

# Fearing Fear Itself

THE ENCOUNTER OF A. MITCHELL PALMER WITH LOUIS F. POST

*Paul D. Carrington*

THERE IS GOOD REASON to fear fear itself. As implied in Franklin Roosevelt's caution, it is an infectious emotion. And it has corrosive effect on the moral judgment of those it afflicts. Hugh Henry Brackenridge wrote of "moral influenza" that spreads among a community or nation.<sup>1</sup> Popular fear is the most common form of moral influenza. It can inspire irrational loathing of those associated with the feared threat. It has often caused democracies to fail. The events of September 11 gave us a good if not yet acute case of popular fear. This might therefore be an occasion to recall a time past when America previously took a path looking rather like the one we are on.

A. Mitchell Palmer, the Attorney General in 1919, was in 1916 a defeated candidate for the United States Senate for whom the President of the United States needed to find an honorable place.<sup>2</sup> Palmer was a Quaker and a

Swarthmore graduate who celebrated, even if he did not always practice, tolerance, and who professed pacifism. His signature bowler hat was not Quaker, but the strength of his opinions might be said to be so.

Palmer started his professional career as a lawyer in Stroudsburg, Pennsylvania, reading law with a mentor in that town. Soon manifesting intense ambition for higher office by speaking publicly at every opportunity, he worked his way up the political ladder to Congress, but failed of election to the Senate. The President appointed him Alien Property Custodian to manage German property in the United States. Although his performance in that role was subject to criticism, he was elevated to Attorney General in February 1919.

The infection of fear for which Palmer bears some responsibility was contracted by the American people in 1917. Their wartime hostility to Germany caused many Americans

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1 MODERN CHIVALRY 642 (Claude M. Newlin ed., New York 1937).

2 His biography is Stanley Coben, A. MITCHELL PALMER, POLITICIAN (New York 1963). Much of this account is drawn from Robert K. Murray, RED SCARE: A STUDY OF NATIONAL HYSTERIA 69-77 (Minneapolis 1955).

to fear and loath their German-American neighbors. Popular pressure was felt by the Department of Justice to punish such persons for any available reason. This pressure was for the most part successfully resisted by the Department led through the war by Thomas Gregory. However, the Espionage Act of 1917<sup>3</sup>



A. Mitchell Palmer in 1919 (Library of Congress)

made sedition a federal crime for the first time in 120 years. In 1918, the Act was expanded to punish severely persons engaged in a variety of allegedly treasonous conduct such as obstructing the sale of government bonds or urging workers to curtail production of military hardware.<sup>4</sup> An extraordinary effort was made to

expel Wisconsin's Robert La Follette from the United States Senate because it was erroneously reported that he told an audience that America had no grievance against Germany.<sup>5</sup>

An extravagant utterance of the fear and loathing came from United States District Judge Kenesaw Mountain Landis (later the Commissioner of Baseball). He was disqualified from sitting on a case tried under the Espionage Act for saying prior to the trial:

If anybody has said anything worse about the Germans than I have I would like to know so I can use it. ... One must have a very judicial mind, indeed, not to be prejudiced against the German-Americans in this country. Their hearts are reeking with disloyalty.<sup>6</sup>

In Nebraska, a state settled by thousands of German immigrants, a legislature in the same frame of mind prohibited the teaching of the German language to children.<sup>7</sup>

It was true, of course, that many Americans of German ancestry had hoped that the United States would not enter the war against Germany. Those hopes were not expressed in conduct obstructing the war effort. There was during the war one detonation of military supplies in New Jersey that may have been an act of sabotage,<sup>8</sup> but there was no other instance of effective espionage or sabotage detected during or after the war to justify mistrust of German-Americans.<sup>9</sup>

Lacking real spies and saboteurs to punish, those enforcing the law punished the advocacy of pacifism. Eugene Debs, the labor leader and

<sup>3</sup> Act of June 15, 1917, P.L. 24, 40 Stat. 217.

<sup>4</sup> Act of May 16, 1918, P.L. 150, 40 Stat. 553.

