

Where the Palmer Raids a justified limitation on freedom?  
By Richard Clark, Reno High School

Following the end of the “War to End All Wars” in November of 1918 “(t)he belief in imminent revolution that stirred the Communists was only one aspect of the spirit of millenarianism that swept the United States...”<sup>1</sup> The Russian Revolution, the buildup of organized labor in the United States, the anti-establishment sentiment in the United States, and “the postwar inflation, which saw costs of living climb in 1920 by 105 percent...” created a storm for hostilities that would be known as the Red Scare.<sup>2</sup> The Anti-communist sentiment was equally as strong. The tensions came to a crescendo in the spring of 1919 when a series of mail bomb were sent to a number of prominent anti-labor advocates such as Senator Thomas Hardwick of Georgia, the mayor Seattle, and John D. Rockefeller. It was after the bombing of Attorney General A Mitchel Palmer’s home in Washington DC that set the stage for what became known as the Palmer Raids. With the mounting unrest from organized labor, Palmer began to raid the Union of Russian Workers in dozens of cities and depart suspects thought to be planning a Bolshevik revolution. Were these raids justified, or was it a tinder box of circumstance that led to an unfortunate situation?

Even before the indignation that occurred shortly after the United States declared war against Germany in 1917, many people and groups were organizing to fight what they saw as major civil liberties violations by both the US and State governments. “Eugene Debs, the four-time Socialist Party candidate for president, was sentenced to ten years for a speech he made in Canton, Ohio...he was convicted for saying ‘(y)ou need to know that you are fit for something

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<sup>1</sup> William E. Leucht enburg *The Perils of Prosperity: 1914-32*. (The University of Chicago Press 1993) p.69

<sup>2</sup> Ibid p.70

better that slavery and cannon fodder.”<sup>3</sup> Lilian Wald, a social worker from New York who personally knew Woodrow Wilson wrote to him about the heavy assault upon civil liberties “Halls have been refused for public discussion, meetings have been broken up; speaker have been arrested and censorship exercised, not to prevent the transmission of information to enemy countries, but to prevent the free discussion by Americans citizens of our own problems and policies.”<sup>4</sup>

On the other hand membership of the American Protective League had risen to 250,000 members by 1915; many of the members carried badges and said they were the “Secret Service”. Others organization demanded to search homes of individuals who had not registered for the draft, while others were physically forcing people to purchase their fair share of Liberty Bonds.<sup>5</sup> The Attorney General’s office advocated their actions as patriotic, even if some of these vigilantes beat immigrants or disloyal citizens, forced them to kiss flags and publicly tarred and feathered them.

The animosity that was brewing between the so called “patriots” and the nonconformist was brewing. Both sides had no fear of taking action and did so, on a regular basis. Because of the continued unrest and violence the government got involved and found ways to further limit those who were outspoken about the war in Europe and the United States’ involvement. In 1917, Congress passed the Espionage Act that prohibited individuals from:

“obtaining information respecting the national defence with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information, concerning any vessel, aircraft, work of defence, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defence, owned or constructed, or in progress of construction by the United States or under the control or the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any

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<sup>3</sup> Christopher Finan, *From Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America*. (Beacon Press. Boston) p. 12

<sup>4</sup> Ibid p. 13

<sup>5</sup> Ibid p. 13

place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States”<sup>6</sup>

Which was followed up by the Sedition Act of 1918 that:

“Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports, or false statements, ...or incite insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct ...the recruiting or enlistment service of the United States, or ...shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution (narrative) of the United States, or the military or naval forces of the United States ...or shall willfully display the flag of any foreign enemy, or shall willfully ...urge, incite, or advocate any curtailment of production ...or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein.”<sup>7</sup>

These laws grew out of the growing unrest over the war and why the US got involved. The Supreme Court further weighed in by uphold these laws in series cases decided in 1919: *Schenk v. US*, *Frohwerk v. US* & *Debs v. US* and *Abrams v. US* making it clear that the government was free to suppress dissident speech during war time.<sup>8</sup> These acts and decision lead further civil disobedience.

The outcomes of the war in Europe also lead to further tensions between the people and the government. In 1917, Russia left the conflict to fight its own internal conflicts as a result of the Bolshevik Revolution, “the Brest-Litovsk peace accord with Germany seemed to make the Bolshvick regime a traitor to the Allied cause”<sup>9</sup> This communist revolution triggered many with in the United States to fear a similar uprising strengthening the actions of law enforcement to enforce both Espionage and Sedition Acts as well as similar state laws.. In addition, once the war was over the US military took actions to prevent the Soviet influence from spreading to war torn

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<sup>6</sup> Section 1: Espionage Act of 1917. (Pub.L. 65-24, 40 Stat. 217) enacted June 15, 1917

<sup>7</sup> Section 3: Sedition Act of 1918. (Pub.L. 65-150, 40 Stat. 553) enacted May 16, 1918

<sup>8</sup> Finan p. 28

<sup>9</sup> Regin Schmidt *Red Scare: FBI and the Origins of Anticommunism in the United States*. (Museum Tusculanum Press, University of Copenhagen, 2000) p.24

Germany and Russia, which caused many leftist leaning Eastern European immigrants to protests.

