ten separate complaints, the minority, like Ward, hammered at the Resolution's incompatibility with longstanding Union policy.²¹

Although significant, the voices of opposition nevertheless stood in the minority. And the majority, while exhilarated by the positive public response, understood that the implementation of the 5 February Resolution required certain actions as well as words. First, not a single member of the Board or the National Committee had vowed to uphold the Resolution. Second, an admitted Communist still sat on the Board of Directors.

On the first issue, there was only so much that the Board could accomplish. Elections within the Union occurred annually, at which point one-third of the offices came up for consideration. Since the Resolution had been incorporated into the bylaws, all members elected to the organization's governing bodies were subject to its provisions. In short, to assume one's duties on the ACLU's Board or National Committee, the candidate-elect had to approve of the Resolution in principle. Naturally, future elections would require that candidates be polled on their support or opposition to the measure.

Yet 1940's annual elections had taken place on the day of, and immediately following, the Resolution's adoption. Inevitably, the question arose: did the Resolution apply to this most recent election, and, more generally, at what point in future elections does a candidate vow to uphold the Resolution--before or after his election? To answer

²¹Crisis in the Civil Liberties Union, *ibid.*

these questions, the Board turned to Arthur Garfield Hays, the ACLU's chief counsel, for his determination. Hays concluded that, according to the organization's electoral by-laws, it would be legally questionable to force candidate-elects to approve of the Resolution. Therefore, he advised the Board in the future to poll candidates on the Resolution and "elect only those who approve." As for the persons elected on 5 February, Hays counseled the Board to nullify their elections, but also request that they serve on as holdovers until the next election.²²

What to do about the Board's sole Communist seemed abundantly clear: Elizabeth Gurley Flynn's continued presence was inconsistent with the Resolution and her resignation was mandatory. Therefore, on 28 February, Board member Dorothy Bromley, a columnist for Scripps-Howard newspapers, announced that she would request Flynn's resignation at the following meeting. Bromley's announcement had come at the behest of others, who felt that another woman should charge Flynn. Wrote Roger Baldwin: "It's a tough job, but you [Bromley] are the person to do it with firmness and delicacy."²³

Flynn Charged

At the 4 March Board meeting, Bromley did as she had promised, citing Flynn's

²²Arthur Garfield Hays, Letter to Roger Baldwin, 7 March 1940, p. 73-75, vol. 2162, ACLU Collection; and Minutes, 28 February 1940, reel 8, ACLU Records.

²³Ibid.; and as quoted in Milner, 282.

continued service as inconsistent with the 5 February Resolution and requesting her resignation. Flynn refused. Bromley, anticipating this response, promptly moved that the Board hold a hearing for the purpose of expelling Flynn. The Board upheld Bromley's motion and scheduled the hearing for 18 March. But because she would be out of town on that date, Flynn asked that the Board reschedule for 25 March.²⁴

Flynn, realizing that she had little time for which to prepare her defense, immediately began to wage her battle in the press. As she informed The New York Times:

I have been a charter member of the union [sic] for twenty-three years. I was re-elected to membership a year ago and my term of office still has two years to run. It was known at that time that I was a member of the Communist party [sic], yet I was elected unanimously.

Therefore I am contesting their right to charge me at this time on the particular basis of my membership in the Communist party. I feel compelled to fight for my right to membership on the Civil Liberties Union.²⁵

Flynn then turned to the Communist press for help. She authored an article in the 19 March New Masses entitled, "Why I Won't Resign from the ACLU," which angrily attacked the Board. Flynn set a defiant tone, even questioning the Board's right to judge her: "I can say in all modesty that there are no two other members [herself and Ward]

²⁴Minutes, 4 March 1940, reel 8, ACLU Records; and "Footnotes on Headliners," The New York Times, 10 March 1940, Sect. IV, p. 2.

²⁵"Liberties Union Asks Red to Resign," The New York Times, 5 March 1940, p. 25.

whose records surpass ours in the defense of the Bill of Rights." Again, she reminded readers that she had informed the Board of her Party membership three years beforehand and it had never been an issue until recently. She concluded the article by writing: "I don't mind being expelled by this kind of people [the "pseudo-liberals" on the Board]. I don't belong with them anyhow. I'll fight them to expose them, not from a desire to associate with them any longer."²⁶

In addition, Flynn penned "I Am Expelled from Civil Liberties," which appeared in the 17 March Daily Worker. While the title was somewhat premature, it did reveal that Flynn harbored no illusion as to what the future held for her within the organization. In this piece, her tone was even less measured, as she frequently resorted to sarcasm to make her points. She aimed one particular broadside at Baldwin: "Mr. Baldwin, the Director, used to boast of their [the Board's] broadness [in political, religious, and economic composition]: 'Why we even have a Communist on our Board!' and timid old ladies thrilled at his bravery."²⁷

Flynn's articles in the Daily Worker and the New Masses gave only more ammunition to those who sought her ouster. John Haynes Holmes, who referred to the articles as "perfectly outrageous," demanded her resignation:

²⁶Elizabeth Gurley Flynn, "Why I Won't Resign from the ACLU," New Masses, 19 March 1940, p. 11.

²⁷Elizabeth Gurley Flynn, "I Am Expelled from Civil Liberties Union," Daily Worker, 17 March 1940.

