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BOOK REVIEW

RED SCARE IN COURT: NEW YORK VERSUS THE INTERNATIONAL WORKERS ORDER. BY ARTHUR J. SABIN.* UNIVERSITY OF PENNSYLVANIA PRESS, 1993. \$29.95.

REVIEWED BY ELENA MARCHESCHI**

The International Workers Order (IWO), as Professor Arthur Sabin tells us in his compelling account of the IWO's legal ambush and demise, was one of the largest, most successful left-wing organizations in modern American history. Until it fell victim to the Cold War hysteria of the early 1950s, the IWO was a financially sound fraternal benefit society. In addition to low-cost insurance, the IWO offered its members social, cultural, and educational programs. The IWO's vulnerability was its openly Communist leadership and left-wing social activism. The IWO's social activism placed it in the front ranks of such major movements of the day as the struggle for social security, unemployment insurance, racial equality, and trade unionism.

The IWO's success, its phenomenal growth in membership, and resultant financial strength sowed the seeds of its ultimate destruction.¹ In 1950, with the legal field increasingly littered by domestic casualties of the war against communism,² and against the back-

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1. See *infra* text at page 18 for a discussion of how the IWO's financial strength led to its prosecution.

2. In July 1948, the first Smith Act indictment against top leaders of the United States Communist Party (CPUSA) was filed in New York. *United States v. Foster*, 80 F. Supp. 479, 481 (S.D.N.Y. 1948). The defendants were charged with conspiring to advocate the forcible overthrow of the government, as well as with conspiring to organize a group that so advocated. *Id.* Eleven defendants were convicted after a jury trial held in the U.S. Courthouse on Foley Square in New York City, a court building lying adjacent to the County Courthouse where the IWO case was tried. The United States Supreme Court ultimately upheld the convictions against a constitutional challenge to the Smith Act, in the case of *Dennis v. United States*, 341 U.S. 494, 517 (1951). In addition to the *Dennis* case, the Hiss trial had just concluded at Foley Square. On January 21, 1951, a jury found Alger Hiss, a Harvard trained attorney with the State Department and past clerk to Supreme Court Justice Oliver Wendell Holmes, guilty of having lied to the House Un-American Activities Committee about his Communist connections in the 1930s. RICHARD M. FRIED, NIGHTMARE IN RED: THE MCCARTHY ERA IN PERSPECTIVE 17 (1990). The trial of Julius and Ethel Rosenberg also opened in New York on March 6, 1951, having been arrested in July and August of 1950. The Rosenbergs were found guilty and executed for conspiring to steal and pass atomic secrets to the Soviets. DAVID

drop of the souring Korean War inflaming popular fears of a Soviet menace, the State of New York sought the dissolution of the IWO on political grounds. The legal battle which ensued, lasting nearly four years and engaging such participants as civil rights attorney Arthur Kinoy,³ is the subject of this scholarly yet engrossing book by Professor Sabin. The battle's predictable outcome is still an anomaly of American legal history. To this day, the IWO remains the only insurance company ever liquidated for its politics.

I. THE IWO: A FRATERNAL BENEFIT SOCIETY

To comprehend both the legal and social dimensions of the destruction of the IWO, one must initially understand the special role of fraternal societies in the beginning of this century. Before the growth of industrial unionism in the mid-1930s, fraternal benefit societies were a vital part of the American working class. In the absence of affordable alternatives, millions of workers, particularly immigrants, relied on such societies for inexpensive insurance and medical benefits that the commercial insurance companies would not offer.

It is estimated that in 1919, some 200 societies with 120,000 lodges and over 9,000,000 members operated in the United States.⁴ Often established along ethnic lines, these organizations did much more than provide low-cost insurance. Fraternal lodges sponsored social, educational, and recreational activities including the following: community singing societies, dance and theater groups, kindergartens and language schools, and athletic programs. For millions of Americans, many of them recent immigrants, the fraternal societies were as much a reassuring link with cultural and ethnic traditions as they were security against financial disaster.

A. *The Evolution of the IWO*

Out of this tradition came the IWO. The IWO was formed in 1930 by a left-wing split from the Workmen's Circle, a well-established fraternal order founded by Jewish socialists in 1892. From the beginning, most of the IWO's leaders were communists. Max Bedacht, a founder of the American Communist Party, led the IWO as General-Secretary from 1932 to 1945.⁵ Rubin Saltzman, IWO General-Secretary at the time of the IWO trial and the first defense witness, was a leader of the American Communist Party's Jewish

CAUTE, *THE GREAT FEAR: THE ANTI COMMUNIST PURGE UNDER TRUMAN AND EISENHOWER* 63 (1978).