By 1919, hundreds of demobilized veterans were returning home looking for jobs, thousands of immigrants and “organized labor...revolted and demanded that its rights to collective bargaining be recognized in addition to higher wages and improved working conditions.”<sup>10</sup> When the Seattle Central Labor Council “vote conduct a general strike to support their brothers (Seattle shipyard workers), decision taken under the influence of an admirer of the Russian Revolution”, the match was that sparked the Palmer Raids was struck.<sup>11</sup> Beginning on April 28, homemade bombs found their ways into the mailboxes of anti-labor government officials throughout the country. Throughout the summer a series of strikes and urban violence ensued following the bombing. President Woodrow Wilson wanted to take swift action to put down the unrest, and was persuaded by Attorney General Palmer to take quick action against these strikes given to the Justice Department by the Lever Act. In August, Palmer asked for and received a \$500,000 increase in his budget in order to combat radicalism and along with a young ambitious J. Edgar Hoover created an antiradical, division which eventually becomes known as the Federal Bureau of Investigation.

Palmer’s major target was foreign born Russian and Communist immigrant “most of whom had committed no criminal offense..., few were communist; most were anarchist...and many of the philosophically anarchist who had no intention of ever using violence.”<sup>12</sup> By the end of the 1920 the Red Scare as it became to know was over, Palmer and his raids had lost its punch. Palmer and the new formed FBI arrested over 5000 people and deported 600, few of these were serious threats, yet it was the dismissal of five Socialist Party members of New York State

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<sup>10</sup> Ibid p. 25

<sup>11</sup> Leuchtenburg p.71

<sup>12</sup> Ibid p. 77

legislature that brought the Palmer Raids and the Red Scare to an end. These assemblymen were democratically elected and the Socialist Party was legally recognized by the state of New York. The outrage of the event made “the Red Scare appear more than a little ridiculous”.<sup>13</sup> The Assistant Secretary of Labor, Louis Post, who was entrusted with caring out the deportation proceedings, began to guarantee strong legal representation for the immigrants because of the gross civil liberties violations taking place. When called in front of a Congressional Committee to explain is favoritism towards the immigrants that was leading to a “tender solitude of social revolution” his evidence was so overwhelming that his political enemies backed down.<sup>14</sup> As a result the Congress stop investigating the potential of communist revolution in the nation but A Mitchell Palmer himself. This severely crippled Palmer’s bid for the presidency in 1920 and his repeated accusations about further social unrest becoming revolutionary went unnoticed. The country began to move past the war and into a new decade, but this fear and paranoia of external threats entering the United States would not go way, and would resurface several times throughout the twentieth and twenty-first centuries.

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<sup>13</sup> Ibid p. 79

<sup>14</sup> Ibid p. 79

## **Work Cited**

Espionage Act of 1917. (Pub.L. 65-24, 40 Stat. 217) enacted June 15, 1917

Sedition Act of 1918. (Pub.L. 65-150, 40 Stat. 553) enacted May 16, 1918

Schmidt, Regin. *Red Scare: FBI and the Origins of Anticommunism in the United States*. Museum Tusculanum Press, University of Copenhagen, 2000

Finan, Christopher, *From Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America*. Beacon Press. Boston

Leucht enburg , William E. *The Perils of Prosperity: 1914-32*. The University of Chicago Press. 1993

# Extended Controversial Issue Discussion Lesson Plan Template

**Lesson Title:** From the Red Scare to the War on Terror: During times of national emergencies/wars, what is the appropriate response government should take to maintain peace and safety?

**Author Name:** Richard Clark

**Contact Information:** [rclark@washoeschools.net](mailto:rclark@washoeschools.net)

**Appropriate for Grade Level(s):** 11 Grade United States History

**US History Standard(s)/Applicable CCSS(s):** NVSSS: H2.[9-12].7 & H2.[9-12].7

**Discussion Question(s):** During times of national emergencies/wars, what is the appropriate response government should take to maintain peace and safety?

**Engagement Strategy:** Socratic Seminar – I call the “Forums” in my class

**Student Readings (list):** Excerpt from Regin Schmidt's *Red Scare: FBI and the Origins of Anticommunism in the United States* & *The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President's Power as Commander-in-Chief*, 2002

**Total Time Needed:** 1 - 50 minute class periods

### Lesson Outline:

[illegible]

<b>Description of Lesson Assessment:</b> See Speaking Rubric & Writing Rubric	

**How will students reflect on the process and their learning?** Exit Ticket Survey

United States History

1920's

# GOVERNMENTAL POWERS

*Opinion is Power*

-- Thomas Jefferson

"During times of national emergencies/wars, what is the appropriate response government should take to maintain peace and safety??"

## About Forum:

All forum are composed of two grades, a written and a verbal grade. The written will usually due the morning to the forum, without the written portion of the seminar you cannot participate in the in-class discussion and will be given an alternative assignment. Your written work is your "entry ticket"

## For This Seminar:

Using Excerpt from Regin Schmidt's *Red Scare: FBI and the Origins of Anticommunism in the United States & The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President's Power as Commander-in-Chief*, 2002

1. Answer the situation questions on the back of this sheet.
2. Select ONE issue and write a one page position paper arguing your stance on this issue. **BE PERSUASIVE**, not ignorant, and please type this using 12pt, New Times Roman font double spaced, with one inch margins. Be sure to include examples from your reading to highlight your thesis.
3. In class we will discuss and debate these issues, so be prepared

**NOTE:** R-18 is a safe place for ideas of all kinds. Forums are intended to be a practice in impassioned, civil discourse

So..."During times of national emergencies/wars, what is the appropriate response government should take to maintain peace and safety??"