Assuming that you must have some sense of personal dignity and self-respect, I regard it in your own mind as intolerable that you should any longer have contact with us. . . . [Y]ou have certainly . . . disqualified yourself by these public and wicked attacks upon those whom you formally called friends.

On the day after the publication of the Daily Worker piece, Roger Riis insisted that her insults should be included among the charges against her. "Whatever is urged in exculpation," Riis wrote, "no one will deny that these words of hers reveal an attitude toward the Board and the Union which disqualify Miss Flynn as a member of the Board." At the 1 April Board meeting, Riis formally filed his charge. Additionally, Elmer Rice formally charged Flynn for the New Masses column at the 25 March Board meeting.²⁸

The Interim

The sudden illness of Flynn's son, Fred, postponed the date for her hearing beyond the 25 March date. On 31 March 1940, Fred Flynn died during an operation for lung cancer. The Board, however, did not allow her personal tragedy to affect the proceedings against her. Rice's charge came after Flynn had notified the Board of her need for indefinite leave. In addition, the Board drafted and issued public statements in defense of

²⁸John Haynes Holmes, Letter to Roger Baldwin, 19 March 1940, p. 89-90, vol. 2162, ACLU Collection; John Haynes Holmes, Letter to Elizabeth Gurley Flynn, 19 March 1940, p. 91-92, *ibid.*; Roger Riis, Letter to John Haynes Holmes, 17 March 1940, p. 82-83, *ibid.*; Minutes, 1 April 1940, reel 8, ACLU Records; and Minutes, 25 March 1940, *ibid.*

their actions against her. Thus, by the time Flynn contacted the Board to arrange the hearing for 8:00 in the evening of 7 May at New York's City Club, the groundwork had been laid solidly against her.²⁹

²⁹News Release (30 March 1940), *ibid.*; "Proposed Statement by the Board of Directors," undated, p. 49-55, vol. 2162, ACLU Collection; and Minutes, 22 April 1940, reel 8, ACLU Records.

Chapter Five:

The Trial of Elizabeth Gurley Flynn

Elizabeth Gurley Flynn

No sooner had Harry Ward resigned when proponents of the Resolution began pushing for Elizabeth Gurley Flynn's removal. Her continued service on the Board remained a highly visible--and embarrassing--contradiction with the adoption of the 5 February Resolution.

The task did not appear to be an easy one. Flynn was held in high esteem throughout the organization, perhaps as well-respected as Ward himself. A charter member of the ACLU, she had served on the National Committee from 1920 to 1936. In 1936 she had won a seat on the Board of Directors and was re-elected to another three-year term in 1939. But Flynn, unlike Ward, showed no indication that she would leave voluntarily.

Nor did it appear that Flynn would leave the Union quietly. She certainly was not one to keep a low profile; in fact, she attracted attention wherever she went. Having joined the International Workers of the World at the tender age of fifteen, Flynn gained great renown for her inspired speaking ability. So gifted was she that The New Yorker classed her with "Billy Sunday, William Jennings Bryan, and other brass-lunged giants of Chautauqua days." Additionally, she was, by nearly all accounts, a woman of remarkable

beauty. Descriptions invariably focused on "her black hair, hanging down her back, and her blue Irish eyes, ringed with black lashes."¹ Through the years, she had lost none of her youthful magnetism.

Her attractiveness, however, did not detract from her underlying toughness. In the labor movement, which was dominated by men, Flynn had proved over and over that she was as devoted to the cause as they. She had been arrested and jailed on numerous occasions for her striking activities. Moreover, she had played a leading role in strikes such as the ones in Philadelphia (1911), Lawrence, Massachusetts (1912), Patterson, New Jersey (1913), Passaic, New Jersey (1926). So respected was she that one male counterpart admiringly described her:

[She was] a real friend to half the world, the mother of every bum, the sister to every ham poet, a rebel, a fighter. She is the kind of woman I wish all American feminists were. She has never sought or expected privileges because of her sex--she has taken the gaff most men would have shrunk from [sic].²

During World War I and thereafter, Flynn became more deeply involved with the defense of civil liberties and particularly with the protection of labor's First Amendment rights. She worked assiduously in the ACLU's defense of the anarchists Sacco and

¹"Hoarse," The New Yorker (26 October 1946): 25; Vorse, 175-76; and Milner, 282.

²Elizabeth Gurley Flynn, Rebel Girl (New York: International Publishers, 1973), 55 and 108-155; and as quoted in Stephen Charles Cole, "Elizabeth Gurley Flynn: A Portrait" (Ph.D. diss., University of Indiana, 1991), 2.

Vanzetti, World War I political prisoners, and Tom Mooney.³

Yet the labor movement remained closest to her heart. After the International Workers of the World folded, Flynn drifted towards the Communists, whose beliefs most closely approximated her own. In 1937, she joined the CPUSA, informing the Union's Board of her decision. Thereafter, she rose rapidly through the Party's ranks to its highest level, the National Committee, while also sitting on its Committee on Civil Rights.⁴

7 May 1940, the New York City Club

At eight o'clock on the evening of 7 May, twenty-two members of the Board, Roger Baldwin, and Lucille Milner convened to decide Flynn's fate.⁵ Chairman John Haynes Holmes presided.

