

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 7: The Republican Era – Criminal Justice

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*National Popular Government League, Report upon the Illegal Practices by the  
United States Department of Justice (1920)*<sup>1</sup>

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*The National Popular Government League (NPGL) was a nonpartisan organization committed to promoting progressive understandings of good government. In April 1920, several prominent lawyers and members of Congress urged the NPGL to issue a public statement condemning what they perceived to be unconstitutional behavior by the Federal Bureau of Investigation and the United States Department of Justice. Twelve leading law professors served on the committee formed to issue the report. They included Felix Frankfurter, who would become a Supreme Court Justice, and Zechariah Chafee, a prominent proponent of free speech rights.*

*Consider some issues of political and constitutional development when reading the materials below. To what extent did civil liberties issues arise at the turn of the twentieth century because of*

- *New threats to public order;*
- *New means of crime control;*
- *New assertions of civil rights and liberties?*

*How does the report characterize the reasons for the crime control practices being condemned? How does the memo from the Justice Department justify those crime control practices?? How would explain those practices? Were they justified in 1920 or at present?*

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

Under the guise of a campaign for the suppression of radical activities, the office of the Attorney General, acting by its local agents throughout the country, and giving express instructions from Washington, has committed continual illegal acts. Wholesale arrests both of aliens and citizens have been made without warrant or any process of law; men and women have been jailed and held *incomunicado* without access of friends or counsel; homes have been entered without search-warrant and property seized and removed; other property has been wantonly destroyed; workingmen and workingwomen suspected of radical views have been shamefully abused and maltreated. Agents of the Department of Justice have been introduced into radical organizations for the purpose of informing upon their members or inciting them to activities; these agents have even been instructed from Washington to arrange meetings upon certain dates for the express object of facilitating wholesale raids and arrests. . . .

These acts may be grouped under the following heads:

(1) *Cruel and Unusual Punishments:*

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<sup>1</sup> Excerpt taken from National Popular Government League, *Report Upon the Illegal Practices by the United States Department of Justice* (Washington DC: National Popular Government League, 1920).

...  
Punishments of the utmost cruelty, and heretofore unthinkable in America, have become usual. Great numbers of persons arrested, both aliens and citizens, have been threatened, beaten with blackjacks, struck with fists, jailed under abominable conditions, or actually tortured.

(2) *Arrests without Warrant:*

...  
Many hundreds of citizens and aliens alike have been arrested in wholesale raids, without warrants or pretense of warrants. They have then either been released, or have been detained in police stations or jails for indefinite lengths of time while warrants were being applied for. It has been established in open court before Judge Anderson in Boston, Mass., that warrants of arrest were dispensed with pursuant to express written instructions from the Department of Justice at Washington. . . .

(3) *Unreasonable Searches and Seizures:*

...  
In countless cases agents of the Department of Justice have entered the homes, offices, or gathering places of persons suspected of radical affiliations, and, without pretense of any search warrant, have seized and removed property belonging to them for use by the Department of Justice. In many of these raids property which could not be removed or was not useful to the Department, was intentionally smashed and destroyed. Exhibit 2a is a photograph of the interior of a house raided by the Department of Justice. . . .

(4) *Provocative Agents:*

We do not question the right of the Department of Justice to use its agents in the Bureau of Investigation to ascertain when the law is being violated. But the American people has never tolerated the use of undercover provocative agents or "agents provocateurs," such as have been familiar in old Russia or Spain. Such agents have been introduced by the Department of Justice into the radical movements, have reached positions of influence therein, have occupied themselves with informing upon or instigating acts which might be declared criminal, and at the express direction of Washington have brought about meetings of radicals in order to make possible wholesale arrests at such meetings. . . .

(5) *Compelling Persons to be Witnesses against Themselves:*

...  
It has been the practice of the Department of Justice and its agents, after making illegal arrests without warrant, to question the accused person and to force admissions from him by terrorism, which admissions were subsequently to be used against him in deportation proceedings.