(See back)

Essay Rubric:

10 – Is a well-organized essay that has a strong thesis, few grammatical mistakes, and provides convincing tangible evidence from multiple readings or outside sources.<sup>15</sup>

9 – Is an organized essay that has a solid thesis, few grammatical mistakes, and provides tangible evidence from multiple readings.

8 – Is an organized essay that has a thesis, few grammatical mistakes, and provides some evidence from one of the readings.

7 – An essay with a weak thesis, few grammatical mistakes, and provides general information regarding the readings

6-0 – A weak essay with little to no thesis, with very little application, and does not answer the question at hand.

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<sup>15</sup> Outsides sources are not necessary but some questions may open themselves up to outside research



**DIRECTIONS:** Below are six questions to think about while going through your readings for today. Take a few moments to read each question. Remember you have to write a response to ONE question, but you must be able to answer all the questions in class. You should be able to take a stand on each question, and be prepared to defend your position.

1. Was the 1919 Palmer Raids an appropriate response to the Russian Revolution within the United States? Make sure you use specific examples from your reading.

2. What lead to the social unrest during the 1919 Palmer Raids? Massachusetts Governor Calvin Coolidge declared “there is no right to strike against the public safety by anybody, anywhere, anytime,” is the governments need to maintain social order more important that the need for people to assert and protect their economic and social rights?

3. Compare the actions of the Palmer Raid’s and Red Scare to the actions taken shortly after 9/11, how are they similar? Are violations of civil liberties necessary during times of national emergency?

4. According to *The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President’s Power as Commander-in-Chief, 2002* why was President George W. Bush going to use torture? Was torture an appropriate response to period right after 9/11? (You may only use the text to answer this question)

5. Was *The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President’s Power as Commander-in-Chief, 2002* an appropriate check to President Bush’s Torture Law? Explain your answer?

6. How does the Justice Department use the Constitution as the basis of their argument? But why does torture go too far in the President’s power? Explain

## The Origins of the Red Scare

### *1919: The Revolution That Never Was*

The big Red Scare of 1919-20, a short-lived but intense period of political intolerance and repression of Communists, radicals and other non-conformists, was not an isolated incident but part of a larger American tradition. Alongside the celebrated tradition of political pluralism, diversity and civil liberties ran another, darker tradition of intolerance, enforced conformity and repression. As early as 1798, facing war with France and internal Jeffersonian opposition, the Federalists enacted and proceeded to use the Alien and Sedition Acts, which, among other things, enabled the government to deport treasonable aliens and to prosecute any anti-government activities and writings. In 1886 the nation experienced an anarchist scare following the Haymarket Square bomb, and during World War I pacifists, socialists and alleged German sympathizers were persecuted. All through the 19th century and until the New Deal in the 1930s, unions were regarded as criminal conspiracies by the courts and ruthlessly fought by the employers, while the black minority was oppressed and forced to live in a subjugated position in the South. Later, Japanese-Americans on the West coast were interned in concentration camps during World War II, suspected Communists were the targets of the McCarthy era and anti-war protesters harassed during the sixties and seventies.<sup>1</sup>

1919 was one of those dramatic years, like 1968, filled with unrest, protest and the clashing of social and political forces, when, for a short moment, the future of the nation seemed to hang in the balance.<sup>2</sup> The reasons for the unrest were many and complex. The almost instant reconversion from wartime production and government planning in November 1918 brought chaos to the economy. The rapid demobilization threw hundreds of thousands of veterans into the job market and

led to growing unemployment. During 1919 and 1920 an average inflation of 15% ate into the salaries and savings of the middle and lower-middle classes. At the same time, groups which had subdued their narrow interests to the wartime national harmony now burst forward to claim their rewards. Organized labor, which had grown in strength under the government's recognition but had only obtained modest increases in wages, revolted and demanded that its right to collective bargaining be recognized in addition to higher wages and improved working conditions. The employers were determined to break the unions and reclaim complete control of the work place. As a result, a wave of strikes, more than 3,600 involving 4 million workers or a fourth of the work force, swept the country. Blacks had migrated in great numbers to the North during the war, gaining employment in the industry and serving in the army "to make the world safe for democracy." They began to demand equal rights and increasingly favored retaliation against injustices, while many whites were determined to beat back the blacks. Consequently, the summer of 1919 was marred by a wave of lynchings in the South and race riots in Northern cities. At the same time, the partisan political debate flared up with an aggressive Republican majority in Congress which insisted on weakening the Democratic President Woodrow Wilson and dismantling his domestic reforms, blocking the League of Nations and recapturing the White House in 1920.

Simultaneously with this unrest, radicalism was on the rise, seemingly threatening the existing order. The Bolshevik revolution in Russia in 1917 frightened many with its calls for the overthrow of established governments and the expropriation of private property, and the Brest-Litovsk peace accord with Germany seemed to make the Bolshevik regime a traitor to the Allied cause if not actually pro-German. Thus, anti-German passions of the war were therefore transferred to the Bolsheviks. In 1919 Communism threatened to spread to Western Europe with Red uprisings in Germany and Hungary, and in March the Third International was founded in Moscow to direct the worldwide revolution. In the US, radicals, already identified with disloyalty because of their opposition to the war, were vitalized by the apparent Bolshevik advances. During the spring and summer the Socialist Party split, and in September two Communist parties were established. The Communists were very active in their agitation and predicted optimistically the imminent overthrow of the capitalist classes and the government, followed by the establishment of Soviets. In fact, the would-be revolutionaries were few, numbering at most perhaps some 40,000, most were recent

<sup>1</sup>For the intolerance in American history, see, John Higham, *Strangers in the Land. Patterns of American Nativism. 1860-1925* (New Brunswick, N.J., 1955); David H. Bennett, *The Party of Fear. The American Far Right from Nativism to the Militia Movement* (New York (1988), 1992); Seymour M. Lipset & Earl Raab, *The Politics of Unreason. Right-Wing Extremism in America, 1790-1970* (London (1970), 1971).