3. See *infra* note 25 for a description of Arthur Kinoy.

4. Roger Keeran, *The International Workers Order and the Origins of the CIO*, 30 *LAB. HIST.* 385 (1989).

5. *Id.* at 385-86.

Federation.⁶ In addition to fulfilling its insurance and cultural functions, it was not unusual for a fraternal benefit society to support political activism. For example, many fraternal organizations actively supported the major union organizing drives of the 1930s.⁷ Indeed, the Workmen's Circle retained its own political identification long after the IWO ceased to exist.

Openly mixing insurance and politics, the IWO quickly increased its membership from the initial 5,000 members to 137,000 members by 1937. Membership reached a high of approximately 200,000 members in 1946. Although composed primarily of workers, small businessmen, and farmers, the IWO also counted among its members such notables as the singer Paul Robeson, playwright and poet Langston Hughes, and performers Jimmy Durante and Zero Mostel. At the time of the trial, the president of the IWO was the leading American artist and illustrator Rockwell Kent.

B. A Commitment to Racial Equality and Integration

There were undoubtedly many reasons for the IWO's stunning success, but at least one of them was clearly grounded in its politics. The IWO refused to racially discriminate. While commercial insurance companies and white fraternal societies excluded African-Americans, the IWO actively recruited them. The IWO was the only national insurance carrier of its time to offer African-Americans insurance coverage at the same rate as whites. This commitment to racial equality and integration extended to the IWO's in-house practices. African-Americans and other minorities held staff supervisory positions, were employed as national organizers, and, in the case of defense witness Louise Patterson, sat on the IWO's national board as National Recording Secretary.

Overall, the IWO's successful approach to membership was deeply pluralistic, emphasizing pride in ethnic and racial diversity in a time of blatant racism and anti-Semitism. By the late 1930s, the IWO had thirteen different nationality Sections; there were African-American and Asian Sections, a large, active Jewish Section, and a general Section of English speaking members.⁸ Different IWO Sections published news in their own languages, ran after school programs for children, sponsored singing societies, sports teams, marching bands, and offered dance and theater groups.

6. *Id.* at 385.

7. *Id.* at 390-92.

8. Keeran, *supra* note 6, at 386.

II. A CHALLENGE TO SURVIVAL: LEADERS WITH A POLITICAL AGENDA

It is undeniable that many leaders of the IWO had a political agenda and were committed to improving the security of workers in ways other than providing good, low-cost insurance. Promoting social legislation, unionism, and other progressive movements were unmistakably part of IWO activities. Through rallies, publications, and appeals for financial and other support, the IWO championed such causes as the movements for social security legislation, anti-poll tax laws, anti-lynch laws, and the rights of aliens to gain and maintain citizenship. In the mid-1930s, the IWO also played a crucial role in the formation of the Congress of Industrial Organizations (CIO) by significantly aiding industrial union drives in steel, auto, and other industries.

Through its national newsletter and foreign-language press, the IWO gave favorable publicity to many CIO union campaigns.⁹ In an effort to gain nationwide support for such drives, key IWO members also organized and promoted a series of conferences targeting other fraternal orders.¹⁰ In addition, IWO lodges in key steel towns in Pennsylvania and Ohio, as well as in the Chicago and Calumet industrial areas, supported union organizing campaigns by collecting funds, providing volunteer organizers, and renting out space for union meetings.¹¹ Many organizers leading the steel and auto union campaigns of the mid-1930s found that only the IWO would rent to the organizing unions.¹² Significantly, the IWO treasury never supported these political activities. At the trial of the IWO, the State failed to present evidence indicating that any policyholder money was used for these or any other political purposes. Apparently, all political activities in which IWO lodges and members participated were entirely funded by donations voluntarily collected from members and supporters.

For thousands of people, low-cost, high-coverage, non-discriminatory insurance was undeniably the main attraction to the IWO. As noted, the IWO differed from other carriers by offering insurance at the same rate to all members, including workers in high-risk occupations such as mining. The IWO kept costs for life insurance, health coverage, and other insurance programs exceptionally low in part because it never maintained a sales staff or paid commissions. All recruitment was done by members, primarily through word-of-mouth advertising. By 1950, the IWO had paid out \$13,000,000 in benefits to its members. It carefully conducted the

9. *Id.* at 393.

10. *Id.* at 390-92.

11. *Id.* at 393-94.

12. *Id.* at 406.

insurance aspects of its business in a fiscally conservative manner and in strict conformity with the law. Its assets were secure and liquid, it had surpluses in amounts far exceeding legal requirements, and Dunne's Insurance Report gave it an "A plus" rating ranking the IWO among the country's top five fraternal.

A. State Regulation of the IWO

Like all insurance companies, the IWO was licensed and regulated by state law. The historic aim of state administrative control had been to insure fiscal integrity by monitoring the solvency of carriers, insisting on adequate reserves, and overseeing the payment of claims through periodic audits and reviews. In New York, the IWO's home state, these functions were carried out by the State Department of Insurance which had conducted routine audits of the IWO without incident for twenty years. By the time the New York Insurance Department began its examination of the IWO in 1949, however, anti-communist sentiment had become pervasive in American society. Congressional hearings investigating domestic communist "infiltration" of government and public life were ongoing, with accusations and exposures destroying careers and intimidating opposition.

At the same time that unions were being torn apart by the loyalty oath issue,¹³ school boards were routinely banning books and discharging teachers for what they read and thought. The Justice Department, empowered by President Truman's 1947 Employee Loyalty Program, prosecuted federal employees on charges of disloyalty to the U.S. government.¹⁴ The 1949 trial of eleven top Communist Party leaders¹⁵ on charges of violating the Smith Act,¹⁶

13. In 1947, the Taft-Hartley amendments to the National Labor Relations Act (NLRA) were adopted. These provided that the essential protections of the NLRA would be unavailable to a union unless each of its officers filed an affidavit with the National Labor Relations Board, stating that "he [was] not a member of the Communist Party or affiliated with such party, and that he [did] not believe in, and [was] not a member of or support[er] [of] any organization that believes in or teaches, the overthrow of the United States Government by force . . ." National Labor Relations Act, Pub. L. No. 80-101, § 9(h), 61 Stat. 136, 146 (1947).

14. Exec. Order No. 9,835, 3 C.F.R. 129 (1947) *revoked* by Exec. Order No. 11,785 § 12, *reprinted in* 5 U.S.C.A § 7311 (1974).

15. *United States v. Foster*, 9 F.R.D. 367, 371 (S.D.N.Y. 1949).

16. 18 U.S.C. § 2385 (1988). The Smith Act regulated political speech by making it a federal crime to either advocate the overthrow of the U.S. government by force or violence, to organize any group which taught, advocated or encouraged to overthrow, or to conspire to commit any of these offenses with or without the commission of an overt act. *Id.* Although passed in June 1940, the Smith Act was not used against the Communist Party until 1948. *See generally* Marc Rohr, *Communists and the First Amendment: The Shaping of Freedom of Advocacy in the Cold War Era*, 28 SAN DIEGO L. REV. 1 (1991) (discussing the development of First Amendment jurisprudence in relation to the persecution of the Communist Party in the United States).

which resulted in guilty verdicts, fines and prison terms for all but one defendant, was then on appeal before the Second Circuit¹⁷ and on its way to the U.S. Supreme Court.¹⁸ Then in December 1947, U.S. Attorney General Tom C. Clark issued his infamous list of "subversive" organizations, placing the IWO among some seventy-eight organizations deemed politically dangerous.¹⁹ In such a charged atmosphere, the 1949 examination of the IWO by the New York Department of Insurance was bound to prove anything but routine.

B. *The Unprecedented Definition of "Hazard" to Policyholders*

In January 1950, an examiner with the Department of Insurance filed a report recommending that the IWO be liquidated, despite its excellent financial standing. Having initially discovered the IWO on the Attorney General's list of subversive organizations, examiner James Haley concluded that the insurance company had engaged in political activities constituting a "hazard" to its policyholders. The examiner rested his conclusion on an entirely unprecedented interpretation of the word "hazard" under New York State law, which had previously limited cognizable "hazard" to financial risk to policyholders. In Haley's novel view, the IWO's political activities created a "hazard" by exposing policyholders to charges of disloyalty to the United States. On this premise, Haley recommended the dissolution of the IWO. With the Haley Report on file, the State of New York quickly mobilized for the legal proceedings which were certain to follow.

III. THE CAMPAIGN TO DESTROY THE IWO

Without voicing any of his own conclusions, Professor Sabin grapples with long-standing allegations that James Haley was instructed by his superiors to target the IWO for liquidation. Given the sluggish and uninspired bureaucratic figure which James

17. *United States v. Dennis*, 183 F.2d 201, 205 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951).

18. *Dennis v. United States*, 341 U.S. 494 (1951).

19. The Attorney General's list included organizations such as The American Committee for Yugoslav Relief, the American Croatian Congress, the American Polish Labor Council, the American Polish League, The American Slav Congress, and the Slovak Workers Society. See CAUTE, *supra* note 4, at 586-87 & n.2. These organizations were determined subversive without benefit of due process proceedings, prompting the IWO and two other groups to file a lawsuit challenging the listing and its legality. *Id.* In a Pyrrhic victory for the IWO, the U.S. Supreme Court would on appeal ultimately characterize the Attorney General's conduct as "patently arbitrary" and rule against the government in the matter. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 126 (1951). Ironically, Attorney General Clark, who had compiled and promulgated the subversives' list, had by 1951 been appointed a Justice of the U.S. Supreme Court. As a result, he could take no part in the decision. *Id.* at 124.

Haley portrayed in the courtroom, his insistence at trial that he acted entirely on his own was unconvincing. In any event, whether or not Haley initially acted alone is of mild interest, compared with the abundant evidence Professor Sabin presented regarding the ultimate involvement of major anti-communist players in the campaign to destroy the IWO.

The individuals and entities that had a direct hand in the IWO proceedings were indeed numerous. Thomas E. Dewey, then the Republican Governor of the State of New York, took the unusual action of personally appointing his friend, Paul W. Williams, to be special prosecutor in the IWO case. Williams, a former Assistant U.S. Attorney, was at the time a partner in the prestigious Wall Street law firm of Cahill, Gordon and Reindell. The U.S. Immigration and Naturalization Service (INS), then involved in numerous deportation proceedings under the Internal Security Act,²⁰ provided almost all of the State's witnesses and documents used in the IWO trial. Disregarding the clear impropriety, if not downright illegality, of his actions, the federal judge who presided in the case of *United States v. Dennis*²¹ at the trial level, Harold R. Medina, actually provided materials from his personal *Dennis* files to Williams in an apparent effort to assist the State's case against the IWO.²²

Professor Sabin also documents that the U.S. Federal Bureau of Investigation (FBI) conducted unauthorized break-ins at IWO headquarters on three or more occasions, the last of which occurred in 1953 shortly before the IWO's legal appeals had ended. J. Edgar Hoover himself was involved in the IWO case personally replying to a request that the FBI produce certain IWO reports—a report which one of the State's witnesses, Matthew Cvetic, claimed he had filed with the agency. J. Edgar Hoover refused to produce the reports. Such attention to detail by the head of a federal agency does not appear to surprise Professor Sabin, who clearly views Hoover as the master architect and manipulator of the domestic Red Scare. Next to these examples of far-flung and eager interest in the outcome of the IWO case, the question of whether Haley was prodded or suborned seems irrelevant. The behind-the-scenes activities Pro-

20. 50 U.S.C. §§ 781-858 (1950). As the most comprehensive federal legislation directed against the CPUSA, the McCarran Act required "Communist-action" and "Communist-front" organizations to register with the federal government, to disclose the names and addresses of officers and, in the case of "Communist-action" organizations, to disclose the names of members. *Id.* §§ 786, 787. The Act additionally amended the immigration and naturalization laws, strengthened espionage laws, and provided for the detention of potential spies and saboteurs. *Id.* §§ 785, 811-826, 851-858.

21. *United States v. Dennis*, 183 F.2d 201 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951).

22. Just as the IWO case went to trial, Judge Medina, who was a friend and mentor to IWO trial Judge Henry Clay Greenberg, was honored by the American Legion for his contributions to the fight against communism.

fessor Sabin recounted are entirely sufficient to convince even the most reluctant of conspiracy theorists.

A. Preparation for Litigation

Although filed in January, the Haley Report was not delivered to the IWO until May 18, 1950. The matter quickly moved to administrative hearing. By that time, the IWO had engaged the services of labor and civil rights attorneys Frank Donner, Arthur Kinoy, and Marshall Perlin.²³ It was no easy task for the IWO to obtain competent representation. Lawyers were justifiably afraid to represent leftist clients. Professor Sabin's examples underscore the terror of the times, as well as the regrettable acquiescence and collaboration of some. Professor Sabin reminds us that every one of the trial attorneys who represented the eleven top Communists in the *Dennis* case was found guilty of contempt by Judge Medina, sentenced to prison and ultimately disbarred. The American Bar Association itself, in 1950 and 1951, endorsed by resolution the expulsion of any attorney who refused to sign a non-communist affidavit, urging state and local bar associations to commence disbarment proceedings against communists and advocates of Marxism-Leninism.

Also in 1950, the House Un-American Activities Committee leveled a major attack on the National Lawyer's Guild, labeling the organization an appendage of the Communist Party. Unfortunately, attorneys had difficulty finding support and resolve even among civil libertarians, whose organizations sometimes also capitulated. Even the American Civil Liberties Union (ACLU) expelled the well-known labor figure Elizabeth Gurley Flynn from the ACLU's governing board because of her membership in the Communist Party.²⁴ In the words of Supreme Court Justice William O.

23. Frank Donner had been part of a team of lawyers working on behalf of the defendants in the trial of the *Dennis* case. He went on in subsequent years to represent many activist clients and to write extensively on the events of the Red Scare period, including a book describing the IWO case. FRANK J. DONNER, *THE UN-AMERICANS* (1961). Arthur Kinoy, a 29-year-old union attorney at the time of the trial, went on to litigate many of the most memorable cases of the post-war period including: (1) the final attempt to save Julius and Ethel Rosenberg from execution; (2) challenges to Senator Joseph McCarthy and the House Un-American Activities Committee; (3) the defense of Adam Clayton Powell's seat in Congress; (4) the civil rights case of *Dombrowski v. Pfister*, 380 U.S. 479 (1965); and (5) the successful appeal of the Chicago Seven's conviction for organizing demonstrations at the 1968 Democratic Convention. Like Donner and Kinoy, Marshall Perlin continued to represent activist clients and causes in the years following the trial. Perlin is, to this day, involved in the Rosenberg trial, on behalf of the third *Rosenberg* defendant, Morton Sobell.

24. *THE TRIAL OF ELIZABETH GURLEY FLYNN BY THE AMERICAN CIVIL LIBERTIES UNION* (Corliss Lamont ed., 1968). The ACLU rescinded and repudiated this action years later. David Kairys, *Freedom of Speech, reprinted in, THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE*, 165 & n.75 (David Kairys ed.,

Douglas, who is quoted by Professor Sabin, the intimidation directed at the American bar during the McCarthy years was "a dark tragedy" in American legal history.²⁵

At the administrative hearing, the State had little difficulty in convincing hearing officer Manuel Robbins that the IWO was primarily a communist tool, with insurance merely a sideline to its political activities. Robbins' comments made it clear that it would be imprudent, in his view, to permit the law to protect the domestic enemy. Robbins easily sustained the conclusions of the Haley Report and, on the same day, the State filed its petition in the New York County Courthouse, asking for an Order To Show Cause why the IWO should not be liquidated. The Order was signed on the following day by Henry Clay Greenberg, Judge of the Supreme Court of the County of New York. The legal burden then rested on the IWO to show cause why the State should not get what it wanted. After fruitless attempts to obtain representation from a number of prominent New York litigation firms, the IWO engaged as lead trial counsel Raphael H. Weissman, an experienced insurance attorney.²⁶ When Judge Greenberg declined to rule on defense motions challenging the court's jurisdiction and alleging that the State's Petition was defective, the parties quickly mobilized for trial.

Professor Sabin describes in great detail each step in the subsequent trial's progress, often pausing to provide helpful lessons in legal practice for the lay reader. In addition to the voluminous trial and appellate record, Professor Sabin had access to the archives of the IWO and to the extensive files of the State's special counsel Paul Williams. Professor Sabin's attention to minute legal detail, while at times perhaps difficult for the general reader to digest, offers much of interest to the practitioner.

B. *The Prosecution of the IWO*

The State's case for liquidation rested on four grounds. First, the IWO was organized and functioned under the auspices of the Communist Party. Second, the IWO was listed as subversive by the

1982). The NAACP also did not escape the intimidation of the times. When W.E.B. Dubois, at one time editor of the NAACP's journal, was arrested in 1951 at age eighty-two for failing to register under the McCarran Act as a leader of the Soviet-leaning Peace Information Center, the NAACP's Legal Defense Fund shunned him, although the groundless case was later dismissed. FRIED, *supra* note 4, at 165.

25. William O. Douglas, *The Black Silence of Fear*, N.Y. TIMES, Jan. 13, 1952, § 6 (Magazine), at 7, 38.

26. Professor Sabin reports that after the IWO case Weissman vigorously returned to his trial and appellate practice. ARTHUR J. SABIN, *THE RED SCARE IN COURT* 38 (1993). There is no record that he ever again represented leftist clients in any case involving accused subversives. *Id.*

U.S. Attorney General. Third, the IWO violated the Smith Act as well as the state's criminal anarchy statute, by promoting the violent overthrow of the government. Fourth, the IWO operated *ultra vires*, by failing to state in its charter the IWO's actual, non-insurance-related political mission. The question of whether the IWO's actions constituted a "hazard" under state law continued to be an issue. Additionally, as to the second ground, the State alleged that the IWO's liquidity would allow it to quickly transfer its assets to the USSR. Thus, the financial health of the IWO was made a detriment to be held against it.

The State presented its case through the testimony of thirteen witnesses, all but one of whom were paid professional informers. Among them were Matthew Cvetic and Louis F. Budenz, veteran media "stars" of many communist trials of the period.²⁷ One by one, the State used its witnesses to prove its first ground, that is, to tie the admittedly radical politics of the IWO officers to the actual policies of the IWO. Presenting themselves as ex-communists and former IWO members, many of the witnesses described the IWO as a "transmission belt for the Communist Party," established primarily as a recruiting tool for the latter organization. The State elicited testimony that the IWO, as an organization, supported the American Communist Party financially, and that literature of the American Communist Party was distributed at IWO functions. In essence, the State elicited testimony that Moscow guided the IWO's policies.

With the exception of J. Edgar Hoover, Professor Sabin reserves perhaps greatest opprobrium for the professional government witnesses, mostly low-ranking ex-communists whose highly suspect testimony was uncritically accepted by Judge Greenberg. These self-proclaimed experts on communism, under contract with the Justice Department, FBI or INS, did yeoman's work for government prosecutors. A caravan of such "kept witnesses" moved from trial to trial throughout the late 1940s and early 1950s, identifying individuals as Communists and testifying to general credulity about the operations of the American Communist Party.²⁸ As

27. Cvetic's life was lionized in the Hollywood film, *I WAS A COMMUNIST FOR THE FBI* (1951). In 1955, after entering a mental hospital, Cvetic's testimony was effectively challenged. Budenz, who was on the stand for two weeks in the *Dennis* case, shortly before his appearance at the IWO trial, was labeled a perjurer by fellow informer Harvey Matusow, in the autobiography recanting Matusow's own testimony in communist trials of the period. *HARVEY MARSHALL MATUSOW, FALSE WITNESS* 62 (1955). Budenz became notorious for falsely accusing many of being members of the Communist Party, including four officials of the Guggenheim Foundation, a number of beneficiaries of the Rockefeller Foundation, and Professor Linus Pauling, who referred to Budenz as a professional liar.

28. See generally Richard H. Rovere, *The Kept Witness, THE AMERICAN ESTABLISHMENT AND OTHER REPORTS, OPINIONS AND SPECULATIONS* 72 (1963); HER-

noted, all but one of the thirteen witnesses produced by the State were professional informers, supplied by the INS as veterans of prior Smith Act trials and agency deportation hearings. Most of the paid witnesses had no other source of employment. As Professor Sabin makes clear, it is well established that government-paid professional witnesses lied and that many were ultimately indicted for perjury. Three of the State's key witnesses in the IWO case were themselves subjects of later exposures, alleged to have lied at numerous trials in order to serve prosecutorial purposes.

Professor Sabin takes pains to distinguish the testimony of Red Scare witnesses from true expert testimony. Payment of the expert witness today is not contingent upon the results obtained in the case. What differentiates the professional government witnesses used in communist trials, such as the IWO case, is that their careers entirely depended upon their continued ability to make identifications and testify to subversive activities. In addition, these experts met none of the stringent standards now generally required for the certification of expert testimony. Yet, despite inconsistent and discredited testimony—including clear evidence in some cases of prior false accusations—mental instability and moral turpitude, courts were willing to accept unchallenged the testimony of such witnesses.

While the professional informers of the Red Scare trials may inspire distaste, it is clear that they were only tools to be wielded. Eager to exploit the informers were those who sought them out, coached them, hid their sordid pasts, rewarded them relative to the usefulness of their disclosures, and presented them as unassailable experts in the crusade against communism. Professor Sabin's and our greater reproach would seem better reserved for the unscrupulous prosecutors and their superiors, as well as for the suspiciously credulous judges.

IV. THE DEFENSE OF THE IWO

Once the State rested, Defense Counsel Weissman attempted to establish that IWO officers had never espoused radical political views on behalf of the IWO, but had done so only in their individual capacities. In addition, Weissman sought to emphasize the importance of the IWO's insurance programs to the IWO members. As a matter of law, Weissman ultimately argued that New York insurance law did not authorize liquidation of the IWO since "hazard" was intended by the legislature to protect policyholders from the risk of financial loss, not from perceived political danger. Having

BERT L. PACKER, *EX-COMMUNIST WITNESSES: FOUR STUDIES IN FACT FINDING* (1962) (evaluating the testimony of four ex-communist witnesses as it related to the fact finding process of the American legal system).

already discredited the State's witnesses during cross-examination, Weissman sought to recast the IWO in favorable terms.

Weissman depicted the IWO as a decentralized, democratic organization, committed to providing good, affordable insurance and fraternal opportunities for its members. He also elicited testimony showing that the IWO permitted extensive local autonomy to its Sections and lodges. One after another, top IWO officers testified about the Order's impeccable insurance practices and the multitude of fraternal activities offered. Witnesses such as Rockwell Kent did not dispute that the IWO agenda included political action, as well as social, cultural and athletic activities. He and others did not avoid expressing, as their personal beliefs, a perceived need for broader solutions to economic, social and racial problems, than could be provided by the immediate relief of IWO insurance benefits and fraternal activities. Top IWO leaders testified that, to the extent that they and IWO members had supported Communist Party-identified causes, they had done so on their own behalf, not on the behalf of the IWO. With the exception of Rockwell Kent, who denied membership in the Communist Party, all the other IWO witnesses who were asked the same question invoked the Fifth Amendment.

A. *The Red Scare Mentality*

As the IWO trial continued into the Spring of 1951, the press reflected mounting domestic and international tensions. Professor Sabin effectively recreates the growing paranoia of the times, punctuating his trial narrative with increasingly alarmist headlines from the New York daily papers. As reported, the world news was grim, with the Korean stalemate taking center stage. On the domestic end, the media was full of the latest accusations of subversion, from Reds in the White House, to Soviet-controlled homosexuals in the State Department.²⁹

Newspapers fed the public the latest details of the major court battles of the day, from the trial of the Rosenbergs, which had opened in another courtroom in Foley Square on March 6, 1951, to the *Dennis* and Alger Hiss cases on appeal. The developments in the IWO trial were also reported regularly, although the reports were almost completely one-sided. While the major New York newspapers promptly published the direct testimony of each of the

29. On the role of the national press during the Red Scare era, see CAUTE, *supra* note 4, at 446-55. National magazines helped feed the fear, suspicion and hysteria. The August 1948 issue of LOOK MAGAZINE, for example, included an article entitled *Could Reds Seize Detroit?*, which depicted masked subversives mowing-down telephone operators, radio announcers, and power station attendants, as well as blowing-up children on bridges. CEDRIC BELFRAGE, *THE AMERICAN INQUISITION: 1945-1960*, at 86 (1973).

thirteen State witnesses, no admission or revelation obtained from State witnesses on cross-examination was ever reported. Nor, with one exception, did the newspapers ever report the testimony of any IWO defense witness. The single exception was Rockwell Kent's denial of membership in the Communist Party. This, as well as countless other such examples, underscores the pervasive role played by the press in creating the popular Red Scare mentality of the early Fifties.

B. The Demise of the IWO

In the end, nothing short of disproving all communist connections by IWO officers could have defeated the State's case. Only after the defense rested and the parties filed supporting briefs did Judge Greenberg finally rule on the IWO's preliminary Motions to Dismiss. On June 21, 1951, the Judge issued his decision granting the State's request for dissolution of the IWO, but permitting a stay in the liquidation proceedings pending appeal. The Judge accepted the testimony of all of the State's witnesses without question and refused to sever the individual acts of officers from those of the IWO. As to the legal issues, Judge Greenberg construed statutory "hazard" to include "political hazard." He further determined that the IWO had exceeded its powers by abdicating control to the Communist Party, finding the "virus" infecting the organization so pervasive as to preclude rehabilitation.

The Appellate Division stretched the "hazard" concept even further to include "moral risk." The Court of Appeals, the state's highest court, predictably affirmed, concurring readily that the very financial strength of the IWO made liquidation imperative. Grasping at its final straw, the IWO petitioned the U.S. Supreme Court for a Writ of Certiorari, alleging violations of the freedoms of speech and assembly, as well as of the rights to property and political beliefs. Justices William O. Douglas and Hugo Black voted for granting the Writ; all other Justices voted to deny the Order's Petition. On December 15, 1953, the State of New York assumed control of the IWO and its assets.

Until the very end, the IWO held out hope that the liquidation order would be overturned, attempting to support its legal pleas with extensive letter writing campaigns and mass demonstrations in both Albany and Washington. Remarkably, the overwhelming majority of IWO members retained their memberships throughout the years of the trial and successive appeals. Indeed, 15,500 IWO members signed petitions to the U.S. Supreme Court asking for relief. Perhaps the greatest testament to their loyalty is the fact that the State was unable to obtain the testimony at trial of a single current member of the IWO.

V. THE IMPLICATIONS OF THE IWO TRIAL

What is the significance of the IWO case? Professor Sabin points out that, from a strictly precedential standpoint, its importance is close to nil. Indeed, in over forty years, the case has never been significantly cited in any subsequent insurance company litigation.³⁰ From a broader legal perspective, Professor Sabin notes throughout the text that the anachronistic nature of the IWO case is in itself important. No other American court has ever put an insurance company out of business because of its politics, and that is worth reflecting upon. The significance of the case to the tens of thousands of fraternal members whose vital organization was destroyed was most certainly keener, although steps were undertaken to protect their interests. A committee of IWO officers and policyholders continued to meet after the IWO's liquidation and ultimately succeeded in obtaining favorable insurance terms and conditions for members through a commercial company. The Continental Assurance Company in Chicago, Illinois, became the carrier and, to this day, maintains a separate IWO department. As Professor Sabin also recounts, IWO members frequently continued to associate after the liquidation, often forming clubs and carrying on some of the social, political, and educational functions of the Order.

It is even arguable that the anachronistic aspect of the IWO's destruction is significant only when viewing the details from closest range. In many ways, the IWO was not much different from any other group or individual accused of subversion, except that IWO members were neither imprisoned nor executed. After all, anti-communism insinuated itself into all aspects of mid 20th-century life. If Senator Joseph R. McCarthy could claim that the U.S. Army was infested with Reds,³¹ then insurance boardrooms certainly could not expect more delicate treatment. While it is true that the purveyors of anti-communism were generally friendlier to private property and corporate interests, the situation clearly got out of hand more than once.

One wishes, in fact, that Professor Sabin would say something about Joseph McCarthy, as the Senator is conspicuously absent from Professor Sabin's narrative. Although McCarthy was but one of many players on the Cold War stage and his haunts were primarily the hearing rooms and legislative halls, not courtrooms, his unstated presence somehow intrudes the narrative. One begins to recall the highlights of McCarthy's four years in the spotlight, and to place them in temporal relation to the events in the IWO case.

30. *In re International Workers Order*, 106 N.Y.S.2d 953 (N.Y. Sup. Ct. 1951), *aff'd*, 113 N.Y.S.2d 755 (N.Y. App. Div. 1952), *aff'd*, 112 N.E.2d 280 (N.Y. 1953).

31. FRIED, *supra* note 4, at 137.

McCarthy's career as America's most prominent anti-communist did play itself out during the entire period of the IWO liquidation proceedings, coming to its abrupt end in 1954, shortly after the IWO ceased to exist. The casts of characters crossed at least once. In the Spring of 1950, shortly before the IWO received the Haley Report and started down the long road to liquidation, McCarthy was using a future State witness in the IWO trial, Louis F. Budenz, to connect Owen Lattimore to the Communist Party.³²

Compared to the major communist trials and congressional hearings of the 1950s, the liquidation of an insurance company may seem on the legal fringes of Cold War events. However, Professor Sabin's thoughtful and scholarly work leaves us with the conviction that the destruction of the IWO was one of the powerful events that helped define the Red Scare years.

32. *Id.* at 126. Lattimore was a journalist and academic expert on Far Eastern policy, with loose ties to the U.S. State Department. *Id.*