<sup>5</sup> Nancy C. Unger, *FIGHTING BOB LA FOLLETTE: THE RIGHTEOUS REFORMER* 254-256 (Chapel Hill 2000).

<sup>6</sup> *Berger v. United States*, 255 U.S. 22, 28 (1921).

<sup>7</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>8</sup> Henry Landau, *THE ENEMY WITHIN: THE INSIDE STORY OF GERMAN SABOTAGE IN AMERICA* 280 (New York 1937).

<sup>9</sup> Frederick C. Luebke, *THE BONDS OF LOYALTY: GERMAN AMERICANS & WORLD WAR I* (DeKalb 1974).

socialist candidate for President in 1912, was convicted of that offense and served three years in prison.<sup>10</sup>

Among Attorney General Palmer's first tasks was a review of cases under the wartime Espionage Act. At his direction, many cases were dropped. Also, clemency was granted to many of those who had previously been convicted. And the 10,000 German and Austrian aliens who had been arrested and held during the war were released. These deeds were popular because patriots no longer feared their neighbors of German ancestry.

However, no sooner was the armistice signed in November 1918 than the popular fear and loathing was redirected against aliens and naturalized citizens from Eastern Europe who might be suspected of Bolshevik sympathies. There was, of course, no war declared against the Bolsheviks. However, in response to the revolution of October 1917 that took Russia out of the war against Germany, President Wilson had been induced by his British and French allies to send a military detachment to Russia. The stated purpose of this venture was to maintain an eastern front against Germany, but at least in some minds the real aim was to suppress the *Bolsheviki*.<sup>11</sup>

The mission was certainly ill advised. Newton Baker, the Secretary of War, protested at the time that the intervention was a violation of international law. At least one member of the President's personal staff at Versailles resigned to protest its continuation after the Armistice. This was young Adolph Berle, who foretold that nothing positive would be accomplished while it would earn the enduring hatred of the United States by those trying to organize the Soviet Union. Senator La Follette spoke out against this adventure, as did Nebraska Senator George Norris.

The protests did not avail because the mission was not unpopular with the people. It was a modest military adventure compared to the war just ending, and many Americans were even more horrified and frightened by Russian Bolsheviks than they had been by the German Kaiser and his presumed underlings living in their neighborhoods and supposed to be plotting against them.



Leon Czolgosz

([www.spartacus.schoolnet.co.uk/USA/czolgosz.htm](http://www.spartacus.schoolnet.co.uk/USA/czolgosz.htm))

A reason this was so is that everyone remembered that the President of the United States had been murdered in 1901 by an anarchist whose name was Leon Czolgosz.<sup>12</sup> Although widely presumed to be an Eastern European, Czolgosz was in fact a native of Detroit. Belying his gentle countenance, he affirmed that killing the President was his own idea, and that he had done it "to help the good people, the working men of all countries." The latter words were enough to suggest a connection of Czolgosz to an international conspiracy.

And one of the very few who defended his crime was the ominous Emma Goldman, a native of Lithuania and editor of *Mother Earth*,

<sup>10</sup> *Debs v. United States*, 249 U.S. 211 (1919).

<sup>11</sup> See generally Peter Filene, *AMERICANS & THE SOVIET EXPERIMENT 1917-1933* (Cambridge 1967).

<sup>12</sup> A recent account is Jack C. Fisher, *STOLEN GLORY: THE MCKINLEY ASSASSINATION* (La Jolla 2001).

an anarchist publication.<sup>13</sup> Few Americans knew the difference between anarchism and communism, and Bolsheviks were identified in the popular mind with Czolgosz and Goldman.

American radicals were enraged by the intervention in Russia and protested. In *Abrams v. United States*,<sup>14</sup> the Department of Justice prosecuted five persons for circulating two papers urging opposition. All the defendants were natives of Russia and none was a citizen. None was shown to be a member of any larger group. They wrote and printed the circulars on a printing press one of them bought for the purpose.