<sup>2</sup>The most comprehensive account is Murray, *Red Scare*.

European immigrants and already hopelessly isolated from American reality and traditions.

The Red Scare was, at bottom, an attack on these movements for social and political change and reform, particularly organized labor, blacks and radicals, by forces of the status quo. It might briefly be described as a breathtaking series of dramatic events, mainly between February 1919 and January 1920. On February 6, a general strike was called by the Seattle Central Labor Council in support of a shipyard strike. Although the strike was peaceful and had legitimate labor demands, it was branded a revolutionary uprising by employers and conservatives. Mayor Ole Hanson requested federal troops to break the strike, which lasted just five days. Immediately following the strike a Senate committee, the Overman Committee, which had originally been formed to investigate German propaganda in the US, shifted its focus and held public hearings on Bolshevik activities. It reveled in lurid accounts of Red atrocities and such topics as the alleged nationalization of women in Soviet Russia. Thus the Red menace was placed on the political agenda.

The spring of 1919 was marred by outbreaks of political violence. In late April, postal authorities intercepted 36 packages containing bombs addressed to prominent politicians, judges and other state officials. On the following May Day, radical demonstrations in several cities were attacked and broken up by mobs of patriotic soldiers and sailors. The violence culminated on June 2, when bombs exploded in eight cities, and among the intended victims was Attorney General A. Mitchell Palmer. In response, Palmer declared war on the radicals, warned of an imminent revolutionary uprising, and mobilized the Justice Department by establishing a special political section, the Radical Division, headed by a 24-year old ambitious bureaucrat, J. Edgar Hoover.

The social unrest, which had been building up since the Armistice, culminated during the summer and fall of 1919. During the summer, a number of particularly violent race riots engulfed cities throughout both the South and the North. 120 people were killed. The impact of the Red Scare became evident when Southern politicians and the authorities claimed that blacks had been influenced by radicals. In September the Boston police walked out, demanding that its union be recognized. The authorities and the press branded the strike as Bolshevistic influenced, Massachusetts Governor Calvin Coolidge declared that "there is no right to strike against the public safety by anybody, anywhere, any time" and proceeded to dismiss the whole police force. Later that same month some 365,000 steel workers went

on strike, demanding the right to collective bargaining. The steel industry, led by the powerful Judge Gary of US Steel, was determined not to give in and used strikebreakers and company police to crush the walk out and claimed that the strike was a revolutionary plot. Undermined by the charges of radicalism, the strike ended in utter failure in January 1920. The national coal strike followed on November 1. It was effectively broken by the federal government with an injunction which forbade any strike activity on the part of labor leaders.

Meanwhile, the Justice Department had launched its dramatic all-out war against the radical movement. Its main weapon was the deportation provisions of the immigration laws, which enabled the government to expel aliens who advocated or who belonged to organizations which advocated the overthrow of the government with force or violence. On November 7, federal agents raided the headquarters of the anarchistic Union of Russian Workers and arrested some 1,200 members, most of whom were Russian immigrants. Following swift deportations proceedings, on December 21, 249 aliens were deported on the USS *Buford*, nicknamed the "Soviet Arc." Shortly after this success, on January 2, 1920, the Bureau of Investigation raided offices and homes belonging to Communists in 33 cities and arrested between 5,000 and 10,000 suspected subversives, often with great brutality and in many cases without warrants. At the same time, the Justice Department investigated the political activities of American citizens and lobbied for a peacetime sedition law, which would effectively put an end to revolutionary agitation.

Although the repressive measures of the federal government were by far the most dramatic and important, other agencies of authority and opinion leaders eagerly participated in the defense of the existing order. The courts generally interpreted civil liberties in a restricted sense, Congress expelled the socialist Victor Berger and debated proposals to restrict free speech, the states convicted 300 citizens for violating the criminal syndicalism laws, and the New York State Legislature expelled five socialist Assemblymen. Finally, the press played an important role in the Scare by exaggerating the radical threat and printing sensational accounts of revolutionary plottings, while patriotic societies attacked non-conformists and left-wingers within the educational system, the church and cultural life.

