

A RED FLAG ABOUT A RED FLAG IN 1920S CALIFORNIA

By John S. Caragozian

When a teenage camp counselor raised a red hammer-and-sickle flag and had children pledge to it, she and other camp personnel were convicted of felonies. The case's background and eventual resolution by the U.S. Supreme Court offer insights into 1920s California.

In the early twentieth century, California was, in writer Carey McWilliam's words, "at the quirky vanguard of social change..." For example, California's progressives had enacted direct democracy – popular initiative, referendum, and recall – to dilute business control of the state legislature. The City of Los Angeles had taken the progressive step of replacing a private utility with a municipal one to provide residents with water and electricity.

By the 1920s, however, the pendulum had swung the other way. Radicals' fatal 1910 bombing of the Los Angeles Times, the 1917 Russian revolution, and the rise of militant labor unions such as Industrial Workers of the World all contributed to an era of repression. This so-called First Red Scare was epitomized by armed raids, imprisonment and deportations, all directed against anarchists, communists, socialists and labor leaders across the nation. Too, California and other states enacted "syndicalism" statutes criminalizing advocacy of violence to accomplish political or economic change, and courts consistently upheld the statutes. *E.g.*, *Whitney v. California*, 274 U.S. 357 (1927), and cases cited therein.

The era's right-wing organizations included the influential Better American Foundation. It was founded in L.A. in 1920 to crusade against "un-American activity" in California. Well-funded by private utilities (such as Southern California Edison) and other businesses, the BAF prioritized defeating organized labor. The BAF also opposed the eight-hour workday, child labor's abolition, the Constitution's 17th Amendment (providing for direct election of U.S. Senators), and books by such "Bolshevik" authors as Arthur Schlesinger, Sr. in public schools. See Edwin Layton, "The Better America Foundation: A Case Study of Superpatriotism," 30 *Pacific Historical Review*, 137-47 (May 1961).

The BAF kept many of its operations secret, but tactics included paying "professional informers," supplying witnesses in prosecutions against unions and other perceived radicals, and underwriting political campaigns. *E.g.*, Carey McWilliams, "Southern California Country: An Island on the Land," 291 (1946). (Readers familiar with Watergate might be interested to know that BAF co-founder and president was Los Angeles businessman Harry Haldeman, grandfather of H.R. Haldeman. The latter Haldeman, President Nixon's chief of staff, was convicted of and imprisoned for perjury and obstruction of justice in the Watergate cover-up.)

At the other end of the spectrum was the Pioneer Summer Camp Conference founded in Los Angeles by various communist and other leftist organizations. Beginning in 1927, the Conference operated a summer camp for working-class children on rented land near Yucaipa in San Bernardino County. Because the landowner charged only nominal rent and adults volunteered their services, camp fees were low, only \$6.00 per week per child. Children received leftist political education and also engaged in traditional activities such as hiking and baseball.

In the summer of 1929, Pioneer Camp had 40 children between 10 and 15 years old and half a dozen staff, including 19-year-old Yetta Stromberg. Stromberg had graduated from L. A.'s Roosevelt High School, had completed one year at UCLA, and was a member of the Young Communists League. Her daily camp duties included raising a homemade triangular red flag with a hammer and sickle and reciting with the children, "I pledge allegiance to the workers' red flag, and to the cause for which it stands, one aim throughout our lives, freedom for the working class." Stromberg also taught history to the children.

The BAF learned of the Pioneer Camp and pressured San Bernardino County law enforcement to act. That summer, carloads of sheriff's deputies, district attorney personnel, and private citizens (mostly American Legion members) raided the camp.

Stromberg and the other camp staff were arrested and charged with violating California Penal Code section 403a: "Any person who displays a red flag ... or any flag ... of any color or form whatever in any public place or in any meeting place ... [1] as a sign, symbol or emblem of opposition to organized government or [2] as an invitation or stimulus to anarchistic action or [3] as an aid to propaganda that is of a seditious character is guilty of a felony."