Circulation occurred on August 18, 1918; it was accomplished partly by throwing the circulars out the window of an office building where one of the group worked and partly by private distribution to their friends. One of the circulars charged the Allies and President Wilson with hypocrisy; it called for the workers of the world to rise and put down their enemy, capitalism. The second circular was written in Yiddish. It protested that the money loaned to the government by people buying victory bonds and the weapons being made by American workers were being used not to fight Germans but to kill Russian workers. There was no evidence that these circulars had any effect. Yet the defendants were convicted by a jury of violating the 1918 Act. While sentencing the defendants to twenty years in prison for circulating the offending papers, the federal judge gave the brutal fate of the Czar's daughters murdered at Ekaterinberg as a reason for their harsh sentences.

The judge and jury in *Abrams* reflected rising popular fear of Reds. In February 1919, a Hammond, Indiana jury acquitted the assassin

of an alien who had been heard to say, "To hell with the United States."<sup>15</sup>

Attorney General Gregory resigned that month to return to private practice in Texas. It was not the cause of his retirement, but he had been subjected to criticism for his failure adequately to punish radical agitators. As Palmer took office, there was already talk of the need to round up seven to eight thousand radicals for deportation.



The Abrams defendants (Library of Congress)

On May Day, 1919,<sup>16</sup> fears were further elevated when many newspaper headlines screamed notice of a communist plot to assassinate numerous prominent men, including John D. Rockefeller, J.P. Morgan, and Attorney General Palmer. The Communist Party, as was its custom on that date, held rallies in many cities; that year, the rallies would celebrate the Russian Revolution and protest American military intervention. Everywhere, the rallies were attacked by mobs no less anarchical than communists, and sometimes the mobs had the support of the police. In Cleveland, over a

<sup>13</sup> Her biography is Richard Drinnan, *REBEL IN PARADISE: A BIOGRAPHY OF EMMA GOLDMAN* (Chicago 1961).

<sup>14</sup> 250 U.S. 616 (1919).

<sup>15</sup> 6 Mark Sullivan, *OUR TIMES, THE UNITED STATES: 1900-1925* at 160 (New York 1938).

<sup>16</sup> MURRAY, note 2, at 69-77.

hundred persons presumed by the mob to be Reds were wounded by gunshots and two died. The rumor leading to this violence was partially confirmed by thirty-six bombs that were sent through the mail, timed to arrive on May Day. Many went undelivered for insufficient postage. Only one actually exploded as intended, blowing off the hands of the maid of Georgia Senator Thomas Hardwick.

On May 6, at a victory loan pageant in Washington, a member of the audience refused to rise for the playing of the national anthem. An enraged sailor fired three shots into his back, and the crowd burst into cheers in admiration of the sailor's patriotism.<sup>17</sup>

The violence of radicals marked by the thirty-six bombs was renewed on the evening of June 2. Nine bombs exploded in nine cities, damaging public buildings and homes of local notables. The most spectacular explosion took the front off the home of Attorney General Palmer. It was set off by one or perhaps two persons who died in the blast. Miscellaneous body parts were found at the scene of the crime and around the neighborhood. Quite possibly, all were the remnants of a single suicide bomber. The first person on the scene other than the Attorney General and his wife was their neighbor, Franklin Roosevelt.<sup>18</sup> Pamphlets found at the site proclaimed that "class war is on" and "we are ready to do anything and everything to suppress the capitalist class."<sup>19</sup>

On June 17, an all-day meeting of its leading officers was held at the Department of Justice. The Chief of the Secret Service, William Flynn, foretold that there would be many more bombs. Others present predicted that

July 4, three weeks thence, would be a day of terror. The evidence before the group at that time was that American radicals were hopelessly divided and poorly led, and lacked support in the American labor movement. Notwithstanding the evidence, the frightened group concluded that the United States was on the brink of a revolution.

At the urging of the Department, police were posted at all public buildings on the fateful day. However, nothing happened except baseball double-headers, fireworks, speeches, and a heavyweight boxing match. The absence of violence was taken by some as evidence that the conspiracy against America was more disciplined and therefore perhaps even more dangerous than previously thought.