The Red Scare petered out in 1920 as suddenly as it had begun. The Labor Department, which had formal jurisdiction over deportation matters, regained control over the process, reinstated due process and refused to deport most of those arrested by the Justice Department.





historians have abandoned the "status anxiety" theory. Later studies have rejected the notion about a populist grass-roots movement in support of McCarthyism.<sup>14</sup> Instead, historians have pointed to "the Imperial Presidency," partisan rivalry, the National Security State, and elitist interest-groups as the causes of anticommunist policies during the Cold War.<sup>15</sup> In a study of political intolerance and repression during McCarthyism, the political scientist James L. Gibson found that in states where the elite was more intolerant, more repressive laws were enacted than in states where the mass opinion was more intolerant. This led him to conclude that "political repression occurred in states with relatively intolerant elites. Beyond the intolerance of elites, the preferences of the mass public seemed to matter little."<sup>16</sup> The absence of a mass-based public hysteria is further indicated by the fact that according to a 1954 poll, at a time when McCarthyism was at its height, only 1% of the public said that they were worried about the internal threat of Communism in the US.<sup>17</sup> Thus, according to this analysis, repressive government policies during the McCarthy era were initiated by the political elite, while the role of the public opinion and the political culture was more that of setting the limits to how far the repression could go. In a later study on the causes of state level political repression during the Vietnam war, Gibson even speculated that perhaps "one reason why we so often observe so much intolerance in the United States is that the American people have learned from their leaders that the appropriate response to threatening disruptions from unpopular political minorities is repression."<sup>18</sup> Thus, instead of the "pluralist" theory of the 1950s and 60s, which explained repressive

and professional men. This is hardly proof of a widespread, popular hysteria.<sup>19</sup> It is highly questionable, therefore, whether the literature on the Red Scare has substantiated its thesis about the existence of a popular anti-radical movement.

Another, even more fundamental objection to the prevailing picture of the Red Scare is its deep dependency on the so-called "consensus" or "pluralist" school of thought among historians and political scientists. Practically all of the studies of the Red Scare date from the 1950s and early 1960s and are clearly inspired by the contemporary drama of McCarthyism. For example, Murray notes in his work, published just as McCarthyism was coming to an end in 1955, that "Since it would appear from the current trend of events that many of the same problems and fears which plagued the American public of 1919 still bother us today, it seemed of particular value to return to that almost forgotten scene."<sup>20</sup> In other words, Murray and other authors saw in the Red Scare a clear parallel to the contemporary scene and therefore transferred their view of the causes of McCarthyism to that earlier period. The prevailing view among historians and political scientists of that time was that McCarthyism was an irrational, mass-based populist movement, composed of social groups which for one reason or another suffered from "status anxiety," and which brought pressure on the more tolerant political elite to repress unpopular minorities. Thus, according to this view, political repression was the result of pressure from below and, consequently, there was implicit in this theory a distrust of "mass politics" and democracy itself.<sup>21</sup> This view of the democratic capacity for repression is most clearly expressed by Murray, who notes that "in a democracy what the general public thinks and does also in the long run vitally affects the government. Hysteria, therefore, is particularly dangerous to the democratic system ... ultimately it also destroys intelligent action by the government."<sup>22</sup>

<sup>19</sup>For example, Coben, *A Mitchell Palmer*, 183, 306n7; also, 214, 317n66. An indication, albeit unrepresentative and of uncertain reliability, of the lack of public hysteria is a letter from former Secretary of the Treasury William G. McAdoo to President Wilson at the end of July 1919, at a time when the public supposedly had become excited about the danger of a revolutionary uprising because of a number of anarchist bombs in June. McAdoo reported that, "The two things which are concerning the average man and woman more than anything else are, first, the high cost of living and, second, taxation" (Link (ed.), *The Papers of Woodrow Wilson*, Vol. 62, 71).

<sup>20</sup>Murray, 281. Murray also writes that "the underlying hysterical spirit of American anti-bolshevism, which the Red Scare represented, lives on" (ibid., 278).  
<sup>21</sup>For examples of the "pluralist" view see, Daniel Bell, (ed.), *The Radical Right* (New York (1955), 1979); Lipset & Raab, *The Politics of Unreason*; Hofstadter, *The Paranoid Style in American Politics*.

<sup>22</sup>Murray, 190.

<sup>14</sup>Nelson W. Polsky, "Towards an Explanation of McCarthyism," *Political Studies*, Vol. VIII, No. 3 (1960), 250-271; Michael Paul Rogin, *The Intellectuals and McCarthy: The Radical Specter* (Cambridge, Mass. & London, 1967).

<sup>15</sup>Earl Latham, *The Communist Controversy in Washington. From the New Deal to McCarthyism* (Cambridge, Mass., 1966); Robert Griffith, *The Politics of Fear: Joseph R. McCarthy and the Senate* (Lexington, Ky., 1970); Robert Griffith and Athan Theoharis, eds., *The Specter: Original Essays on the Cold War and the Origins of McCarthyism* (New York, 1974); Athan Theoharis, *Seeds of Repression: Harry S. Truman and the Origins of McCarthyism* (Chicago, 1971); Fried, *Nightmare in Red*; Heale, *American Anticommunism*; Schrecker, *Mary Are the Crimes*.

<sup>16</sup>James L. Gibson, "Political Intolerance and Political Repression During the McCarthy Red Scare," *American Political Science Review*, Vol. 82, No. 2 (June 1988), 518; also, 513-518.

<sup>17</sup>Ibid., 519.

<sup>18</sup>James L. Gibson, "The Policy Consequences of Political Intolerance: Political Repression During the Vietnam War Era," *Journal of Politics*, Vol. 51, No. 1, February 1989, 31; also, Gibson, "Political Intolerance and Political Repression," 520, 521-522. Even today, a significant number of Americans believe that the government would suppress various forms of opposition: For example, 79% of whites and 86% of blacks believe the government would not allow a nationwide strike and 40% of whites and 64% of blacks do not believe the government would allow public meetings in opposition to official policies (James L. Gibson, "The Political Consequences of Intolerance: Cultural Conformity and Political Freedom," *American Political Science Review*, Vol. 86, No. 2 (June 1992), 342).

government policies as caused by a hysterical opinion, more recent studies of the opinion poll data suggest that repressive McCarthy era legislation was initiated by an intolerant political elite and that the general opinion was to a large extent unconcerned about the issue of Communist subversion and played a somewhat peripheral and insignificant role.