The hearing started with procedural matters. The three charges were read. Dorothy Bromley introduced the Resolution as evidence and then asked Flynn two brief questions: Was Flynn a member of the CPUSA and did she sit on its National Committee? Flynn replied in the affirmative to both.⁶

³Flynn, 155.

⁴Cole, 171.

⁵Nine Board members declined to attend. Surprisingly, Norman Thomas and Mary Van Kleeck were among the absentees. Van Kleeck boycotted the hearing in protest of the proceedings; Thomas, for all his efforts in eradicating communism from the Union, curiously did not show.

⁶Lamont, The Trial of Elizabeth Gurley Flynn, 35-46.

Flynn then began her defense against Bromley's charge. Describing the proceedings as "neither appropriate or fair," Flynn proudly re-declared her Communist membership. Furthermore, she asserted that the Resolution contradicted the organization's longstanding qualification that members pledge their allegiance to the Bill of Rights. As evidence to this effect, Flynn cited Ward's letter of resignation, the disapproval of five of the ACLU's "most active" local committees,⁷ the numerous resignations of and protest letters from Union members, and the letter signed by the seventeen prominent liberals. To buttress her contentions, she also cited several of the Union's own publications.

Flynn also emphasized that her main concern involved the Bromley charge. The Rice and Riis charges, she said, were irrelevant in any case: if the Board convicted her of the first, then her expulsion would be a foregone conclusion. In any case, though, Flynn challenged the Board's ability to act as an impartial judge and jury on any of the charges. How could she possibly prevail, she queried, when all three of her accusers and a Chairman who had referred to her as "a symbol of difficulties" sat in her judgment? Additionally, she vigorously protested against the closed nature of the meeting, which she likened to a "star chamber"; this atmosphere, she claimed, further stacked the deck against her.⁸

⁷These were the Chicago, Iowa, Massachusetts, New Jersey, and Philadelphia branches.

⁸Ibid., 48-50.

Flynn's Fight

At this juncture Flynn's defense should be addressed. As stated in the ACLU's bylaws, the Board retained the right to expel its members. This hearing, however, was the first of its kind, and the procedure for expulsion had never been outlined specifically. Hence, questions arose as to whether Flynn would be offered the right to counsel, whether the ACLU Board could try her case, whether she could vote in her own trial, and whether she could introduce evidence in her defense.

Some within the organization worried greatly that Flynn might challenge the legality of the hearing if the outcome was unfavorable to her. These persons sought guidance from the Union's chief counsel, Arthur Garfield Hays, on how to conduct the hearing. Hays responded:

We should handle this matter in such a way as to be proof against successful attack in court. Our determination cannot be challenged so long as a hearing is granted and the proper vote taken, if the hearing is a fair one and if there is any reasonable basis whatever as a foundation for the actions taken.⁹

Obviously, the persons in receipt of Hays's advice only listened to half of what was suggested. True, the Board did offer Flynn the right to counsel during the proceedings; Osmond Fraenkel served in this capacity for her. Moreover, the Board agreed to Flynn's request that a record be kept of the hearing and permitted her to

⁹Arthur Garfield Hays, Letter to Roger Baldwin, 7 March 1940, p. 73-75, vol. 2162, ACLU Collection.

incorporate evidence into the transcript. Yet all similarities with a formal legal proceeding ended there. In a court of law the defendant is guaranteed a trial by an impartial jury. Nevertheless John Haynes Holmes overruled Flynn's objections to the participation of her three accusers; at the same time, Flynn was denied an opportunity to vote on her own behalf.

As for Flynn's contention that the Board was attempting to "railroad" her (the "star chamber" accusation), this blame could not be pinned upon the Board. The Board had determined the 8 May date of the hearing at the 22 April Board meeting. Therefore, copies of the meeting's minutes would have been sent out on the 29 April. Granted, allowing for the time of delivery, the news of the hearing's date would not have reached ACLU members until a few days before the hearing on 7 May. Nevertheless New York-area Union members still would have had knowledge of the trial before it took place. Second, news of the impending hearing had been circulating since the latter half of March, which would seem an adequate amount of time to organize protests--if there had been support for such a measure. Last, Flynn knew full well that attendance was restricted to Board members. She certainly had the time and opportunity to challenge the hearing's prohibition to outside attendees; the fact that she did not was her own fault.

The Hearing Resumes

Having been interrupted by other members who wished to resolve procedural

questions surrounding the hearing, Flynn continued with a sustained assault on the 5 February Resolution. As her first line of defense, she contended that the Resolution did not square with previous Union policy and practices; in doing so, she referred to the numerous examples that already have been enumerated.¹⁰

Then, Flynn took an entirely different approach in her defense. As she had done before, Flynn challenged the Board to provide evidence of her violation of the Bill of Rights: "I defy [you] to prove any change in my position on civil liberties or my conduct of them for the past three years." But instead of hammering away at this point, she instead posited that communism was entirely compatible with the Bill of Rights. Flynn produced a copy of the Soviet Constitution and flatly denied that the Soviet government was totalitarian. In addition, she contrasted the egalitarianism of the Soviet Union with the inequalities of capitalist societies. According to Flynn, the Soviet Union was less oppressive to women, minorities, and the impoverished than the United States.¹¹

Consideration of the Second and Third Charges

Nearly four hours had passed before the Board turned to Rice's and Riis's charges. So late had the hour become that Corliss Lamont noted that "it was difficult to think clearly." Nevertheless, although Raymond Wise moved to adjourn the hearing, no one

¹⁰Lamont, The Trial of Elizabeth Gurley Flynn, 99-101.