At trial in San Bernardino County Superior Court, the prosecution introduced evidence of the flag and pledge. The prosecution also offered into evidence communist literature seized at the camp, which literature contained statements such as "[communists] openly declare that their goal can be achieved only by the violent overthrow of the whole of the present social system." The defense objected on the grounds that the literature was Stromberg's personal property and had never been shared with the children. The trial judge overruled the objection.

The jury convicted (i) Stromberg of violating Section 403a for actual flag raising and (ii) Stromberg and the rest of the staff of conspiracy. Stromberg's sentence was up to 10 years imprisonment.

The International Labor Defense (a Communist International arm) and the American Civil Liberties Union jointly funded an appeal of the convictions.

The District Court of Appeal dismissed all the conspiracy convictions, because, as the prosecution admitted, no “overt act” had been charged. The court, however, upheld Stromberg’s section 403a conviction. The court ruled that the evidence – including the communist literature – showed that “the camp was conducted as a school of armed revolutionary propaganda and that the flag was exhibited as a symbol of that teaching...” The court held section 403a constitutional, because California is able to bar “willful and deliberate training of traitors,” especially “among those who by reason of youth and inexperience have no chance to form an independent judgment.” See *People v. Mintz*, 106 Cal. App. 725, 729-32 (1930).

The California Supreme Court denied a hearing, but the U.S. Supreme Court granted one. Stromberg’s brief argued that section 403a unconstitutionally criminalized raising a flag of a legal political party (namely, communists) and of a nation with which the U.S. is not at war (namely, the Soviet Union). The prosecution’s brief countered by implying that Stromberg was somehow suspect owing to her “Russian parentage” and arguing that, even if part of section 403a were unconstitutional, such part could be severed and Stromberg’s conviction upheld.

In a 7-2 decision, the Supreme Court reversed Stromberg’s conviction. The court’s majority opined that states could outlaw speech posing a clear and present danger of violence. However, the San Bernardino jury’s general verdict meant that Stromberg could have been convicted of violating only Section 403a’s clause [1] quoted above, namely that she raised a flag “in opposition to organized government,” without necessarily posing a clear and present danger. Accordingly, this clause was “[r]epugnant to the guaranty of liberty in the Fourteenth Amendment.” *Stromberg v. California*, 283 U.S. 359, 363-70 (1931).

The case was a landmark. For the first time, the Supreme Court reversed a state court conviction on free speech grounds. Moreover, the court explicitly held that the First Amendment’s free speech protections were enforceable against states and that “visual symbols like the red flag” qualified as speech. *E.g.*, David Currie, “The Constitution in the Supreme Court: Civil Rights and Liberties 1930-1941,” 1987 *Duke Law Journal* 800, 809, 813-14 (1987). The Supreme Court further signaled that it would “closely scrutinize local actions that might compromise the integrity of the political process by restricting speech.” Daniel Hildebrand, “Free Speech and Constitutional Transformation,” 10 *Constitutional Commentary* 133, 149 (1993).

Stromberg herself continued to be dogged with communist accusations despite the reversal of her convictions. The FBI tracked her, and she was blacklisted from teaching at California public schools.

She died in 2008, aged 97. She never spoke publicly about the Supreme Court case and its aftermath. However, her great niece Judy Branfman – a filmmaker and UCLA research affiliate – interviewed Stromberg at length and is completing a film that includes videos of the interviews. Information is available at <https://www.orangegrovesandjailsfilm.com/>.

***John Caragozian** is a Los Angeles lawyer and on the Board of the California Supreme Court Historical Society. He thanks Professor Nat Stern and Janie Schulman for their contributions to this column. He welcomes ideas for future monthly columns on California's legal history at jcaragozian@sunkistgrowers.com.*

A version of this article first appeared in the July 28, 2022 issue of the Los Angeles Daily Journal. Reprinted with permission.