The fundamental problem of the "pluralist" or "consensus" school, which dominated American historical thinking during the 1950s and early 1960s and which lies at the heart of the still generally accepted explanation of the Red Scare, is that it to some extent downplayed the significance of basic group differences and conflicts and instead assumed that public events and policies were supported by a consensus of Americans. American history was seen as fundamentally harmonious and larger crises were viewed as short aberrations from the normal state of affairs and were often explained as the result of socio-psychological difficulties.<sup>19</sup> If we instead accept that social conflicts existed and search for groups, which might have had an interest in an anti-radical campaign and which were in a position to promote it, we find the business community and other organized economic and conservative groups.

#### *The Business Offensive*

There were several reasons for the militancy of the business community in 1919. During the war, as a result of the government's regulation of labor relations, organized labor's influence and prestige had increased significantly and the number of organized workers had doubled. With the end of the war, the American Federation of Labor was determined to capitalize on its gains and to win the right to collective bargaining, improved working conditions and higher wages to off-set the wartime increase of the cost of living. At the same time, there were proposals for maintaining or even extending the government's regulation of the economy after the war. To mention one example, the so-called Plumb plan proposed government ownership of the railroads and the United Mine Workers called for the nationalization of the coal mines. Business leaders and conservative spokesmen reacted strongly against such talk of "industrial democracy" and increased federal planning, and they were just as determined to

growth of state intervention to its pre-war position."

The cornerstone of the employers' counter-attack was the open shop campaign, which rapidly grew from a local and spontaneous reaction by groups of employers to labor militancy and strikes to a well-organized and well-financed national campaign in 1919-20. The ostensible idea of the open shop was the non-discrimination of employees regardless of whether they were organized or not, in contrast to the closed shop which required union membership of all employees. In reality, the purpose of the campaign was to undermine the position of the unions by a policy of non-recognition and the denial of employment to and the discharge of union members. In order to win support for what was at bottom a union-breaking campaign, an extensive propaganda drive was organized by such powerful employer organizations as the National Founders Association, the National Metal Trades Association, the US Chamber of Commerce and the National Association of Manufacturers, which established a separate Open Shop Department and issued an *Open Shop Bulletin*. By 1920, the open shop campaign was active in 240 cities.<sup>21</sup>

The main goal of the propaganda was to discredit unions as subversive, Bolshevistic and alien to basic American values. While the open shop was named the "American Plan" and packaged as representing 100% Americanism, providing equal opportunity for all, the closed shop was called "sovietism in disguise" and "un-American," unionism was "nothing less than bolshevism" and the Plumb plan was branded "'Plumb' Bolshevistic." Unions, according to the most extreme anti-union publication, the *Open Shop Review*, were nothing less than "the greatest crime left in the world" and the conservative AFL, no less than the Bolsheviks, showed utter "disregard for the law."<sup>22</sup> Hammering away with its well-oiled machinery of speakers, publications and releases on the theme of Bolshevism within organized labor, the employers not only undermined the position of the unions, but also spread the suspicion of radicalism in general.

<sup>19</sup>William A. Muraskin, "The Social-Control Theory in American History: A Critique," *Journal of Social History*, Vol. 9, No. 4 (June 1976), 559-561; Samuel P. Hays, "The Social Analysis of American Political History, 1880-1920," *Political Science Quarterly*, Vol. LXXX, No. 3 (September 1965), 374-375, 393. For an example of an explanation of political repression as caused by the elite, see, Robert Justin Goldstein, *Political Repression in Modern America. From 1870 to the Present* (Cambridge/New York, 1978).

<sup>20</sup>Allen M. Wakstein, "The Origins of the Open-Shop Movement, 1919-1920," *The Journal of American History*, Vol. LI, No. 3 (December 1964), 464-465; Hays, 391; Higham, 224-225; Murphy, 63-64. When Secretary of the Navy Josephus Daniels in May 1919 spoke with members of the Republican controlled House Military Affairs Committee, he noted afterwards that "Most of them opposed any extension of governmental control & deplored extension to socialistic measures" (E. David Cronon (ed.), *The Cabinet Diaries of Josephus Daniels 1913-1921* (Lincoln, Nebraska, 1963), 414).

<sup>21</sup>Wakstein, 460-475; Irving Bernstein, *The Lean Years. A History of the American Worker, 1920-1933* (Boston, 1960), 153-157.

<sup>22</sup>Bernstein, 147-148; Murray, 92-94, 117-119, 164-165, 267-269.