¹¹Ibid., 102-06.

seconded the motion.¹²

Forging ahead, Rice declared that Flynn's "attitude" expressed in the New Masses article warranted her removal from the Board. Flynn countered that the "attitude" had arisen over frustration with recent events: the inability of the minority to present their interpretation of the Resolution, she said, had forced her to voice her protest through an outside channel. More importantly, though, maintained Flynn, was that she had a First Amendment right--like every other citizen of the United States--to express her opinion. Never, she declared, would she move to curtail Rice's speech, even though she disagreed as thoroughly with him as he with her.¹³

Others appeared to take the article's comments very personally. Hays, Bromley, and Finerty suggested as much. Corliss Lamont, however, asserted that intemperate remarks hardly justified expulsion. Recalling Norman Thomas's 16 December 1939 article in The Call, Lamont reminded the Board that Thomas had referred to some as "hypocrites...[and] insincere," but had gone unpunished; in that situation, the Board had issued only a mild admonishment, calling the article "highly improper." How, Lamont asserted, was Flynn's article any different?¹⁴

¹²Partial transcript of Elizabeth Gurley Flynn hearing, 7 May 1940, p. 140-41, vol. 2162, ACLU Collection. Wise promptly left the meeting after his motion failed.

¹³*Ibid.*, 141-43.

¹⁴*Ibid.*, 143-46; and Minutes, 18 January 1940, reel 8, ACLU Records. Thomas's article had greatly upset Board member Osmond Fraenkel. Fraenkel, a well-known liberal lawyer, had developed a reputation for his assiduous defense of free speech.

Lamont received no answer, and the Board took up consideration of the third charge. Flynn quickly presented her defense, reiterating what she had declared earlier: "My basis [for writing the article] is my right to free speech and to defend myself." Yet tempers had worn so thin that the debate persisted despite the conclusion of her testimony. Members rehashed the Board's conflicts of recent years, unleashing accusations and counter-accusations about whom ultimately was responsible for the divisiveness. Yet Chairman Holmes, recognizing that the discussion had got sidetracked, restored order by cutting off further discussion. He then requested that Flynn leave the room, so that the Board could deliberate and vote on the charges freely.¹⁵

Expulsion

On Dorothy Bromley's charge, the Board deadlocked. Bromley, Carl Carmer, Morris Ernst, Benjamin Huebsch, William Nunn, Elmer Rice, Roger Riis, Whitney Seymour, and Florina Lasker voted to sustain the charge; Robert Dunn, John Finerty, Osmond Fraenkel, Nathan Greene, Arthur Garfield Hays, A. J. Isserman, Corliss Lamont,

principles. It disturbed him that Thomas had aired the Union's dirty linen in such a public fashion and also that Thomas carelessly had labeled "six or seven" Board members as Communist or fellow travelers. Fraenkel reprimanded Thomas: "So far as I know, there is only one member of the Communist Party [Elizabeth Gurley Flynn] who is a member of the Board, and whatever the degree of friendliness toward the CPUSA of other members. . . . I think you should be the last to charge such persons as being Communists." See Osmond Fraenkel, Letter to Norman Thomas, 17 December 1939, p. 57, vol. 2064, ACLU Collection.

¹⁵Transcript of hearing, p. 146-54, vol. 2162, ACLU Collection.

Beverly Kenyon, and William Spofford opposed it; and Alfred Bingham, and Walter Frank abstained.¹⁶

That left the outcome in the hands of one person. As the Union's bylaws clearly stated, the Chairman reserved the right--but was under no obligation--to cast the deciding ballot in the event of a tie. Holmes voted to sustain the charge, making the final tally ten to nine.¹⁷

Votes on the Rice and Riis charges lacked the drama of the first. Flynn lost on both counts by identical tallies of twelve to eight.¹⁸ As a result, the Board made one final determination. By a vote of eleven to eight, the Board passed Rice's motion for expulsion. Exhausted, the members adjourned at 2:20 in the morning.¹⁹

Analysis

Several observations may be drawn from the hearing. First, the persons who had brought the charges against Flynn played a major role in her expulsion. If Bromley, Rice,

¹⁶Ibid., 157.

¹⁷Ibid.

¹⁸Walter Frank and Alfred Bingham participated in these decisions, both voting against Flynn. Arthur Garfield Hays also voted to sustain both charges.

¹⁹Minutes, 7 May 1940, reel 8, ACLU Records; Transcript of the hearing, p. 158, vol. 2162, ACLU Collection; and "Liberties Union Drops Miss Flynn," The New York Times, 9 May 1940, p. 25.

and Riis had been disqualified from voting, the Bromley charge would have failed;²⁰ the Rice and Riis tallies would have been much closer; and the final vote on expulsion would have ended in a tie. Granted, Holmes undoubtedly would have sided with the pro-expulsion contingent in the final balloting. Nevertheless, the inclusion of the accusers skewed the results.