The Department brought a test case under the Espionage Act against members of an anarchist group in Buffalo, the very city in which Czolgosz had in 1901 murdered the President. The group had proclaimed its dedication to the destruction of organized society. The federal judge dismissed the indictment because the group's propaganda did not explicitly advocate violence. "Congress in passing it," the court said, "did not have in mind, in my judgment, the overthrow of the Government . . . by the use of propaganda."<sup>20</sup> The Department of Justice ruefully concluded that, notwithstanding *Abrams*, it had no case against *citizens* who were members of organizations that did nothing more than fulminate against capitalism. There was little they could do except perhaps deport aliens.

Later in July, a black Chicago boy swimming in Lake Michigan crossed an imaginary line segregating the whites' beach from the blacks'

17 WASHINGTON POST, May 7, 1919.

18 Roosevelt's account is provided by James Roosevelt @ Sidney Shallett, *AFFECTIONATELY, F.D.R.: A SON'S STORY OF A LONELY MAN* 59 (New York 1959).

19 WASHINGTON POST, June 5, 1919.

20 Attorney General A. Mitchell Palmer on Charges Made Against Department of Justice by Louis F. Post and Others: *Hearings Before the House Committee on Rules*, 66th Cong., 2d Sess. 166-68 (1920), quoted in COBEN, note 2, at 217.

beach.<sup>21</sup> White boys threw rocks at him, causing him to drown. When other black swimmers asked the Chicago police to arrest those throwing rocks, they refused. After three days of mayhem, thirty-four people were dead and some homes burned. Most but not all those dead were black. There was also a smaller race riot in Washington. It was widely assumed that these events were caused by communists in the black community. Secretary of State Robert Lansing, a lawyer of stature, declared that "We are face to face with an inveterate enemy of the present social order." A few weeks later, he wrote that the peril caused by radical propaganda "seems to me very great."

So advised, on August 1, the Attorney General created a General Intelligence Division within his department to investigate those planning the revolution. Placed at the head of the Division was J. Edgar Hoover, a recent graduate of the Georgetown Law School. Hoover's staff set up files on thousands of persons suspected of radical sentiments. Their primary sources of information were 625 radical newspapers, including 251 they designated as ultra-radical.

When the Senate was reluctant to appropriate the money Palmer sought for the new division, Assistant Attorney General Francis Garvin (who had once studied constitutional law at the New York Law School with Professor Woodrow Wilson) told the Senate committee that "We have every reason to believe that the Russian *Bolsheviki* are pouring money in here at the rate" of millions of dollars a month. There was no evidence whatever that this was so, and indeed Russia, which was then in utmost disarray, was sending no money to support the communist movement in the United States. The evidence on which Garvin relied was that some of the radicals writing in

some of the publications being monitored by the Department expressed optimism that a revolution would occur in America, or at least that a benign Soviet Union might send them some money to pursue that end. Hoover, Garvin, and Palmer, among many others driven by fear, chose to believe that this was so.

In September, the steelworkers struck. It was widely supposed that this was evidence of radical control of their union. Hoover assured Palmer that this was the case. Coal and rail strikes were threatened, leading major newspapers to expose the Bolshevik plot to engulf the world in class war.

In October, accepting an honorary degree from Lafayette College, Attorney General Palmer made a speech opposing legislation limiting immigration as an overreaction. He also reaffirmed the right of communists to assemble and express their dissatisfaction with the government. The *New York Times* in response to these calm words opined that Palmer had "expressed ancient and outworn views on immigration. ... The resolve of Americans to defend the American policy against Bolshevism is growing sterner every day. And here is the Attorney General of the United States, whose official duty it is to have these alien seditionaries, anarchists, plotters against the Government of the United States arrested, punished, deported, talking this pre-Adamite sentimentality."<sup>22</sup> He was denounced by many other frightened newspapers as a moral weakling imposing his quaint Quaker pacifism on the country in its hour of grave danger.

In October, the Supreme Court of the United States affirmed the *Abrams* convictions, finding that the record established that the defendants intended to induce their readers "to turn a deaf ear to patriotic appeals."<sup>23</sup> It

21 For a moving account, see Carl Sandburg, *THE CHICAGO RACE RIOTS, JULY 1919* (New York 1919).

22 *NEW YORK TIMES*, October 17, 1919.

23 250 U.S. at 620-21.

mattered not at all that their purpose was to help Russians if in fact they were helping Germans in time of war. Justice Holmes dissented on several grounds, one of which was the excessiveness of the sentences.

An article was soon published in the *Harvard Law Review* recounting the *Abrams* case and concluding that the “whole proceeding from start to finish, has been a disgrace to our law, and none the less a disgrace because our highest court felt powerless to wipe it out.”<sup>24</sup> The author was a young Harvard Law professor, Zechariah Chafee.

There was an explosion of rage among the School’s alumni and many of them sought Chafee’s dismissal. Among those urging Chafee’s dismissal was John Henry Wigmore, the distinguished dean of the Northwestern University Law School.<sup>25</sup> The Harvard Overseers Committee conducted a hearing at the Boston Harvard Club and voted 6-5 to retain Chafee.<sup>26</sup>

Also in October, Senator Miles Poindexter of Washington (a sometime prosecutor from Spokane) led a charge against the Attorney General. He drafted a resolution (or was it “an hysterical ... yowl”?) that passed the Senate without a dissenting vote; it demanded that the Attorney General inform the Senate whether he had yet begun legal proceedings against those who preached anarchy and sedition, advised defiance of the law, and advocated destruction of property and whether he had yet begun to arrest and deport aliens who had performed those misdeeds. Palmer later correctly affirmed that he was not only berated by the Senate, but “shouted at from every editorial sanctum in America from sea to sea.”<sup>27</sup>

Thus motivated, Palmer made a deal with

the Secretary of Labor, William Wilson: the Justice Department would identify 4,000 members of the Union of Russian Workers; the Department of Labor would issue warrants for their arrest; Justice would round them up; and Labor would deport them. The Union was targeted because its members were all immigrants and its manifesto stated the Union’s aim to teach the working class to abolish government. Membership was therefore deemed grounds for deportation.

On November 7 came the sweep by Justice of the meeting places of the Union in twelve cities. Federal officers were assisted by local officers and patriotic volunteers deputized for the purpose. Everyone within or near the designated meeting places was arrested or taken into custody for questioning, and many were beaten by the police. Homes were invaded and searched without warrants. Six-hundred-fifty people were arrested in New York, although warrants had been issued for only twenty-seven. People were taken into custody because they roomed with a member of the Union. To the frustration of the police, many of those taken into custody insisted on speaking to their attorneys before interrogation and then refused to discuss their political beliefs or associations. Most were released, but many were beaten in the hope of coercing a confession, and many remained in custody for months without a hearing.

On December 21, after cursory administrative hearings in the Department of Labor, 249 were placed on a former troopship bound for Russia and named by the press as *The Soviet Ark*. “Red Emma” Goldman was among them. The popular press was ecstatic. The *New York World* opined that it felt:

24 *A Contemporary State Trial – The United States versus Jacob Abrams et al*, 22 HARV. L. REV. 747 (1919).

25 William R. Roalfe, JOHN HENRY WIGMORE: SCHOLAR & TEACHER 150-151 (Evanston 1977).

26 Arthur F. Sutherland, THE LAW AT HARVARD: A HISTORY OF MEN & IDEAS, 1817-1967 at 252-259 (Cambridge 1967).

27 United States Senate Committee on the Judiciary, CHARGES OF ILLEGAL PRACTICES IN THE DEPARTMENT OF JUSTICE, Hearings, 66th Cong., 3d Sess. (1921).

mingled emotions of pride and resentment [as it] watched the vessel pass out of sight. America had risen in her might and delivered a blow that reached the very soul of the incorrigible fanatics. ... [Those aboard were] 249 blasphemous creatures who not only rejected America's hospitality and assailed her institutions, but also sought by a campaign of assassinations and terrorism to ruin her as a nation of free men.<sup>28</sup>

It was generally assumed that all or almost all of the thousands of persons taken into custody were subversives. Palmer was an instant national hero and a viable candidate for the Presidency. Senators expressed pleasure with his answer to Senator Poindexter's resolution, but there were many calls for much more of the same. The popular press did not observe that no crime or preparation for crime had been traced to the Union of Russian Workers. Nor did they report the fact that few members of the Union had ever read its manifesto. It turned out that the organization served chiefly as a social club for lonely immigrants.

On Armistice Day, 1919, perhaps excited by the raid, there was more counter-revolutionary anarchy among Senator Poindexter's constituents in Centralia, Washington.<sup>29</sup> On Memorial Day, 1918, there had been an attack by members of the American legion on the Centralia meeting hall of the International Workmen of the World, a radical labor group then engaged in a struggle with the lumber industry. The hall was trashed and everyone in it beaten up. In June 1919, there was an attack destroying the newsstand of a blind man, who among other things sold rww publications. He was directed to leave Centralia by a writing signed by "U.S. soldiers, sailors and Marines." In November, the American Legion, over the objection of its local commander, planned its parade to go past the rww's new meeting hall. Reaching that point, the parade turned into the

hall. The rww members present defended their hall on the advice of their lawyer that they were entitled to do so. Four Legionnaires were shot and killed, including the deputy commander who led the raid. An rww defender who had recently returned from military duty in France killed two of the Legionnaires. He was caught, castrated and burned alive. Eleven other rww members caught were indicted for murder. So was the lawyer who had advised them that they had a right to defend their hall. The lawyer was acquitted, but five members were convicted. They served seventeen years in prison.

In December, the Department of Justice aimed to bring in and deport all aliens associated with the Communist Party or the Communist Labor Party. The list was accumulated by Hoover and he was in charge. Ignored by Hoover was Secretary of Labor Wilson's expression of doubt that membership in the latter group was a deportable offense. On Christmas Eve, Justice asked the Labor Department to issue 3,000 warrants. The requests were mimeographed. They were signed by John Abercrombie, the Solicitor to the Department and Acting Secretary, who did not perform the task assigned him by Secretary Wilson, i.e., to determine in each instance whether there was evidence of wrongdoing other than party membership. On December 27, instructions went out to all United States Attorneys directing them to arrest and search each of the named individuals, and to search their homes for books, papers and anything hanging on the walls that might be evidence of their political beliefs. No heed was to be paid to the Fourth Amendment. Again, of necessity, local police and private volunteers were deputized to help.

The raid was conducted on January 2, but continued in some cities for several days

28 Quoted in Louis F. Post, *THE DEPORTATIONS DELIRIUM OF NINETEEN TWENTY* (Chicago 1923).

29 The story is told by John McClelland, *WOBBLY WAR: THE CENTRALIA STORY* (Tacoma 1987).

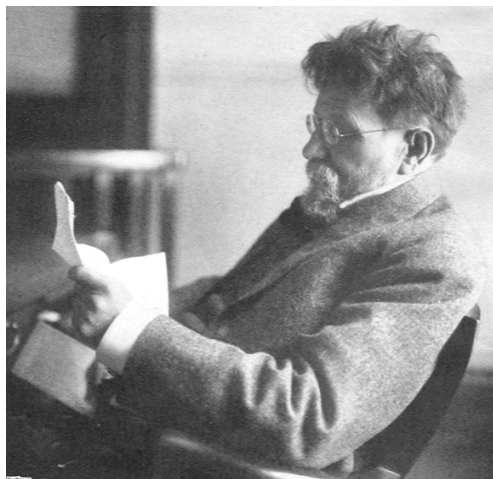


thereafter. In homes and meeting halls, there was a nighttime knock on the door preceding a rush of police. About 3,600 aliens were arrested, many of them in bed. An equal number were not arrested but taken into custody for questioning. In Seattle, the pool-rooms were invaded, and everyone there was taken into custody unless they could prove citizenship. Only those who confessed were allowed to talk to lawyers. Nowhere was there room to store the people, and many were held in abominable conditions. Some citizens were thus held for months because they had no evidence of citizenship. Many aliens were arrested for being in the wrong place, there being no evidence that they were even members of a condemned organization. Some of those on membership lists proved to be illiterate. Some were members of socialist organizations that had been folded into one of the two offending organizations without their knowledge. Many were parents of citizens. Families were not notified, nor was any concern manifested for those who were dependents of those taken into custody and sometimes held for months.

Fan mail poured into the Department of Justice. The *New York Times* saluted Palmer and apologized for its earlier impatience.<sup>30</sup> A cabinet meeting on January 6 was a celebration. The New York legislature in alarm refused to seat five socialists who had been elected by their constituents. It was supposed that the socialists were enough like anarchists that they would use their votes to harm the state. Solicitor Abercrombie, warned by the popular accolades for the deportations he had effected, resigned from the Department of Labor to run for the Senate.

The United States Attorney in Philadelphia, Francis Fisher Kane, resigned in protest

over the January raids and released his letter to the press. The press was not at the time, however, much interested in his views. With Secretary Wilson sick, Abercrombie's departure left responsibility for the Department of Labor with the veteran Assistant Secretary, Louis F. Post.



Louis F. Post

(Louis F. Post, *The Deportations Delirium of Nineteen Twenty* (C.H. Kerr 1923))

Post was then seventy years old. He had once been an assistant United States Attorney in New York City, but he had turned to journalism and had for fifteen years edited *The Public*, a weekly journal devoted to the single tax politics of Henry George. He had come to the Department of Labor in 1913 at the request of Secretary Wilson, a friend of many years. As a supporter of George, he was no socialist but he invariably took the side of the poor and downtrodden. He looked like Leon Trotsky.<sup>31</sup> Placed in command of the Department of Labor, he wreaked havoc on the program. He worked night and day, seven days a week, reviewing individual cases. He ordered the release of aliens held on illegally obtained evidence, or against whom the only evidence

<sup>30</sup> NEW YORK TIMES, January 5, 1920.

<sup>31</sup> A biography is John Williamson Easterly, LOUIS F. POST (1849-1928): THE "HENRY GEORGE MAN" AS PROGRESSIVE REFORMER 116-204 (Ph.D. dissertation, Duke University 1976).

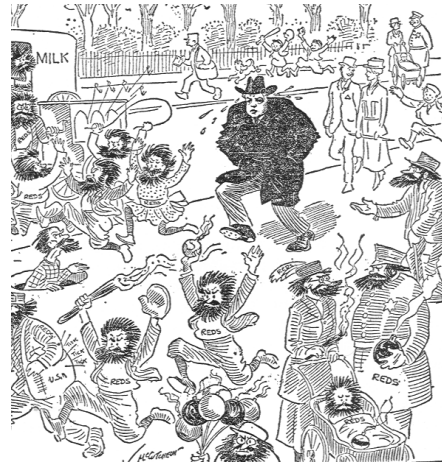
was their membership in an organization that had been folded into the Communist Party without their consent. He also released those whose only offense was membership in the Communist Labor Party. By April 7, he had released over a thousand persons, almost three-quarters of those whose files he had reviewed.

The Department of Justice was enraged and Congressman Hoch of Kansas moved the impeachment of Post. Because of his appearance, many "profiled" Post as a communist sympathizer. When the House Rules Committee conducted a hearing on Hoch's impeachment motion, Post came to justify his decisions. His appearance was dazzling. He demonstrated with elegance and humor that neither the people clamoring for deportations, nor the Department of Justice, nor indeed the members of the committee, knew the difference between Marx and Tolstoi. Certainly, the lawyers in Justice knew nothing of immigration laws, or the Fourth Amendment, or Due Process. He noted that their searches of thousands of homes had turned up three weapons capable of being fired, all of them .22 pistols. At the end of the day, the Rules Committee looked "very much like a person who had picked up a hot poker and was trying to find a place to put it." It resolved to conduct no further investigations of Post. President Wilson and Secretary Wilson belatedly expressed support for Post.

Much of what had happened in January occurred without Palmer's knowledge. When later questioned, he left it to Hoover to explain and justify the events. Nevertheless, in April he dismissed Post's testimony and warned that the coming May Day would be the occasion for a general strike by American workers. Daily bulletins from the Department announced

forthcoming assassinations. Newspapers vibrated with alarm. The entire New York Police Department remained on duty for fifty consecutive hours. Machine guns were mounted on police cars. Nothing happened, not even a disorderly meeting.

The Association of the Bar of the City of New York then presented itself as advocate for the socialist legislators whom their



"A. Mitchell Palmer on A Nice Spring Day"  
(Chicago Tribune, April 23, 1920)

brethren had refused to seat. Their case was presented by Charles Evans Hughes, the former Governor of New York, Supreme Court Justice, and Republican Presidential candidate. His appearance on their behalf was overwhelming.<sup>32</sup>

On June 1, a federal court in Boston released eighteen aliens on writs of habeas corpus. After listening to the Department of Justice witnesses, Judge George W. Anderson exclaimed that "A more lawless proceeding it is hard for anyone to conceive. Talk about Americanization! What we need is to Americanize people that carry on such proceedings as this."<sup>33</sup> His exclamation was very soon followed by another taking the form of a 67-page booklet soberly

32 George Martin, *CASES & CONFLICTS: THE CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1870-1970* at 206-212 (New York 1970).

33 Quoted in COBEN, note 2, at 238.

expressing apprehension about the course of events in the Department of Justice.<sup>34</sup> Among its twelve distinguished authors were Zechariah Chafee, Felix Frankfurter, Ernst Freund, and Roscoe Pound. The report contained sixty pages of exhibits supporting six counts of blatant and frequent violations of the Constitution of the United States.

In January, 1921, this indictment of the Justice Department was brought before a Senate committee by the eminent Thomas J. Walsh of Montana. The argument was advanced in defense of Attorney General Palmer that there had been a popular fear "of the spread of bolshevism because of the dastardly bomb outrages and the activities generally of the reds." To this, Senator Walsh replied that "It is only in such times that the guarantees of the Constitution as to personal rights are of any practical value. ... If in such times the Constitution is not a shield, the encomiums which statesmen and jurists have paid it are fustian."<sup>35</sup>

While Palmer continued to run for the Presidency as the candidate who would suppress the coming revolution, there were by mid-summer very few newspapers still in the throes of panic and his candidacy was in deep trouble. Indeed, he was ridiculed as Little Red Riding Hood with a Cry of Wolf. The *Chicago Tribune* portrayed him in his bowler hat

wearing an overcoat on a nice spring day and imagining anarchists in every direction.

He would not be nominated, and the Democratic candidate who was would have to repudiate him. There was nothing for him to do but return to Stroudsburg. The infection of popular fear had at last subsided. Post's testimony had been the turning point, and he is surely the hero of the story.

It is not easy to tell people that their fears are exaggerated and impairing their moral judgment. Politicians are not very good at it. But it is what lawyers must often do for their clients and their calm must be the most important antidote to the popular infection. It is not a coincidence that good lawyers were the primary source of the calm needed to restore the moral judgment of the nation in 1920.

In reflecting on his achievement, Post ratified the assessment of the group of twelve:

It is a fallacy to suppose that, any more than in the past, any servant of the people can safely arrogate to himself unlimited authority. To proceed on such a supposition is to deny the fundamental American theory of the consent of the governed. Here is no question of a vague and threatened menace, but a present assault upon the most sacred principles of our Constitutional liberty.



<sup>34</sup> National Popular Government League, *To THE AMERICAN PEOPLE* (Washington 1920).

<sup>35</sup> Quoted in POST, note 28, at 304.