Simultaneously with this propaganda campaign a number of more direct, union-breaking techniques were put to systematic use by the employers. Corporations compiled and exchanged blacklists of union members and "agitators" who were fired or refused employment. New employees were required to sign a "yellow dog" contract, in which they pledged not to join a union. Employers appealed to the courts to issue labor injunctions to break strikes. Private detectives were employed to infiltrate, spy on and create internal dissension within unions – and in some cases to act as agents provocateur and provoke labor unrest, which would then be suppressed by the employers. Strikebreakers were hired, often with armed guards, and large steel, coal and metal mining corporations established their own private police system, such as the infamous Pennsylvania Coal and Iron Police, which was used as a private army against strikers. Finally, complete control of the labor force was introduced with company towns, which isolated workers from the outside and subjected them to constant surveillance.<sup>23</sup>

The employers' associations were not only the most effective private force behind the anti-radical propaganda in 1919, there are indications that at least some of the radical agitation and political violence during the Red Scare was a part of the anti-union campaign – and that the government had knowledge of the activities. The number and influence of the private detective agencies was quite extensive following the war. It has been estimated that by 1928 some 200,000 labor spies were at work and that the three largest detective agencies in total earned \$65 million during the decade. Some observers suspected that the detectives deliberately exaggerated the revolutionary threat and radicalism within the unions in order to frighten the employers and, thereby, create a brisk business for themselves.<sup>24</sup> In the summer of 1919, at the beginning of the government's anti-radical campaign, Francis Fisher Kane, the US attorney in Philadelphia, wrote to Attorney General A. Mitchell Palmer and informed him that a number of the most extreme agitators, who had been kept under surveillance by the Bureau of Investigation, had turned out to be spies employed by private detective agencies who had "been actively stirring up trouble, fermenting it by their activity, and even at times creating, as I believe, evils that did not exist." According to Kane, the purpose of the provocations was to increase business: "Of course, it is the meat they feed on, – they know on which side their bread is buttered." In

<sup>23</sup>Bernstein, 148-153; also, Murray, 135, 145-148.

<sup>24</sup>Frank Morn, "The Eye That Never Sleeps." *A History of the Pinkerton National Detective Agency* (Bloomington, Indiana, 1982), 159; William R. Hunt, *Front-Page Detective: William J. Burns and the Detective Profession 1880-1930* (Bowling Green, Ohio, 1990), 104; Bernstein, 149-150.

Kane's opinion, much of the revolutionary activity may have been caused by these ambitious agencies: "If the Philadelphia situation is a sample of what exists in other large cities, it would certainly indicate that the danger from Bolshevism in America is not as great as the newspapers would have us believe it to be."<sup>25</sup> The BI files show that the Bureau suspected that at least some of the anarchist bombs in 1919 were caused by private detectives. For example, the Los Angeles field office reported that private detectives were the most likely perpetrators of a number of terrorist bomb attacks against Southern California oil fields in order to be employed to guard the installations: "I know that these things have happened before, and were done by unscrupulous detectives and agencies, and no doubt these 'frame-ups' will continue for some time."<sup>26</sup>

Stop here

#### *The Patriotic Right*

The most active private participants in the Red Scare were perhaps the patriotic societies. There existed more than 30 such organizations in the years following the war, but they only had a combined membership of perhaps 25,000. They were in fact just "the mouthpieces of single leaders or small cabals," which were subsidized by corporations and businessmen to propagandize against organized labor; one such patriotic leader, Harry A. Jung of the American Vigilant Intelligence Federation, noted confidentially concerning its anti-radical propaganda, "That it has been a paying proposition for our organization goes without saying...."<sup>27</sup> In any case, the connections between the business community and the societies were close. The National Security League and the National Civic Federation were both financed by leading businessmen and corporations such as J. P. Morgan, John D. Rockefeller, T. Coleman DuPont, William K. Vanderbilt, US Steel, Carnegie Steel Company and Standard Oil. Other organizations were established by local and often ultraconservative economic interests. The American Constitutional Association was operated by the largest coal and utility companies in West Virginia, while the Better America Federation in California was run by a small group of extreme right-wing businessmen in Los Angeles.<sup>28</sup>

<sup>25</sup>Letter, Francis Fisher Kane to A. Mitchell Palmer, July 16, 1919, DJ 202600-39-2, Record Group 60, National Archives (microfilm).

<sup>26</sup>Report, S. A. Connell, November 22, 1919, OG 376413, RG65, NA.

<sup>27</sup>Murphy, 67; for the patriots in general, see, Norman Hapgood (ed.), *Professional Patriots. An Exposure of the Personalities, Methods and Objectives Involved in the Organized Effort to Exploit Patriotic Impulses in these United States During and After the Late War* (New York, 1927).

<sup>28</sup>Levin, 201-203; Murray, 84-87; Edwin Layton, "The Better America Federation: A Case Study of Superpatriotism," *Pacific Historical Review*, Vol. XXX, No. 2 (May 1961), 138-139.

## The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President's Powers as Commander-in-Chief, 2002

Memorandum for Alberto R. Gonzales Counsel to the President

*Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A*

You have asked for our Office's views regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by Sections 2340-2340A of title 18 of the United States Code. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the United States. We conclude below that Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture. We conclude by examining possible defenses that would negate any claim that certain interrogation methods violate the statute.

In Part I, we examine the criminal statute's text and history. We conclude that for an act to constitute torture as defined in Section 2340, it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years. We conclude that the mental harm also must result from one of the predicate acts listed in the statute, namely: threats of imminent death; threats of infliction of the kind of pain that would amount to physical torture; infliction of such physical pain as a means of psychological torture; use of drugs or other procedures designed to deeply disrupt the senses, or fundamentally alter an individual's personality; or threatening to do any of these things to a third party. The legislative history simply reveals that Congress intended for the statute's definition to track the Convention's definition of torture and the reservations, understandings, and declarations that the United States submitted with its ratification. We conclude that the statute, taken as a whole, makes plain that it prohibits only extreme acts....