Second, Flynn may have committed a fatal error in her own defense. By generalizing the issue of whether or not Communists were civil libertarians during consideration of the Bromley charge--instead of focusing on whether or not she deserved to retain her seat on the Board--she unnecessarily shifted attention away from herself and clouded the debate. One of Flynn's strongest arguments had been that she had never contravened the Bill of Rights; in fact, her opponents had never suggested or offered proof that she had. Moreover, even if someone had accused her of a specific transgression, Flynn had a built-in defense: in no instance since her joining the CPUSA had she stood alone in the polemic disputes of the past few years; therefore, other members were as guilty as she of any "violations" of civil liberties. Instead, Flynn opened the door to a host of questions against which she could not possibly defend herself. Arthur Garfield Hays, John Finerty, and Raymond Wise engaged her in a lengthy discourse on whether or not Communists and Soviet citizens were as free to take positions in opposition to the Party as she contended. Although Flynn maintained that

²⁰Of course, if Flynn herself had been allowed to vote, the outcome also would have been in her favor.

neither Communists nor Soviet citizens were subject to any rigid standard of discipline, Hays and Wise indicated--by their line of questioning--that they did not agree.²¹

Flynn's answers about the Soviet Union proved a pivotal moment in the hearing. Later, John Haynes Holmes would write that Hays's interrogation "removed any lingering doubt as to the necessity and right . . . in removing a Communist from [the Union's] membership." Roger Baldwin would recall: "Well, she testified at the trial that she supported the Soviet Constitution. The Soviet Constitution was a one-party constitution. It denied all other parties any right to campaign and to exist. She was very proud of her support of the Soviet Constitution."²²

Third, in its haste to end the hearing, the Board never recalled Flynn to inform her of the outcome. Although she had waited for nearly two hours, Flynn learned of her expulsion only through an informal gathering of hungry Board members that followed. Outraged by this treatment, she penned a letter of protest to the Board. As she communicated, she fully had expected to be recalled before any of voting took place, so that she may have voted in her own behalf. Furthermore, she considered the Board's failure to deliver their verdict as discourteous, at best, and, at worst, a violation of due process. Flynn objected: "Even the meanest criminal in a court of law is allowed to receive the verdict of their jury face to face. Yet I, as a charter member of the [Union],

²¹Transcript of hearing, p. 123-39, vol. 2162, ACLU Collection.

²²John Haynes Holmes, Letter to A. F. Whitney, 26 August 1940, p. 212-16, *ibid.*; and Donohue, Politics, 151.

was denied this right by you."²³

Public and Internal Comments

Flynn's removal did not become official with the actions of 7 May. The Board still required the approval of the National Committee before the expulsion became official. Yet for all intensive purposes, Flynn no longer sat on the Board.

Comment on Flynn's expulsion generally commended the Board for its decision. The New York Times echoed the sentiments of the pro-ouster forces: "Communism is no real present menace here, but that is no reason for putting Communists on guard over the citadel of individual rights. They just don't believe in such rights." The New York Herald-Tribune put it bluntly: "She [Flynn] has about as much right to represent the cause of civil liberties as Stalin himself." Nevertheless, one important periodical--outside of the Communist press--took up Flynn's defense. The Nation protested:

... [S]he has not ... been even charged with behavior violating the basic principles of the Union. Since no overt act was involved it should have been possible to delay or avoid the issue rather than precipitate it at a time when popular feeling against extreme elements is running as high as it is today.²⁴

²³Elizabeth Gurley Flynn, Letter to Board of Directors, 8 May 1940, p. 164, vol. 2162, ACLU Collection.

²⁴"Exit Miss Flynn," The New York Times, 10 May 1940, p. 22; "On Serving Two Masters," New York Herald-Tribune, 6 March 1940, p. 99, vol. 2162, ACLU Collection; and "Split in the American Civil Liberties Union," The Nation 150 (18 May 1940): 610.

Regardless of the largely positive public commentary, however, the disappointment and anger of Flynn's defenders lingered. Mary Van Kleeck resigned from the Board and quit the organization. Corliss Lamont wrote Chairman Holmes "that you may have permitted impatience, suspicion, and a passionate anti-Communist feeling to lead you into making unfounded charges." National Committee member A. F. Whitney objected: "Simple justice and fair play would again suggest that Miss Flynn was punished not because of what she said or did, but because she belonged to a certain group." Moreover, six Board members issued a lengthy pamphlet protesting Flynn's ouster.²⁵

No matter how loudly the minority complained, however, the majority refused to revisit the matter. The Union's other members, by all indications, appeared to back Flynn's removal. First, an informal poll conducted by the Board revealed that the organization's rank-and-file overwhelmingly supported the 5 February Resolution: out of 921 returns, 755 approved of the decree. Second, the National Committee solidly upheld Flynn's expulsion. Twenty-seven Committee members sustained the determination, twelve opposed, two abstained, and ten did not respond to repeated appeals for their

²⁵Mary Van Kleeck, Letter to Lucille Milner, 9 October 1940, p. 183-84, vol. 2164, ACLU Collection; Mary Van Kleeck, Letter to John Haynes Holmes, 30 October 1940, p. 1, *ibid.*; Corliss Lamont, Letter to John Haynes Holmes, 17 May 1940, p. 146-47, *ibid.*; A. F. Whitney, Letter to Roger Baldwin, 16 August 1940, p. 202-06, vol. 2162, ACLU Collection; and Crisis in the Civil Liberties Union, reel 93, ACLU Records.

votes.²⁶

The Disputed Election

Unable to repeal the Resolution or overturn the expulsion, the minority was left with only one other option. During the 5 February annual meeting, eight Board members were re-elected. Just prior to this balloting, the National Committee had approved 5 February Resolution, which stipulated that adherence to totalitarian doctrines was incompatible with service on the ACLU's governing bodies. Thus, according to the Resolution, candidates to the Board were required to pledge their support for the principles enumerated in that document before the election could occur.

The problem bedeviling the Board was that none of the eight Board members elected on 5 February had taken the oath to uphold the Resolution. Since the Resolution mandated that the pledge be taken beforehand, the Union's chief counsel, Arthur Garfield Hays, advised the Board to nullify the election and then re-elect only those who took the oath. Abraham Isserman, however, bitterly contested this maneuver. He maintained that the Resolution contradicted the organization's bylaws, which did not specifically permit "provisos or conditions of any kind" to be attached as a prerequisite for election. Therefore, since the Resolution directly conflicted with the bylaws, Isserman asserted that

²⁶Minutes, 10 June 1940, reel 8; and Minutes, 12 August 1940, *ibid.*

the Resolution was unconstitutional and the results of the election stood.²⁷

For a period of several months, no headway was made in resolving the disagreement. The motives of each side were apparent. Those in favor of voiding the election did not wish to repeat the expulsion of other members and hoped that the pre-election oath would weed out those who sympathized with totalitarian political theories. The persons in favor of preserving the election results sought to have the Resolution declared unconstitutional, or, at the very least, to render it useless by ensuring that it could not be invoked. As it was, a majority of the Board concurred with Hays's decision. Yet Isserman threatened to initiate legal action if the Board nullified the election.²⁸

To avoid a protracted court battle, Hays and Isserman eventually consented to submit the dispute to outside arbitration. Selecting Professor Karl Llewellyn, both promised to abide by whatever decision Llewellyn reached. Professor Llewellyn concluded that the election was legal and that the results stood. Unfortunately for the pro-Flynn elements, however, this small victory did not result in the Resolution's repeal.²⁹

Flynn's Exit

²⁷Minutes, 28 February 1940, *ibid.*

²⁸Minutes, 24 June 1940, *ibid.*; Minutes, 7 October 1940, *ibid.*; and John Haynes Holmes, Letter to Judge Thomas Thacher, 10 October 1940, p. 53, vol. 2164, ACLU Collection.

²⁹Minutes, 16 December 1940, reel 8, ACLU Records.

On 12 August 1940 the Board officially informed Flynn of the results of the National Committee's poll. Accompanying this notification, the Board "expressed its appreciation of Miss Flynn's long service to the cause of civil liberties."³⁰

In very un-Flynn like fashion, she departed rather quietly. She did author a single article castigating the Board for its capitulation to anti-communism. Beyond that, however, she rarely mentioned the American Civil Liberties Union again. She remained active in the CPUSA and other radical organizations until her death in 1964, which occurred during a visit to the Soviet Union. In recognition of her significant contributions to the Party, her Soviet hosts sprinkled a portion of her ashes beneath the Kremlin Wall, one of the highest honors ever bestowed upon an American Communist.³¹

³⁰Minutes, 12 August 1940, *ibid.*; Elizabeth Gurley Flynn, "The ACLU Regrets To Kick Me Out," Sunday Worker, 22 September 1940.

³¹Rosalyn Fraad Baxandall, Words on Fire: The Life and Writing of Elizabeth Gurley Flynn (New Brunswick, NJ: Rutgers University Press, 1987), 71.

Conclusion:

Partisanship in the American Civil Liberties Union

Assessing whether or not the ACLU Board handled Flynn's expulsion in an impartial manner requires the consideration of two different questions: in light of the prevailing political climate of that time, (1) was it reasonable? and (2) was it fair?

Reasonable?

As this analysis has suggested, Flynn's removal represented the culmination of over two decades of battles with opponents who characterized the Union as aligned with the Communist movement. The Overman Committee, the Lusk Committee, R. M. Whitney, the United Mine Workers' Senate report, and the Fish Committee laid the groundwork for such accusations. Nevertheless, the Union weathered these storms in relatively good shape.

HUAC, however, posed a different challenge. Heightened public fears of Fascist and Communist activities in the United States engendered wide popular support for the Committee's investigation. Moreover, HUAC's investigative abuses often were not as apparent to the public at large as they were to the ACLU, or they were rationalized as an unfortunate consequence of its extraordinary mission. As a result, the Committee's

attacks on the Union succeeded in dramatically tarnishing the organization's image.

Meanwhile, an ongoing debate within the ACLU's Board of Directors had come to a flashpoint. Squabbles over Gastonia, the Madison Square Garden riot, and Henry Ford increasingly had polarized the Board. Disgruntled members intimated that their colleagues were less concerned with the defense of civil liberties than with the pursuit of their personal agendas. Then, the accumulated frustrations of battling HUAC exposed the formation of two--albeit ill-defined--camps.

The signing of the Nazi-Soviet Nonaggression Pact, however, proved to be the watershed in the Board's interpersonal relations. Suddenly, the distinctions between Stalinist Russia and Nazi Germany became blurred, not only to the public at large, but to many on the Board. The Pact resulted in two developments: (1) some Board members, while not sanctioning HUAC's violations of civil liberties, now believed that the investigation of Fascist and Communist activities had some merit; and (2) a heated debate broke out about the presence of Communists and Communist sympathizers on the ACLU's governing bodies.

Outright hostility among Board members crystallized over the publication of the Wise report. Designed as position paper against HUAC's reauthorization, the report's original draft outraged some members with several favorable remarks about its archenemy. Revisions in the report only incensed its earlier supporters. Yet it was the 5 February Resolution that split the Board irrevocably; furthermore, it represented the final

word on an ongoing dispute about communism, civil liberties, and divided loyalties. Each side made compelling arguments. The anti-Communists rightly noted communism's atrocities and repression. How, they asked, can a person sanction the brutalization of citizens abroad while defending the rights of persons within this country? The anti- anti-Communists, in turn, reminded their counterparts that the Bill of Rights applied only to the citizens of the United States. Moreover, they countered, was not a conviction for anti-civil libertarian attitudes--without specific incriminating evidence--tantamount to guilt by association?

In the final analysis, the immediate results of the 5 February Resolution were very positive for the anti-Communist Board members: Ward resigned, the national press applauded the forthright stand against Communist participation, and the opposition to the Resolution was dealt a major defeat. Over the long-term, however, the ramifications were less clear. Several important members--Ward, Flynn, and Mary Van Kleeck--would never return to the organization. Yet now, in a less hostile climate, the Board could concentrate on the defense of civil liberties.

Thus, in returning to the original question, was the expulsion "reasonable"? Yes, it was. The anti-Communist members of the Board genuinely believed that the group had lost its focus and become consumed with its internal disputes, which threatened the entire organization's continuation. To steer the Board back to its true course, the anti-Communists felt that a thorough housecleaning was essential.

Fair?

Determining fairness often is fraught with subjectivity. Certainly when Roger Baldwin and Morris Ernst (and whoever else was involved) bypassed the Board and sought the National Committee's approval of the Resolution, such a maneuver clearly violated any standard of fairness. Likewise, the anti-Communists' announcement that they would secure Ward's resignation from the Board revealed their prejudgment of an esteemed member and a valuable contributor to the organization.

Of course, neither of these issues deals directly with Flynn's expulsion. They do, however, establish a pattern of bias against the Board's "leftists." Therefore, while the expulsion proceedings were given an air of impartiality by providing a forum with which Flynn might combat the charges, all signs indicated that her fate had been predetermined. Dorothy Bromley's charge represented the first time ever that a Board member formally had been threatened with expulsion. Yet Bromley did not present a single example of Flynn's contravention of civil liberties. The evidence against her rested solely upon her membership in the Communist Party.

The implication of this charge escaped most of the Board's members. By promoting the concept that Communist membership was tantamount to attitudes or actions that were at variance with the concepts of the Bill of Rights--without specific proof to support the claim--the ACLU engaged in one of the very practices for which it

had condemned HUAC so vehemently: guilt by association.¹ To be sure, the CPUSA received its marching orders from the Soviet Union, and the Stalinists had committed wholesale violations of their own citizens' civil liberties. Moreover, the CPUSA unquestionably took a purely self-interested approach to the Bill of Rights: on countless occasions, the Party had insisted on and fought for the full range of constitutional protections for itself and its allies, while denying that its foes deserved the same freedoms. On the other hand, American Communists had contributed to the broadening of civil liberties in several areas, particularly labor's rights. Therefore, to generalize that Communist doctrine was incompatible with the Bill of Rights, in the absence of a scintilla of evidence to buttress that claim, should have been challenged aggressively.

But was it incumbent upon the Board to present "evidence" of Flynn's contravention of civil liberties, or was it enough that a majority was convinced of her "guilt"? On one hand, the ACLU certainly would have contested a legal charge against one of its clients without specific proof of wrongdoing. Yet Flynn was not accused of criminal wrongdoing, and the Board certainly reserved the right to determine who sat on the organization's governing bodies. Furthermore, Flynn's re-election in 1939 did not obligate the Board to fulfill the remainder of her term; if it ascertained "wrongdoing" of a member, the Board should have been able to expel her. Thus, there should be no doubt

¹For an interesting and extended analysis of guilt by association, see Sidney Hook, Heresy, Yes—Conspiracy, No (New York: The John Day Company, 1953), 84-93.

that it was fair for the Board to hold a hearing on Flynn's continued service.

Nevertheless, while the Board was required to comply only with its own organizational guidelines, one should not forget that the Board had never given formal consideration to the expulsion of a member before. The Union's bylaws offered little guidance in the matter. To clarify how the hearing should be conducted, therefore, Arthur Garfield Hays counseled Roger Baldwin that the Board should proceed as if the outcome would be challenged in a court of law. "Our determination cannot be challenged so long as a hearing is granted and the proper vote taken, if the hearing is a fair one and if there is any reasonable basis whatever as a foundation for the actions taken," advised Hays.²

The Board largely ignored Hays's stipulations. Although a hearing was granted and "reasonable" justification had been established for its necessity, a "proper" vote was not taken, nor was the procedure "fair." First, the objectivity of Flynn's accusers was clearly suspect; Bromley, Ernst, and Rice should not have been permitted to sit in her judgment. But at the very least, since all three were allowed to vote, Flynn should have been allowed to cast her ballot as well. Second, an impartial "judge"--if that term may be analogized to Holmes's role in the hearing--normally would have recused himself when he had been involved so intimately with the efforts to oust Flynn. As early as 19 March, Holmes had betrayed his true sentiments to Flynn about her service on the Board: "Neither on your side nor on ours [the Board] can there be continued relations

²Hays, Letter to Roger Baldwin, p. 73-75, vol. 2162, ACLU Collection.

Obviously this is a case for divorce."³ Not surprisingly, Holmes cast the deciding vote on the Bromley charge. Third, it seems unlikely that an *unbiased* judge and jury would have upheld two counts of "inappropriateness" against a person for exercising her constitutional right to free speech and free press. Norman Thomas had penned a similar diatribe against members of the Board; why was he not disciplined? Last, and most importantly, it remains extremely doubtful that the Board satisfied Hays's criterion of having established a "reasonable basis" for expulsion. If Flynn's Communist membership indeed compromised her defense of civil liberties, then surely some evidence must have existed to bolster that contention. Yet none was presented.

Mea Culpa

To the Union's credit, the organization eventually acknowledged that it had made a mistake in expelling Flynn. In 1967, three years after Flynn's death, the ACLU rescinded the 5 February Resolution and amended its bylaws by expressly prohibiting the removal of Communists from its governing bodies without credible evidence of violations of civil liberties. Another nine years passed before the organization specifically admitted that it had wronged Flynn. On 10-11 April 1976 the Board of Directors, by a vote of thirty-two to eighteen, formally apologized:

... [T]here was no evidence that . . . Ms. Flynn had ever committed any

³Holmes, Letter to Elizabeth Gurley Flynn, p. 89, *ibid.*

act which in any way violated or transgressed any of the basic principles for which the ACLU has stood [T]he expulsion was not consonant with the basic principles on which the ACLU was founded Therefore, it is the sense of this Board that Ms. Flynn should not have been expelled⁴

In Perspective

Lucille Milner, the Union's longtime secretary, devoted an entire chapter of her autobiography to the Flynn hearing. Milner reflected: "One need not be prompted by any concern for the Communist Party or for Elizabeth Flynn to be disturbed about the basic principle involved in what we had just witnessed. It was nothing other than a political inquiry by the Civil Liberties Union." Corliss Lamont, in his autobiography, recalled the lessons of 1940:

Nineteen-forty was one of the most important years in my life. I had joined the Board . . . in 1932 when I was thirty years old, to uphold the ideals of American democracy But when the crisis regarding Communists and Communism occurred, a majority of those individuals whom I had so admired compromised their civil liberties principles and utilized unscrupulous tactics to put across their purge program. It proved the greatest disillusionment to me and at the same time taught me that I had to be continually on my guard in the debased world of politics against the hypocrisy of some so-called liberals.

In addition, Roger Baldwin's biographer, Peggy Lamson, commented at length on Flynn's

⁴Minutes, 18 April 1976, reel 1, American Civil Liberties Union, Records and Publications Update, 1976-1980; and "A. C. L. U. Reverses Ouster of Elizabeth Gurley Flynn," New York Times, 22 June 1976, p. 38. Opposition to the apology protested that the Board should not question the judgment of a predecessor.

expulsion: ". . . [I]t often struck me as I talked to various people about Roger, notably Corliss Lamont, Alan Reitman, Lucille Milner, and Osmond Fraenkel, that all roads seemed to lead to Elizabeth Gurley Flynn."⁵

Whether or not Flynn's ouster warrants the comments made by Lamont, Milner, and Lamson is debatable. There are legitimate questions as to how the Board would have been able to provide effective leadership to the organization if it had not taken the action it did. Yet Flynn's removal should not be minimized for several reasons. First, the events leading up to her expulsion illustrate--in a microcosm--the divisiveness caused by the issue of communism among civil libertarians. Second, the ACLU did not observe a neutral position on an important domestic and international issue, contradicting what it always has claimed to have done. To be sure, the Board's individual members held strong personal feelings about communism. Those beliefs did not remain personal, however; the anti-Communists maneuvered so that the *organization* adopted a position against the presence of Communists on its governing bodies, and, then, orchestrated Flynn's removal. Third, and most importantly, the Union's Board of Directors compromised the civil liberties of one of its most senior and respected members in the name of anti-communism. Naturally, one must wonder, if the group was willing to sacrifice one of its own, then what sort of defense would the ACLU provide to Communists outside of the organization? That question remains impossible to answer. Yet the most prestigious

⁵Milner, 293; Corliss Lamont, Yes to Life: Memoirs of Corliss Lamont (New York: Horizon Press, 1981), 136; and Lamson, 226.

civil liberties organization in the United States would confront a resurgence in anti-Communist hysteria during the late 1940s and early 1950s. Having made its position perfectly clear about Communists in its own organization in 1940, the American Civil Liberties Union would enter into the second Red Scare struggling to convince the courts, other organizations, and the public at large that Communists, or suspected Communists, required the same constitutional protections as anyone else.

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