...  
Since these illegal acts have been committed by the highest legal powers in the United States, there is no final appeal from them except to the conscience and condemnation of the American people. American institutions have not in fact been protected by the Attorney General's ruthless suppression. On the contrary those institutions have been seriously undermined, and revolutionary unrest has been vastly intensified. No organizations of radicals acting through propaganda over the last six months could have created as much revolutionary sentiment in America as has been created by the acts of the Department of Justice itself.

...  
It has always been the proud boast of America that this is a government of laws and not of men. Our Constitution and laws have been based on the simple elements of human nature. Free men cannot be

driven and repressed; they must be led. Free men respect justice and follow truth, but arbitrary power they will oppose until the end of time. There is no danger of revolution so great as that created by suppression, by ruthlessness, and by deliberate violation of the simple rules of American law and American decency.

It is a fallacy to suppose that, any more than in the past, any servant of the people can safely constitute himself their ruler. Any such contention is a denial of the fundamental American theory of the consent of the governed.

Exhibit 9: In the Matter of Gaspare Cannone.

WALTER NELLES, being duly sworn, says:

I am attorney for Gaspare Cannone. He was taken to Ellis Island on April 2, 1920, under a deportation warrant issued April 1 at the instance of Special Agents of the Department of Justice. Hearings were held at Ellis Island on April 14 and 15, and his case now awaits the decision of the Secretary of Labor.

The following is the substance of Cannone's sworn statements: He was seized at his home in Brooklyn by agents of the Department of Justice about noon on March 30, 1920, *without charge or warrant*, and taken to the office of the Department of Justice in the Park Row Building, New York City. There he was beaten and kicked by a handsome agent in a blue-striped silk shirt, in the presence of three other agents . . . who proceeded to interrogate him. They tried to get him to furnish evidence implicating persons named John Berry, Recchi, and Valdinoce (all entirely unknown to him) in the Washington bomb explosions of last year (of which he knew nothing). They continually beset him to "Tell the truth," "stop lying," "come across,"—and then, when he gave truthful answers to their questions, they called him a "damned liar," a "son of a bitch," and many other things of which the opprobrious meaning was clear, but which he knew too little English to understand exactly. He was told that they would be easy with him if he said what they wanted him to. Failing to get anything from him, they told him he would be deported.

*He was held by the Department of Justice, and denied communication with anyone outside, from noon on March 30 to noon on April 2, when he was taken to Ellis Island. Each night he was taken to Police Headquarters and locked up in a bare cell without blankets or covering. He was given five meals in the four days.*

On his last appearance in the Park Row office, Exhibit B . . . was put before him, and he was told to sign. He refused, because it was not a correct record of what he had said. Of the inherent likelihood that any free man in his senses would sign such a document, nothing need be said.

*A forged signature of "Gaspare Cannone" was subscribed. . . .*

. . .

On April 14th, in the presence of Agents Faulhaber and Palmera, Cannone had testified at some length as to his beating at the Department of Justice and his treatment under detention. On April 15th he continued his testimony upon the same subject for upwards of half an hour. The Inspector suddenly interrupted with the statement that he was going to "cut all this out of the record." After discussion with me, he sent for Chief Inspector Augustus P. Schell, to whom the Inspector and I explained the situation. Inspector Schell, after seeking to dissuade me from pressing the claim of criminal creation of evidence against agents of the Department of Justice—"a department of the Government"—instructed the Inspector not to permit me to proceed unless the agents of the Department of Justice were present; to adjourn the hearing if necessary, and to cancel Cannone's bail "if he thought he would not appear."

. . . I then offered to proceed to prove my case by the testimony of Cannone.

"Well, you've got to furnish *proof*," said the Inspector. "You can't prove anything by this man" (indicating Cannone). "This man is not a witness. HE IS THE ALIEN."

He ruled that no further testimony could be received as to the conduct of the agents of the Department of Justice, and struck out most of the testimony which Cannone had given—not in the ordinary juridical sense of "striking out"; Cannone's testimony was literally and bodily eliminated.

Exhibit 11: Confidential Instructions, Dec. 27, 1919, Department of Justice, Bureau Of Investigation

Briefly the arrangements which have been made are that the warrants will be forwarded to the immigration inspector who will at once communicate with you and advise you of the names of the persons for whom he has received warrants. You should then place under surveillance, where practicable, the persons mentioned and at the appointed time you will be advised by me by wire when to take into custody all persons for whom warrants have been issued.

At the time of the apprehension of these persons every effort should be made by you to definitely establish the fact that the persons arrested are members of either the COMMUNIST PARTY of America or the COMMUNIST LABOR PARTY. I have been reliably informed that instructions have been issued from the headquarters of each of these organizations to their members that they are to refuse to answer any questions put to them by any Federal officers and are to destroy all evidence of membership or affiliation with their respective organizations. It is, therefore, of the utmost importance that you at once make every effort to ascertain the location of all of the books and records of these organizations in your territory *and that the same be secured at the time of the arrests. As soon as the subjects are apprehended, you should endeavor to obtain from them, if possible, admissions that they are members of either of these parties, together with any statement concerning their citizenship status.* I cannot impress upon you too strongly the necessity of obtaining documentary evidence proving membership.

Particular efforts should be made to apprehend all of the officers of either of these two parties if they are aliens, *the residences of such officers should be searched in every instance for literature, membership cards, records and correspondence.* The meeting rooms should be thoroughly searched and an effort made to locate the charter of the COMMUNIST PARTY of America or the COMMUNIST LABOR PARTY, under which the local organization operates, as well as the membership and financial records which if not found in the meeting rooms of the organization will probably be found in the house of the recording and financial secretaries, respectively. *All literature, books, papers and anything hanging on the walls should be gathered up; the ceilings and partitions should be sounded for hiding places. After obtaining any documentary evidence, the same should be wrapped up in packages and marked thereon, the location of the place, and the name of the persons obtaining the evidence and the contents of each package.*

Violence towards any aliens should be scrupulously avoided. *Immediately upon apprehending an alien, he should be thoroughly searched. If found in groups in meeting rooms, they should be lined up against the wall and there searched; particular evidence being given to finding the membership book, in which connection the search of the pockets will not be sufficient. In no instance should money or other valuables be taken from the aliens. . . . I have made mention above that the meeting places and residences of the members should be thoroughly searched. I leave it entirely to your discretion as to the method by which you should gain access to such places. If, due to the local conditions in your territory, you find that it is absolutely necessary for you to obtain a search warrant for the premises, you should communicate with the local authorities a few hours before the time for the arrests is set and request a warrant to search the premises.*

Under no conditions are you to take into your confidence the local police authorities or the state authorities prior to the making of the arrests. It is not the intention nor the desire of this office that American citizens, members of the two organizations be arrested at this time. *If, however, they are taken into custody any American citizens, through error and who are members of the COMMUNIST PARTY OF AMERICA or the COMMUNIST LABOR PARTY, you should immediately refer their cases to the local authorities.*

It may be necessary, in order to successfully make the arrests that you obtain the assistance of the local authorities at the time of the arrests. This action should not be taken, unless it is absolutely necessary; but I well appreciate that where a large number of arrests are to be made it may be impossible for the same to be made by special agents of this Department, in which event you are authorized to request the assistance of the local police authorities. *Such assistance should not be requested until a few hours before the time set for the arrests, in order that no "leak" may occur. It is to be distinctly understood that the arrests made are being made under the direction and supervision of the Department of Justice.*

*For your own personal information, I have to advise you that the tentative date fixed for the arrests of the COMMUNISTS is Friday evening, January 2, 1920.*



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