### The Commander-in-Chief Power

It could be argued that Congress enacted 18 U.S.C. § 2340A with full knowledge and consideration of the President's Commander-in-Chief power, and that Congress intended to restrict his discretion in the interrogation of enemy combatants. Even were we to accept this argument, however, we conclude that the Department of Justice could not enforce Section 2340A against federal officials acting pursuant to the President's constitutional authority to wage a military campaign.

Indeed, in a different context, we have concluded that both courts and prosecutors should reject prosecutions that apply federal criminal laws to activity that is authorized pursuant to one of the President's constitutional powers. This Office, for example, has previously concluded that Congress could not constitutionally extend the congressional contempt statute to executive branch officials who refuse to comply with congressional subpoenas because of an assertion of executive privilege. We opined that "courts... would surely conclude that a criminal prosecution for the exercise of a presumptively valid, constitutionally based privilege is not consistent with the Constitution."... Further, we concluded that the Department of Justice could not bring a criminal prosecution against a defendant who had acted pursuant to an exercise of the President's constitutional power. "The President, through a United States Attorney, need not, indeed may not, prosecute criminally a subordinate for asserting on his behalf a claim of executive privilege. Nor could the Legislative Branch or the courts require or implement the prosecution of such an individual."... Although Congress may define federal crimes that the President, through the Take Care Clause, should prosecute, Congress cannot compel the President to prosecute outcomes taken pursuant to the President's own constitutional authority. If Congress could do so, it could control the President's authority through the manipulation of federal criminal law.

We have even greater concerns with respect to prosecutions arising out of the exercise of the President's express authority as Commander in Chief than we do with prosecutions arising out of the assertion of executive privilege. In a series of opinions examining various legal questions arising after September 11, we have explained the scope of the President's Commander-in-Chief power. We briefly summarize the findings of those opinions here. The President's constitutional power to protect the security of the United States and the lives and safety of its people must be understood in light of the Founders' intention to create a federal government "cloathed with all the powers requisite to the complete execution of its trust." *The Federalist* No. 23, at 147 (Alexander Hamilton)... Foremost among the objectives committed to that trust by the Constitution is the security of the nation. As Hamilton explained in arguing for the Constitution's adoption, because "the circumstances which may affect the public safety" are not "reducible within certain determinate limits,"

it must be admitted, as a necessary consequence, that there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy....

The text, structure and history of the Constitution establish that the Founders entrusted the President with the primary responsibility, and therefore the power, to ensure the security of the United States in situations of grave and unforeseen



emergencies. The decision to deploy military force in the defense of United States interests is expressly placed under Presidential authority by the Vesting Clause, U.S. Const. Art. I, § 1, cl. 1, and by the Commander-in-Chief Clause, *id.*, § 2, cl. 1. This Office has long understood the Commander-in-Chief Clause in particular as an affirmative grant of authority to the President.... The Framers understood the Clause as investing the President with the fullest range of power understood at the time of the ratification of the Constitution as belonging to the military commander. In addition, the structure of the Constitution demonstrates that any power traditionally understood as pertaining to the executive—which includes the conduct of warfare and the defense of the nation—unless expressly assigned in the Constitution to Congress, is vested in the President. Article II, Section 1 makes this clear by stating that the “executive Power shall be vested in a President of the United States of America.” That sweeping grant vests in the President an unenumerated “executive power” and contrasts with the specific enumeration of the powers—those “herein”—granted to Congress in Article I. The implications of constitutional text and structure are confirmed by the practical consideration that national security decisions require the unity in purpose and energy in action that characterize the Presidency rather than Congress.

As the Supreme Court has recognized, the Commander-in-Chief power and the President’s obligation to protect the nation imply the ancillary powers necessary to their successful exercise. “The first of the enumerated powers of the President is that he shall be Commander-in-Chief of the Army and Navy of the United States. And, of course, the grant of war power includes all that is necessary and proper for carrying those powers into execution.” *Johnson v. Eisentrager*,... In wartime, it is for the President alone to decide what methods to use to best prevail against the enemy.... The President’s complete discretion in exercising the Commander-in-Chief power has been recognized by the courts. In the *Prize Cases*,..., for example, the Court explained that whether the President “in fulfilling his duties as Commander in Chief” had appropriately responded to the rebellion of the southern states was a question “to be decided by him” and which the Court could not question, but must leave to “the political department of the Government to which this power was entrusted.”

One of the core functions of the Commander in Chief is that of capturing, detaining, and interrogating members of the enemy.... It is well settled that the President may seize and detain enemy combatants, at least for the duration of the conflict, and the laws of war make clear that prisoners may be interrogated for information concerning the enemy, its strength, and its plans. Numerous Presidents have ordered the capture, detention, and questioning of enemy combatants during virtually every major conflict in the Nation’s history, including recent conflicts such as the Gulf, Vietnam, and Korean wars. Recognizing this authority, Congress has never attempted to restrict or interfere with the President’s authority on this score....

Any effort by Congress to regulate the interrogation of battlefield combatants would violate the Constitution’s sole vesting of the Commander-in-Chief authority in the President. There can be little doubt that intelligence operations, such as the detention and interrogation of enemy combatants and leaders, are both necessary

and proper for the effective conduct of a military campaign. Indeed, such operations may be of more importance in a war with an international terrorist organization than one with the conventional armed forces of a nation-state, due to the former’s emphasis on secret operations and surprise attacks against civilians. It may be the case that only successful interrogations can provide the information necessary to prevent the success of covert terrorist attacks upon the United States and its citizens. Congress can no more interfere with the President’s conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield....