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"We Are At War And You Should Not Bother The President": The Suffrage Pickets and Freedom of Speech During World War I

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“We Are At War And You Should Not Bother The President”: The Suffrage Pickets and Freedom of Speech During World War I

Catherine J. Lanctot

Abstract

The story of Alice Paul’s National Woman’s Party and its 1917 picketing campaign onbehalf of woman suffrage is almost unknown in legal circles. Yet the suffrage pickets were among the earliest victims of the suppression of dissent that accompanied the entry of the United States into World War I. Nearly forty years before the modern civil rights movement brought the concept of nonviolent civil disobedience to the forefront of American political discourse, the NWP conducted a direct action campaign at the very doorstep of the President of the United States, and they did so during a time of war.

In the course of this campaign, Paul and her supporters learned to use the apparatus ofthe municipal courts and the prison system to focus attention on the powerlessness of women, while at the same time elevating their very real suffering to a kind of suffrage martyrdom. Their principal goal was to keep pressure on government officials so that the cause of woman suffrage would not be swept away in the wartime hysteria that gripped the nation in 1917. As the police regularly hauled them off to jail, however, the suffragists began to realize that their ability to pursue that goal hinged largely on the recognition of a constitutional right to free speech.

This Article represents the first step in recovering this forgotten story. I present, for the first time, a detailed narrative account of the legal battles of the suffrage pickets of 1917, beginning with the first round of arrests in late June, and concluding with their victory in the Court of Appeals in March 1918. Although the women themselves did not directly shape legal doctrine, the saga of the suffrage

pickets provides an excellent vehicle for examining the emergence of free speech consciousness during 1917. Bringing the story of the suffrage pickets to the attention of legal scholars may cause a significant reevaluation of the traditional narrative of First Amendment history.

"WE ARE AT WAR AND YOU SHOULD NOT BOTHER THE PRESIDENT": THE SUFFRAGE PICKETS AND FREEDOM OF SPEECH DURING WORLD WAR I

Catherine J. Lanctot[1]

"GOVERNMENTS DERIVE THEIR JUST POWER FROM THE CONSENT OF THE GOVERNED."
– Banner carried by suffrage pickets, July 4, 1917

"You know the times are abnormal now. We are at war, and you should not bother the President."
– Judge Alexander Mullowney, sentencing pickets to jail, July 6, 1917

I. The Story of the 1917 Picketing Campaign.

On November 7, 1917, suffrage leader Alice Paul lay quietly in a hospital bed in the jailhouse for the District of Columbia, having refused to eat for more than two days. The thirty-two year old Paul, one of the most notorious women in America, was the chairman of the National Woman's Party (NWP), a small and militant suffrage offshoot of the mainstream National American Woman Suffrage Association (NAWSA). Since early January, Paul had orchestrated an unprecedented campaign of picketing the White House as public protest against the failure of the Wilson Administration to support woman suffrage. Over time, the picketing campaign had transformed from a genteel demonstration for the vote into a full-scale legal battle with local police and Administration officials over the right to speak freely and to petition the government. By the fall of 1917, more than a hundred women had been arrested and imprisoned on charges of obstructing traffic and unlawful assembly, ostensibly because they attracted large and often hostile crowds to witness their demonstrations.

After months of overseeing the battle from NWP headquarters at Lafayette Square, Paul deliberately courted arrest in order to put the next phase of her campaign into operation. She defiantly informed a municipal court judge that she had no obligation to obey laws when she had no part in the making of them, and was sentenced to seven months in prison for picketing at the White House on October 22, 1917. Two weeks later, on November 5, Paul began a hunger strike at the District of Columbia Jail to protest the refusal of prison officials to grant her and her fellow suffrage inmates the status of "political prisoner." Panicked by the prospect of Paul's martyrdom while under their care, officials for the District Jail had called in noted psychiatrist William Alanson White, the head of St. Elizabeth's Hospital for the Insane, to evaluate her sanity, and to determine whether she should be fed by force.

Slight of build and soft-spoken, and raised in a prosperous Quaker household in

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[1] Professor of Law, Villanova University School of Law. Thanks to participants in workshops at Boston College School of Law and Villanova University School of Law. This article reflects a small part of my larger work in progress on Alice Paul and the legal strategies of the suffrage pickets.

Moorestown, New Jersey, Paul nevertheless was no stranger to prison. In fact, Paul abandoned a promising academic career, begun at Swarthmore and the University of Pennsylvania, soon after moving to London in 1907. She had been radicalized by the cause of woman suffrage, recently revitalized through the leadership of an extraordinary family of activists, Emmeline Pankhurst and her two daughters, Sylvia and Christabel, who founded the Women's Social and Political Union (WSPU) in 1903. By the time of Paul's arrival in England, the WSPU had become a galvanizing force for suffrage, introducing the concept of militant direct action – marching, leafletting, and heckling politicians -- to bring urgency to the demand that a recalcitrant Parliament give women the vote to which they were plainly entitled. Pankhurst's followers, pejoratively called "suffragettes" by the press, sought confrontation with the police to publicize their cause, and later adopted a policy of hunger striking in prison to strengthen their demands.[2]

Paul's career as a militant British suffragette culminated on November 9, 1909, when she was arrested for sneaking into the Lord Mayor's meeting in London, dressed as a charwoman, to heckle the Prime Minister on behalf of the cause. She was imprisoned, began a hunger strike, and was forcibly fed, a ghastly process that posed significant health risks to its victims.[3] Paul finally was released in December 1909, and returned to the United States as a fervently committed activist, who would devote nearly seven decades of her life almost exclusively to equal rights for women.

Paul hoped to turn her formidable energies to suffrage work upon her return, but NAWSA leadership still clung to a conservative strategy whose day had long since passed. The American suffrage movement had been born in militant action at the first Women's Rights Convention in Seneca Falls, New York in 1848, when simply naming a meeting a "Women's Rights Convention" was itself an act of defiance.[4] The cause of woman suffrage attracted women like Susan B. Anthony and Elizabeth Cady Stanton, who had been active reformers in the antislavery and temperance movements. Most suffragists willingly set aside suffrage work when

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[2] See generally Midge Mackenzie, Shoulder to Shoulder (1975) Although "suffragette" was quickly embraced by the militants in the WSPU, most American suffragists resisted the term "suffragette" as pejorative. The NWP's official newspaper was called The Suffragist and its members referred to themselves this way as well.

[3] An excellent biographical sketch of Paul appears in Jean Baker, Sisters: The Lives of America's Suffragists, at 196. Although Paul had been arrested multiple times in 1909 with little American fanfare, her final arrest in November 1909 made the front page of the New York Times. See N.Y.Times at 1 (Nov. 11, 1909). Paul gave an extensive interview to historian Amelia Fry in 1972, when she was well into her eighties. See Conversations With Alice Paul: Woman Suffrage and the Equal Rights Amendment, available online ("Paul Interview"). This lengthy oral history provides useful, if not entirely reliable, information about Paul's activities. She briefly discusses her British experiences at 50- 57.

[4] See generally Eleanor Flexner, Century of Struggle: The Woman's Rights Movement (revised edition 1975).

the Civil War began, believing that their war work would be rewarded with the vote.

Once the war was won, and momentum to amend the Constitution to protect the rights of newly-freed slaves began to build, Anthony and Stanton thought that the time was ripe to achieve both the goals of enfranchising blacks and women at the same time, but they would be bitterly disappointed. Abolitionists such as Frederick Douglass told suffrage leaders Anthony and Stanton that this was "the Negro's hour," and none of the three Civil War Amendments made any provision for granting women the right to vote. The cavalier way that even the most sympathetic male politicians had dismissed the woman suffrage issue enraged many suffragists, and precipitated a dramatic split over strategy and tactics in the national movement.

While more traditional suffrage leaders contented themselves with lobbying for the vote on a state-by-state basis, Anthony and Stanton pursued a federal constitutional amendment, often using militant tactics. Their most spectacular adventure was Susan B. Anthony's federal trial for intentionally casting an illegal ballot in the 1872 presidential election. Anthony was denied the right to testify on her own behalf because of her sex, and was tried before an all-male jury that was instructed by the presiding judge, Associate Supreme Court Justice Ward Hunt, to return a guilty verdict.[5]

Constant feuding between two rival suffrage organizations sapped energy and resources, and the national suffrage movement continued to founder even after both factions reunited as NAWSA in 1890. Indeed, by 1910, when Alice Paul joined NAWSA, the national suffrage movement seemed to be trapped in the "doldrums" of political irrelevancy.[6] For nearly forty years, most suffragists had focused on the largely futile strategy of lobbying male legislators to give women permission to vote in state elections, even though they lacked the two most critical tools of legislative persuasion: the financial power to command the attention of legislators, and the political power to threaten them. As of the fiftieth anniversary of the Seneca Falls convention in 1898, only four states - Wyoming, Utah, Colorado, and Idaho - had granted women the right to vote.

In November of 1912, NAWSA leadership appointed Alice Paul to head its moribund Congressional Committee, which quickly turned its attention to organizing a huge suffrage

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[5] See generally Rayne L. Hammond, Trial and Tribulation: The Story of United States v. Anthony, 48 Buffalo L. Rev. 981 (2000). For a detailed analysis of the constitutional theories developed by nineteenth century suffragists, see Adam Winkler, A Revolution Too Soon: Woman Suffragists and the "Living Constitution," 76 N.Y.U. L.Rev. 1456 (2001).

[6] Eleanor Flexner, Century of Struggle, at 256. More recent scholarship suggests that the suffrage movement was less moribund during this period than the traditional narrative might suggest. See Sara Hunter Graham, "The Suffrage Renaissance: A New Image for a New Century, 1896-1910," in Marjorie Spruill Wheeler, One Woman, One Vote: Rediscovering the Woman Suffrage Movement at 157-77 (1995).

parade to coincide with the arrival of the newly-elected President, Woodrow Wilson. On March 3, 1913, after two months of frenetic organization, five thousand women from all walks of life marched down Pennsylvania Avenue before as many as half a million spectators, stealing the spotlight from Wilson's impending inauguration. Although it began in splendor, the march soon degenerated into a near-riot. Police protection was scarce. By the time the afternoon was over, more than three hundred women had been injured, and the United States cavalry had been called in from nearby Fort Myer to restore order.[7]

Paul reconstituted her group as the Congressional Union (CU) for Woman Suffrage, which soon split from NAWSA, and drew on the energy generated by the 1913 parade to revive the issue of a federal constitutional amendment. NAWSA also had begun to gain traction, particularly in the Western states, under the skilled leadership of its new president, Carrie Chapman Catt.[8] Impatient with these efforts, Paul decided to mobilize her small but zealous troops to transform the 1916 national election into a referendum on woman suffrage. The CU organized itself as a new political party, the National Woman's Party (NWP), and campaigned vigorously against incumbent President Woodrow Wilson and his Democratic Party to punish them for recalcitrance on suffrage.

Despite those efforts, Wilson narrowly won re-election, but within weeks, Paul mobilized her organization to pursue a new and even more confrontational strategy – picketing the White House to demand Wilson's support for a woman suffrage amendment.[9] A hint of what was in the offing came in the middle of Wilson's State of the Union address on December 5, 1916. As Wilson delivered a plea for citizenship for Puerto Rican men, five NWP members leapt to their feet and unfurled a banner from the balcony with the slogan: "MR. PRESIDENT WHAT WILL YOU DO FOR WOMAN SUFFRAGE?" This would be the first time Wilson confronted what would be known in NWP circles as the "demand banner," but it would most certainly not be the last. The women were quickly spirited away, gleeful at the publicity they had won for the cause.[10]

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[7] See Doris Stevens, Jailed for Freedom: The Story of the Militant American Suffrage Movement 21-34 (1920). On the phenomenon of suffrage parades generally, see Lumsden, Rampant Women: Suffragists and the Right of Assembly 70-95 (1997). A more recent account is Barber, Marching On Washington: The Forging of an American Political Tradition 44-74 (2002).

[8] Most historians of the twentieth-century suffrage movement focus their attention on the split over strategies and tactics between Carrie Chapman Catt and Alice Paul, and reach different conclusions about their relative contributions to the ultimate suffrage victory. Those debates are beyond the scope of this article.

[9] Stevens, Jailed For Freedom, at 35-47.

[10] New York Times, December 6, 1916; Inez Haynes Irwin, Up Hill With Banners Flying at 184, 187 (1964); see Catherine Lanctot, "Stealing A President's Spotlight," Phil. Inq.. Feb. 9, 2006.

After extensive discussions within NWP ranks, on January 10, 1917, the first "silent sentinels" of the National Woman's Party appeared at the gates of the White House, carrying the demand banner, as well as the NWP battle cry "HOW LONG MUST WOMEN WAIT FOR LIBERTY?"[11] Wilson is said to have tipped his hat politely at the pickets when he drove through the White House gates.[12] Within a week, one Congressman proclaimed that if the pickets were men, they would already have been jailed, and describing them as an "insult to the President.[13] Although many in the press ridiculed their protest, the pickets were good copy, and soon became as much a tourist attraction as a political statement.[14]

Rapidly deteriorating relations with Germany increased pressure on Wilson to enter the bloody fray in Europe that had raged for nearly three years. Once the United States entered the bloody war in Europe in April, 1917, criticism of the President became dangerous, as the Wilson Administration quickly took steps to mobilize public opinion in favor of the war. At the beginning of American involvement in the war, few realized the fragility of the national consensus on free speech. The combination of patriotic fervor in support of entry into the European conflict, coupled with a systematic government propaganda campaign on an unparalleled scale, produced an atmosphere in which virtually any form of dissent was viewed as treason and anything less than full-throated support of Administration policies was seen as helping the Kaiser.

As one of the earliest examples of a sustained campaign of civil disobedience, the picket struggle had no legal blueprint to emulate. Beginning in late June 1917, and continuing well into the fall, the suffrage pickets found themselves at the center of increasingly violent confrontations with angry crowds and hostile law enforcement authorities. An inflammatory banner aimed at visiting Russian ambassadors infuriated much of official Washington, prompting the police to threaten to arrest the next set of pickets.[15] Paul quickly called their bluff

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[11] Linda Ford, Iron-Jawed Angels: The Suffrage Militancy of the National Woman's Party 1912-1920 (1991) at 123-25 The slogan had particular significance for the NWP, as these were said to have been the last public words uttered by its most colorful champion, Inez Milholland, who collapsed and died at the age of 33 while on a speaking tour during the 1916 campaign. Milholland, whose flamboyant life and passionate politics had made her a national symbol of the "New Woman" of the twentieth century, had become the NWP's most prominent suffrage martyr. For an excellent biography of Inez Milholland, see Linda J. Lumsden, Inez: The Life and Times of Inez Milholland (2005).

[12] Lumsden, Rampant Women at 119; NY Times, Jan 11, 1917

[13] Ford at 129.

[14] See Stevens at 63-79; Christine Lunardini, From Equal Suffrage To Equal Rights: Alice Paul and the National Woman's Party, 1910-1928 (1986) at 108; Ford at 128-29.

[15] Stevens at 92; Ford at 145; NY Times June 21, 1917 at 1

with a banner bearing the President's own words, reading: "WE SHALL FIGHT FOR THE THINGS WE HAVE ALWAYS HELD NEAREST OUR HEARTS, FOR DEMOCRACY, FOR THE RIGHT OF THOSE WHO SUBMIT TO AUTHORITY TO HAVE A VOICE IN THEIR OWN GOVERNMENT."[16] The pickets carrying this banner were arrested, and after a week of controversy and violence, six women were tried in the municipal court system known as Police Court, and sentenced to the District Jail.

Once the battle had been joined, it raged for the next six months. Undeterred by police threats, Paul's intrepid band of militants celebrated Independence Day by marching out under a banner quoting the Declaration of Independence: "GOVERNMENTS DERIVE THEIR JUST POWER FROM THE CONSENT OF THE GOVERNED."[17] Once again, the women met with verbal and physical assault from unruly onlookers, and once again they were arrested. The judge assigned to their cases seemed perplexed by their stubbornness, patiently lecturing the women on world conditions, and explaining: "We are at war, and you should not bother the President," before sending them to serve their sentence at the Occoquan Workhouse in Lorton, Virginia.

This strategy backfired badly in mid-July, 1917, with a firestorm of controversy over the incarceration of several socially prominent women and the intervention of liberal lawyers who previously had been allied with Wilson. These Bastille Day pickets were sent to the workhouse for banners bearing the French motto "LIBERTY, FRATERNITY, EQUALITY." Wealthy women serving time in a workhouse brought extensive media attention. Although Wilson, a supporter of states' rights, was at best a lukewarm supporter of suffrage, and personally offended by what he saw as the shrill and unfeminine protests of the pickets, he moved quickly to pardon the suffrage prisoners, hoping to bring an end to the picket saga. Like many men before and after him, however, Wilson underestimated the resolve and misunderstood the strategy of Alice Paul.

Struggling with public hostility and the defection of many supporters who were antagonized by her tactics, Paul's willingness to be provocative to keep attention on suffrage soon proved to be dangerous. In mid-August, the pickets carried the most infamous banner of the NWP's campaign, referring to the President as "Kaiser Wilson." Such harsh language in wartime touched off a wave of riots against the pickets, who were chased, assaulted, and in one instance, actually fired upon. Arrested suffrage pickets claimed unsuccessfully in court that they had a constitutional right to picket the White House, and were sent to the workhouse in droves.

The picketing campaign continued throughout September and October, with wave after wave of women arrested and sent to Occoquan, Virginia, a workhouse rife with unsanitary conditions and racial tensions between the middle-class white suffrage prisoners and the

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[16] See Inez Haynes Irwin, Up Hills With Banners Flying: The Story of the National Woman's Party (1921, reprinted 1964) at 217-18; Stevens at 94; NY Times, June 23, 1917; Wash. Post, June 23, 1917 at 4

[17] Picket Report July 4, 1917, Reel 45, National Woman's Party Papers (NWPP).

impoverished black women sent there on drug and prostitution charges. It became increasingly difficult to recruit women to join the protest, when they faced a certain and unpleasant jail sentence. With the NWP on the verge of collapse, and scrambling to find a legal strategy to preserve its picketing campaign in the face of relentless judicial hostility, a final dramatic step was necessary before the end of the congressional session. It was for this reason that Paul had marched out to the White House in late October, carrying a banner with President Wilson's own slogan for the Liberty Bonds campaign: "THE TIME HAS COME TO CONQUER OR SUBMIT. FOR US THERE CAN BE BUT ONE CHOICE. WE HAVE MADE IT." This is what had brought her to a cold hospital bed in the District Jail on November 5, at the point of near-starvation, not knowing that she was awaiting an examination that might result in her commitment to a psychiatric ward.

Within two weeks, the 1917 picket campaign would come to a sensational conclusion in federal district court. Held incommunicado in the "psychopathic ward" at the District Jail, Paul experienced the horrors of forcible feeding three times a day. At the same time, the last picket line of the campaign resulted in the arrests of forty-one women, including the wives of prominent Washington men, who were tried en masse and shipped off to the workhouse. The new prisoners intended to adopt Paul's strategy of demanding to be treated as political prisoners, but quickly found that the officials at Occoquan had no patience with the niceties of such theoretical discourse. An organized mob of prison guards and prisoners attacked and beat the prisoners and dragged them off to their cells, leaving one on the floor having a heart attack, and another chained to the bars over her head. Later known in the annals of the NWP as the "Night of Terror," the violence brought to bear against the women both terrified them and strengthened their resolve not to cooperate with prison authorities.

Once NWP lawyers managed to gain access to their clients, under court order, the shocking news of this brutality impelled them to head to federal court for habeas corpus relief. After a week of legal maneuvering, more than thirty haggard and sick suffrage prisoners marched into federal district court in Alexandria, Virginia, while their lawyers demanded that the practice of shipping prisoners from the District of Columbia to serve their sentences at a Virginia workhouse be enjoined. Obviously disturbed by the tale of abuse and intimidation, the district judge held on statutory grounds that the prisoners had improperly been sent to Virginia for offenses committed in the District of Columbia. That ruling, coupled with the increasingly dire state of health of the hunger-striking prisoners, convinced government officials to capitulate. On November 28, 1917, less than three weeks after Paul had begun her hunger strike, all suffrage pickets were released.

Less than three months later, in March 1918, the pickets won a resounding victory in the District of Columbia Court of Appeals, as their convictions were reversed on the grounds that prosecutors had never identified an unlawful purpose in their assembling to picket the White House. Although Paul's troops would sporadically continue their militant activities during the next two years, with occasional prison terms and hunger strikes, their efforts would be far overshadowed by the dramatic political struggle over adoption of the so-called Susan B. Anthony Amendment, finally sent to the states by Congress in June 1919. The adoption of the Nineteenth Amendment in August 1920 ended a seventy-two year struggle, and too soon the

efforts of the women who made that achievement possible were forgotten.

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The story of the National Woman's Party and its 1917 picketing campaign is almost unknown in legal circles.[18] The conventional narrative about the birth of modern freedom of speech jurisprudence tends to focus on the evolving thought processes of Oliver Wendell Holmes, Louis Brandeis, Learned Hand, and their male contemporaries as they grappled with the constitutional implications of dissent during wartime.[19] In some ways, Paul and her pickets have remained almost invisible to the legal academy because they did not have the foresight to generate a Supreme Court opinion as part of their campaign. The NWP's legal battles were fought in an obscure municipal court of the District of Columbia, not in the hallowed halls of the Supreme Court, and what little law they generated sidesteps the question of First Amendment rights.[20] In constitutional terms, it is as if they never existed.

The suffrage pickets deserve far better that this. Nearly forty years before the modern civil rights movement brought the concept of nonviolent civil disobedience to the forefront of American political discourse, the NWP conducted a direct action campaign at the very doorstep of the President of the United States. In the course of this campaign, Paul and her supporters learned to use the apparatus of the courts and the prison system to focus attention on the powerlessness of women, while at the same time elevating their very real suffering to a kind of suffrage martyrdom. Their principal goal was to keep pressure on government officials so that the cause of woman suffrage would not be swept away in the wartime hysteria that gripped the nation in 1917. As the police regularly hauled them off to jail, however, the suffragists began to realize that their ability to pursue that goal hinged largely on the recognition of a constitutional right to free speech. Many of the NWP defendants asserted constitutional claims during their police court trials, insisting that they had a right to stand peacefully outside the White House gates and petition the government for grievances. "We stand on the Bill of Rights," asserted NWP officer Anne Martin at her trial.

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[18] The three leading histories on Alice Paul and the NWP address some of the legal implications of the picket battles, but do not delve deeply into the litigation strategy, and do not trace the day-to-day evolution of the picket campaign. See Christine Lunardini, From Equal Suffrage to Equal Rights: Alice Paul and the National Woman's Party, 1910-1928 at 105-39 (1986); Linda G. Ford, Iron-Jawed Angels at 145-95 (1991); Linda J. Lumsden, Rampant Women: Suffragists and the Right of Free Assembly at 114-40 (1997). Lumsden's book is particularly useful in its focus on the pickets' assertion of constitutional rights. Doris Stevens, Jailed For Freedom (1920) and Inez Haynes Irwin, Up Hills With Banners Flying: The Story of The Woman's Party are invaluable because of their level of detail, but they are quite partisan in their analysis of the role of the suffrage militants in the overall campaign for the vote.

[19] See Bradley C. Bobertz, *The Brandeis Gambit: The Making of America's "First Freedom,"1909-1931*, 40 Wm. & Mary L. Rev. 557, 561 (1999).

[20] See generally Karin Mika, *Self Reflection Within the Academy: The Absence of Women in Constitutional Jurisprudence*, 9 Hastings Women's L. J. 273 (1998).

When NWP defendants claimed at their police court trials in 1917 that they had the constitutional right to speak freely, they echoed a theme that had begun to enter public consciousness in a number of different guises. Modern scholarship has shown that the question of free expression in a democratic society was already under substantial popular debate well before America's entry into World War I.[21] In the labor movement, the most aggressive purveyors of direct action campaigns were the radical Industrial Workers of the World (IWW), known as the "Wobblies." Their "free speech fights" were well-publicized at the time, and some IWW sympathizers, such as radical journalist John Reed and free speech advocate Amos Pinchot, were also early supporters of the NWP picket campaign.[22] Similarly, the emerging women's labor movement also pressed the issue of free speech, particularly during the "Uprising of the 20,000," a mass mobilization of female garment workers in 1909.[23] The courage of the young female strikers inspired many socially prominent women to join them on the picket lines in the so-called "mink brigade." Among them were future supporters of the NWP picket campaign, including its wealthy and flamboyant patron Alva Belmont and Philadelphia socialite Dora Lewis, who would later be forcibly fed with Alice Paul in the District Jail. Free speech questions also swirled around the birth control movement. Indeed, in January 1917, just as Alice Paul's pickets had begun their descent upon the White House, birth control advocate Margaret Sanger and her sister Ethel Byrnes were sentenced to thirty days in a New York workhouse for disseminating birth control information, prompting Byrnes to begin a hunger strike that received nationwide publicity.[24]

The rudimentary constitutional arguments asserted by the suffrage pickets, usually without legal representation, were made during very different times, against the backdrop of the entry of the United States into the war to end all wars. The rapid and seemingly unstoppable descent into suffocating censorship brought on by the war caught many liberals by surprise.

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[21] David Rabban's groundbreaking work focuses particularly on this concept, although he makes no mention of the suffrage protests in it. David Rabban, Free Speech In Its Forgotten Years at 77 (1997).

[22] See Rabban at 81-92; Bobertz, 40 Wm. and Mary at 566-67. The free speech struggles of the IWW have received extensive scholarly attention. See generally William Preston, Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933 (1963); Paul Murphy, World War I and the Origin of Civil Liberties in the United States (1979). A fuller exploration of linkages between the radical labor movement and the militant suffrage movement is beyond the scope of this introductory Article.

[23] See generally Flexner, Century of Struggle, at 248-55. A fuller exploration of linkages between the female labor movement and the militant suffrage movement is beyond the scope of this introductory Article.

[24] See generally Ellen Chesler, Woman of Valor: Margaret Sanger and the Birth Control Movement in America (1991).

Although many Wilson supporters threw their full weight behind the war effort, others found themselves increasingly disquieted by the government's efficient repression of all dissenting voices.[25] This suppression of dissent ran not only to those who seemed to oppose, or even to question, the government's war policies, but also to those, like the suffrage pickets, who criticized the President on other issues.

Concerns about wartime censorship prompted the creation of a new organization, the National Civil Liberties Bureau (NCLB), in the summer of 1917, which would later become the modern American Civil Liberties Union (ACLU) under the leadership of Roger Baldwin. The NCLB's other co-founder, attorney Crystal Eastman, was a committed suffragist and had been a colleague of Alice Paul on the original Congressional Committee.[26] As will be seen, although the NCLB did not intervene directly in the legal battles engulfing the pickets, there were many points of overlap between the emerging community of New York City civil libertarians and the Washington-based NWP.

The saga of the suffrage pickets provides an excellent vehicle for examining the emergence of consciousness about free speech during the early days of American involvement in World War I. But before we can restore the suffrage pickets to their rightful place in the broader historical narrative, we must know the story of their dramatic 1917 campaign . This Article is the first step in that process.

II. June 1917 – The First Arrests.

We pick up the story in June, 1917, when the suffrage pickets first became the targets of wartime repression of speech. By now, the suffrage picketing campaign had gone on for nearly six months, without significant incident. But June 1917 also saw a substantial increase in the federal government's effort to suppress dissent, in response to the national day of draft registration, June 5. Although the federal government's most immediate concern was with suppressing opposition to the draft, the first attempt at large-scale conscription since the Civil War, soon all contrary opinion about the war itself and the officials in charge of waging it became suspect as well. Upheaval over the draft, as well as the desire to generate unanimous support for the war effort, prompted Congress to pass the Espionage Act on June 15, 1917, putting in place a powerful weapon to suppress anyone who might pose even the slightest threat to the single-minded mobilization of American society to a wartime footing.[27]

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[25] See generally H.C. Peterson and Gilbert C. Fite, Opponents of War 1917-1918 (1957).

[26] See John Fabian Witt, Crystal Eastman and the International Beginnings of American Civil Liberties, 54 Duke L.J. 705 (2004).

[27] Geoffrey Stone's important work, Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism (2004), has an extensive discussion of the legislative struggles over the Espionage Act at 146-58.

The NWP had already decided to take no position with respect to the war, but also had refused to follow the example of Emmeline Pankhurst in Great Britain, who had announced in 1914 that the WSPU would abandon suffrage work for war work.[28] But now the picket campaign no longer seemed so innocent to many fervent supporters of Wilson's war policies. It was against this backdrop that the NWP's first confrontation with the police emerged.

With tension over the war increasing at all levels of American society, it is not entirely clear why the NWP leadership decided in late June to pursue a more confrontational picketing strategy, although there may have been concern that the war would cause the pickets to fade into irrelevancy. The immediate precipitant was a speech to the newly-formed Russian provisional government by Elihu Root, a close adviser of Wilson, in which he described the United States as a nation where "universal, direct, equal and secret suffrage obtained." Outraged by this statement, Paul and her supporters saw an opportunity to highlight Administration hypocrisy when Russian diplomats visited the White House in late June.[29]

On Wednesday, June 20, 1917, Lucy Burns and Dora Lewis carried what would be known as the "Russian Banner" to the White House. The banner challenged the Administration's assertion that the United States was a "democracy," announcing:

WE, THE WOMEN OF AMERICA TELL YOU THAT AMERICA IS NOT A DEMOCRACY.
TWENTY-MILLION AMERICAN WOMEN ARE DENIED THE RIGHT TO VOTE.
PRESIDENT WILSON IS THE CHIEF OPPONENT
OF THEIR NATIONAL ENFRANCHISEMENT.
HELP US MAKE THIS NATION REALLY FREE. TELL OUR GOVERNMENT IT MUST LIBERATE ITS
PEOPLE BEFORE IT CAN CLAIM FREE RUSSIA AS AN ALLY.[30]

Word had already gotten out before the picket began that there would be some kind of special protest, and so a fairly large crowd of several hundred onlookers, almost entirely male, had gathered at the White House gates.[31] One onlooker complained: "It's a shame that we have to give our sons to the service of this country and be confronted by such outrageous statements at the very White House gates." Other cries of "Why don't you take that banner to Berlin?" "It's treason!" and "You are helping Germany!" went up from the crowd. Suddenly two men stepped out of the crowd and attacked the offending banner, crying: "Come on, boys, let's tear

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[28] Ford at 130-31.

[29] Stevens at 9; Irwin at 215.

[30] Stevens at 92; Ford at 145-47; NY Times, June 21, 1917 at 1.

[31] Stevens at 92.; NY Times, June 21, 1917 at 1; Wash. Post, June 21, 1917 at 1, 2; Suffragist, June 30, 1917.

that thing down!" The "battle of the suffrage banner," mocked the Washington Post, "was one of the shortest in military annals. It lasted exactly seven minutes."[32] Despite the eruption of violence, the White House had apparently ordered that no arrests be made.[33]

The "Russian banner" ignited a firestorm of controversy, inflaming opponents and antagonizing many suffrage supporters. Many prominent Washingtonians, including members of Congress, considered the banners to be "reprehensible" and "unpatriotic," and mainstream suffragists also decried the protests as harmful to the cause.[34] Lucy Burns later explained that there was no intent to insult either Wilson or Root, but in a more candid moment, she admitted that the NWP felt a need to "hit people between the eyes with this message to get them to notice it at all."[35]

Law enforcement officials found themselves in a quandary about how to proceed against the pickets. They feared that arresting suffragists would play directly into Alice Paul's hands, by enabling her troops to pursue the British strategy of a hunger strike. That evening, Chief of Police Major Raymond Pullman warned Paul that it would be "'unwise' to attempt a repetition of the performance."[36] Paul retorted: "We have picketed for six months without interference. Has the law been changed?"[37]

Pullman's threats proved unavailing. The next day, Thursday, June 21, defiant NWP pickets returned to the White House with the Russian banner and other signs. The publicity had generated a far larger crowd than the day before, with estimates ranging from 2000 to 5000 largely hostile onlookers. Some boys almost immediately tore down the Russian banner

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[32] Wash. Post, June 21, 1917 at 1.

[33] Wash. Post, June 21, 1917 at 1, 2 ("Mr. Wilson would not say the word to cause the desired arrest.") ; NY Times, June 21, 1917.

[34] NY Times, June 21, 1917; Wash. Post, June 21, 1917 at 1, 2.

[35] Lucy Burns to Mrs. J. B. Rublee, August 20, 1917, Reel 47 NWPP ("Undoubtedly it was the opening words of the Russian banner which got it on the front page of every newspaper of the country, and thus carried the rest of the inscription to the people.").

[36] Wash. Post June 21, 1917 at 1, 2.

[37] Stevens at 93; Lunardini at 116. At this early stage of the picketing campaign, the NWP relied primarily on the Clayton Antitrust Act of 1914, a labor statute that was widely viewed as having legalized peaceful picketing by unions. Suffragist at 5 (June 30, 1917). In June 1917, however, there had been little judicial construction of its provisions, and the argument made little headway in police court proceedings.

without any interference by the police.[38] Even greater violence was to befall other pickets. NWP organizer Hazel Hunkins carried a banner reading simply: "DEMOCRACY SHOULD BEGIN AT HOME," and at first received a mixed reaction from the crowd. Suddenly an angry federal worker, Mrs. Dee W. Richardson, emerged from the group. She had spent the morning boasting to her co-workers that she intended to attack the pickets if they reappeared, and now saw her opportunity, exhorting the crowd: "I'll spit on those banners if you men will follow me," without success.

Not to be deterred, Richardson strode over to Hunkins and her colleague to tell them that they were committing a "treasonable act." She hurled one yellow banner to the ground, and "snapping the staff, trampled the suffragist emblem in the dust and returned afresh to the charge." She then "caught Miss Hunkins around the waist, got one hand on the banner, and dragged the Montana girl toward the sidewalk "[39] Richardson finally was thwarted when she was grabbed by a policewoman, "a large woman, who clutched her by the throat," and escorted from the scene. The attacker proudly explained her actions to the dozen reporters who surrounded her, announcing that she had "never shown the white feather. I will fight for my country and let no one stand in front of the White House with such treasonable sayings as have been printed on these banners. These women are a bunch of traitors. I'll tear down every flag they put up."[40] Eventually all the banners were taken down, and "for the first time in many months the White House gates were free of suffrage colors."[41]

Pressure on Paul and the NWP to stop the picketing intensified after this second day of unrest.[42] Although the reluctance to arrest the pickets stemmed from concern that arrests would

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[38] Wash. Post, June 22, 1917 at 1; NY Times, June 22, 1917 at 5; Ford at 148; Irwin at 215-16.

[39] NY Times, June 22, 1917; Wash. Post, June 22, 1917 at 5. A Billings, MT, newspaper also describes the incident. Reel 45 NWPP.

[40] Richardson was later released without charges. Wash. Post, June 22, 1917 at 5; NY Times, June 22, 1917; Irwin at 216. A Secret Service agent who witnessed Mrs. Richardson's "heroic" attack on Hazel Hunkins noted that the pickets demonstrated the "stoicism of martyrs," but concluded that they bore responsibility because "they cause the riots and it's bad publicity for the country." Ford at 148.

[41] WP June 22, 1917 at 5.

[42] Irwin at 217. A "prominent newspaper man" approached Paul to warn that the crowds surrounding the pickets endangered the President, as they might contain a potential assassin. One unnamed "official of the New York city government" provided advice to District officials on the front page of the Washington Post on how to handle the "picketing nuisance,"

"assist them in their efforts to pose as 'martyrs,'" officials nevertheless were unwilling to permit the disorder to continue. They began to debate their options, including declaring the area around the White House a military zone.[43] The unique nature of District of Columbia government made close cooperation between federal and local officials inevitable, as the three District Commissioners who ran the city were presidential appointees.[44]

District Commissioner Louis Brownlow was the principal architect of the developing law enforcement strategy. Brownlow had been an "ardent advocate" of suffrage, but he was deeply offended by the militancy of Alice Paul and the NWP.[45] He later recalled that "Mr. Wilson did not want them arrested, and I did not want to arrest them." But in his view, arrest became essential after April 1917, to "protect them from the mobs who resented the insulting inscriptions on their banners," and because they allegedly threatened "the use of firearms if we *did not* arrest them."[46] Brownlow dispatched Major Pullman to see Paul again, in a "startling conference," in which he ordered the picketing halted, and threatened arrest if the women continued to carry banners with "unpatriotic, if not seditious and treasonable, inscriptions."[47] "The period of leniency has passed," he said, after issuing this order."[48] Unmoved by his threats, Paul simply replied: 'The picketing will go on as usual.'"[49]

Although the NWP's official position was that the events of the past few days had been a great benefit to their cause, it is unlikely that the militants had fully anticipated the ferocity of

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recommending that they "[m]erely give orders that the sidewalks must be kept clear. Keep people moving along, including the pickets." WP June 22, 1917 at 1.

[43] Wash. Post, June 22, 1917 at 1; Stevens at 93.

[44] Under the Organic Act of 1878, the District of Columbia was a municipal corporation governed by three presidentially appointed commissioners. and a commissioner from the military corps of engineers. This form of government lasted until August 1967

[45] Louis Brownlow, A Passion for Anonymity (1958) at 74.

[46] Brownlow at 76. There is no record of such a threat ever having been made by the NWP. Writing forty years after the picket controversy, Brownlow remained convinced that Alice Paul, a product of "German schooling," had been unpatriotic, and that the rioting over the suffrage banners had given aid and comfort to the enemies abroad. Brownlow at 76-77.

[47] WP June 23, 1917 at 1; Phil. Evening Ledger, June 22, 1917, Reel 44 NWPP.

[48] Phil. Evening Ledger, June 22, 1917, Reel 44. NWPP .

[49] Irwin at 217.

the reaction against them. NAWSA quickly moved to disavow the pickets, as "unwise, unpatriotic, and most unprofitable to the cause of suffrage."[50] Letters began to stream into headquarters from friend and foe alike, complaining bitterly about the Russian banner specifically and the picketing generally. Ellen Spencer Mussey, the founding dean of the Washington College of Law, resigned her membership in the NWP, because she considered the Russian Banner "seditious and dangerous."[51] Other opponents attacked the pickets as **"**childish, undignified and very anti-American,"[52] "insane," [53] amounting to "no less than treason,"[54] and "disgraceful."[55] One scientifically-minded critic, a self-described student of "physiognomy," asserted that his study of the faces of the pickets convinced him that "[e]ither they are ashamed of their job, or – they are degenerates."[56] Even loyal party members fretted about the confrontational strategy.[57]

Undeterred by the uproar, Paul decided to press the police on their threats to arrest the pickets. On Friday, June 22, several pickets eluded the police officers who surrounded NWP headquarters and made their way to the White House. This time, however, instead of carrying the inflammatory Russian banner, the suffragists displayed a banner with a direct quotation from Wilson's acclaimed War Message to Congress:

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[50] NY Times, June 22, 1917 at 5. One NWP supporter wryly noted in private: "Mrs. Catt is much milder than usual in her criticism, quite like the parent who feels obliged to reprove the naughty truthtelling child, but who is rather pleased to have the child say what she could not say herself." Katharine R. F. to Mabel Vernon, June 22, 1917, Reel 44 NWPP.

[51] Ellen Spencer Mussey to Paul, June 22, 1917, Reel 44 NWPP

[52] N.C. Jennings to Alice Paul, June 21, 1917, Reel 44 NWPP.

[53] Frances Headlow to Alice Paul, June 21, 1917, Olympia, Washington, Reel 44 NWPP. ("unpatriotic, if not actually traitors to the country in this present crisis.")

[54] Cornelia W. Morton to Congressional Union, June 21, 1917, Reel 44 NWPP.

[55] Ellen C. Church to Congressional Union, June 21, 1917, Reel 44 NWPP.

[56] Mary M. Childs to the Evening Star, June 21, 1917, Reel 44 NWPP.

[57] Lillian M. Ascough to Alice Paul, June 21, 1917, Reel 44 NWPP. One New Yorker exclaimed: " WHO wrote that Russian banner? Not Miss Paul, was it? We fairly gasped when we read it. Was it meant to be deliberately provocative of trouble? OR did they fear that anything less accusatory would pass unnoticed? It was the limit! I figured that Lucy Burns must have written it with one of her red hairs!" Ethel Adamson to Abbie Scott Baker, June 23, 1917 Reel 44 NWPP.

WE SHALL FIGHT FOR THE THINGS WE HAVE ALWAYS HELD NEAREST OUR HEARTS, FOR DEMOCRACY, FOR THE RIGHT OF THOSE WHO SUBMIT TO AUTHORITY TO HAVE A VOICE IN THEIR OWN GOVERNMENT.[58]

The police were predictably puzzled by this banner. "My God, man, you can't arrest that," exclaimed one police officer. "Them's the President's own words."[59] Nevertheless, they soon ordered the women to surrender their banners. Paul's trusted lieutenant Lucy Burns retorted: "We don't intend to give it up. You have no right to take it. Our position is logical and constitutional and yours is illogical and unconstitutional."[60] The police arrested her and her colleague and took them to police headquarters.[61] It took some time for the police to decide what crime had been committed, but eventually the women were charged with blocking traffic and unlawful assemblage.[62]

The decision to use Wilson's own words on the suffrage banners caused consternation for law enforcement officials, but it is unclear whether Paul saw this maneuver as a potential First Amendment defense to criminal prosecution, or whether she simply saw this as another countermove in her chess game with the police.[63] After the arrests, Paul proclaimed: "If this be treason – displaying President Wilson's own words before the White House – let them make the most of it," as she indicated that "the picketing would cease for the time being until a test had been made of the present case."[64] That very week, the Washington Star had suggested that the NWP pickets should submit their banners to the Washington censor in advance for approval

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[58] Irwin at 217-18; Stevens at 94; NY Times, June 23, 1917; Wash. Post, June 23, 1917 at 4.

[59] Suffragist, June 30, 1917, at 7.

[60] Phil Even. Ledger, June 22, 1917, NWPP Reel 44; NY Times, June 23, 1917 at 9; Wash. Post, June 23, 1917 at 1.

[61] Irwin at 218; NY Times, June 23, 1917.

[62] Suff June 30, 1917; Stevens at 94-95. Lucy Burns argued: "Surely you consider the President's own words reasonable argument.." Wash. Post, June 23, 1917 at 1, 4; NY Times, June 23, 1917.

[63] One historian has suggested that this was "a shrewd move that probably helped the pickets escape prosecution under Federal espionage and sedition laws." Lumsden at __ . The Espionage Act had only been passed one week earlier, however, and it seems unlikely that Paul would have been concerned about federal prosecution for sedition and espionage in June 1917.

[64] Phila. Evening Ledger, June 22, 1917, Reel 44 NWPP.

before taking them to the White House.[65]

Pickets continued to be arrested all week, as the press fretted that the NWP was planning "some new form of desperation or deviltry – something even worse than displaying unpatriotic banners."[66] The police arrested twelve more women on Monday afternoon for "displaying propagandist banners without a police permit."[67] Their banner once again invoked the words of Woodrow Wilson himself:

> HOW LONG MUST WOMEN WAIT FOR LIBERTY?
> MR. PRESIDENT, YOU SAY "LIBERTY IS A FUNDAMENTAL DEMAND OF THE HUMAN SPIRIT."
> WE ADDRESS OUR DEMAND FOR THE BALLOT AT THIS TIME IN NO NARROW, CAPTIOUS, OR SELFISH SPIRIT, BUT FROM PUREST PATRIOTISM FOR THE HIGHEST GOOD OF EVERY CITIZEN FOR THE SAFETY OF THE REPUBLIC AND AS A GLORIOUS EXAMPLE TO THE NATIONS OF THE EARTH.[68]

This seemingly innocuous banner inspired the "patriotically irritated." crowd of "several thousand" to renewed outrage.[69] Once again, cries of "Tear the banners to pieces!" and "Traitors" emanated from the crowd, and a few of the banners were snatched by men in the crowd and flung over the railings of the White House grounds.[70] Nine more pickets went out on Wednesday and were arrested, although this time the police held them on $25 bail rather than releasing them on their own recognizance.[71]

Now that so many suffragists had been arrested, District officials worried about whether "the coveted goal" of a hunger strike was about to begin, and struggled to find a legal strategy that would punish the pickets without giving them the opportunity to pursue this dreaded tactic

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[65] Suffragist, June 30, 1917, at 10.

[66] Wash. Post, June 24, 1917 at 2.

[67] NY Times, June 26, 1917 at 12; Wash. Post, June 26, 1917 at 1("inciting unlawful assemblage."). See Record of Pickets Arrests, June 23, 1917, Reel 44 NWPP.

[68] Irwin at 227.

[69] Wash. Post, June 26, 1917 at 1, 4.

[70] NY Times, June 26, 1917, at 12. In contrast, the Washington Post described a "law abiding crowd," and did not mention destruction of banners." Wash. Post, June 26, 1917 at 1.

[71] Wash. Post, June 27, 1917 at 1; NY Times, June 27, 1917 at 7.

of the British suffragettes. One congressman introduced a bill into the House of Representatives, to extend to all government property the law criminalizing the display of banners on the Capitol grounds 'designed or adapted to bring into public notice any party or organization or movement therein.'"[72] On the eve of trial, the Washington Post editorialized that the President should not be "embarrassed" by such matters "while he is engaged in severe toil, planing to defend the nation and organizing for victory."[73]

The culmination of this first round of arrests came on Wednesday, June 27, with the trial of six suffrage pickets in the Police Court for the District of Columbia, on the charge of obstructing the sidewalks.[74] Judge Alexander Mullowney, a former Assistant United States Attorney, had been assigned to the cases. As had been predicted, the suffragists declined to be represented by counsel, appointing two of their number to speak for the group.[75] Prosecutor Ringgold Hart argued that the pickets had obstructed the streets with their banners, analogizing the situation to a recent incident in Indiana, in which socialists carrying the "red flag" had caused "patriots" to riot. In response, suffragist Mabel Vernon, a former classmate of Alice Paul at Swarthmore, made a dramatic demand that the banners seized from the pickets be displayed in court. The suffrage pickets insisted that the source of the obstruction of the sidewalks had been the crowds of onlookers, who never would have posed a problem but for the actions of the police.

Judge Mullowney quickly found all the defendants guilty of obstructing the highways, in a "typical police court travesty."[76] Mullowney earnestly told the pickets that it would be a "nice spectacle" if everyone with a grievance descended upon the White House, and that he was taking judicial notice of the fact that some people "just as sincere as you ladies . . . believe you ladies ought not to have the vote." In an apparent nod to the question of free speech, the judge asserted: " The principle of your advocation of your political views must give in to the general rights of the public," and insisted that the pickets had been "the proximate cause of this idle

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[72] Wash. Post, June 26, 1917 at 1.

[73] Wash. Post, June 26, 1917 at 6.

[74] Ford at 149; Irwin at 228.

[75] Suffragist at 5 (July 7, 1917). Defendant Mabel Vernon later recalled that the decision not to have counsel was deliberate, because "[w]e didn't want it to be legal. We wanted to make a suffrage speech." Interview with Mabel Vernon, Suffragists Oral History Project, p. 75, online.

[76] Irwin at 228; Suffragist, July 7, 1917 at 4-5.

curious crowd" and thus must "take the consequences."[77] Somewhat offhandedly, Mullowney added: "If you had kept on moving, you would be all right.[78] The judge offered to parole the women if they promised to obey the law in the future, but they refused. He sentenced them each to a fine of twenty five dollars or three days in jail. The suffragists immediately opted for jail, proclaiming: " To pay a fine would be an admission of guilt. We are innocent."[79]

For the first time in the long history of the American suffrage movement, suffrage activists now found themselves in prison for the cause. Officials at the District Jail were uncertain of how to handle this new kind of prisoner, and seemed to bend over backward to accommodate them, in stark contrast with what future prisoners would later encounter. The women took advantage of their imprisonment by holding a "song service and suffrage meeting" for the other inmates at the jail.[80] On their first full day of imprisonment, Thursday, June 28, the six suffrage prisoners were permitted to hold an "impromptu reception," and their friends and colleagues "thronged the matron's room at the jail."

Amid much publicity, on Friday, June 29, District officials released all six suffrage prisoners, and the NWP gave them a breakfast in their honor, just as the British suffragettes had done for their returning heroes.[81] At the breakfast, one feisty prisoner, Annie Arniel, announced: "We didn't go [to jail] for fun . . . we are standing for liberty, if we must lose every drop of blood for it."[82] The battle was far from over. Ominously, the press reported that "[t]he police say they will prevent further picketing by more arrests, and the suffragists threaten to picket as fast as the police can arrest them."[83]

III. July - The Independence Day Protests.

Despite increasing hostility to all forms of dissent, Alice Paul would not be stopped. As Independence Day, 1917, approached, Paul began to organize another picket demonstration,

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[77] Suffragist July 7, 1917 at 5.

[78] Irwin at 228.

[79] Stevens at 95; Wash. Post, June 28, 1917 at 1; NY Times, June 28, 1917 ("Militants Get 3 Days; Lack Time to Starve").

[80] NY Times, June 28, 1917, at 6.

[81]. NY Times, June 29, 1917 at 7.

[82] Ford at 149.

[83] NY Times, June 29, 1917 at 7.

designed to capitalize on the symbolism of the holiday.[84] The preparations for the Independence Day protests came amid escalating national tension over the question of dissent during wartime. Since the passage of the Espionage Act, Postmaster General Albert Burleson had moved swiftly to revoke mailing privileges for literature he deemed to be harmful to the war effort. A number of prominent liberals now worried about the apparent deterioration of protection for free speech.

On Monday, July 2, attorneys Roger Baldwin and Crystal Eastman announced the formation of a new organization called the National Civil Liberties Bureau (NCLB), the forerunner of the modern American Civil Liberties Union, "an agency to protect the rights of free speech, free press, free assembly, and liberty of conscience," whose purpose would be "to give legal aid and advice through attorneys and committees of citizens in all parts of the United States to persons whose rights are invaded under pressure of war.[85] The new organization struck many as dangerous and unpatriotic. Indeed, the New York Times celebrated Independence Day by publishing a fiery editorial against the NCLB, thundering: "Jails are waiting for them."[86]

On Wednesday, July 4, a typically hot and humid Washington summer day, Paul made good her promise to send more pickets to the White House, where they were met by a mob of "several thousand."[87] This time, rather than carrying the much-maligned "Russian banner," or a quotation from a presidential address, the lead pickets instead displayed a banner containing the well-known quote from the Declaration of Independence: "GOVERNMENTS DERIVE THEIR JUST POWER FROM THE CONSENT OF THE GOVERNED."[88] In an attempt to test Judge Mullowney's suggestion that they would have been "all right" if they had "kept on moving," the suffragists tried to continue their procession.[89]

Unmoved by the display of Thomas Jefferson's famous words, hecklers trumpeted their disapproval, with cries of "Send them over to the Kaiser," "They are idiots," and "They ought

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[84] Wash. Post, July 2, 1917 at 3; see Telegram, Paul to Mrs. Nelson Whittemore, July 2, 1917, Reel 45 NWPP.

[85] NY Times, July 3, 1917 at 5. For the early history of the ACLU, see generally Samuel Walker, In Defense of Civil Liberties: A History of the ACLU (Oxford 1990); Paul Murphy, World War I and the Origin of Civil Liberties (1979). For a biographical sketch of Crystal Eastman, see John Fabian Witt, 54 Duke L.J. 705 (2004).

[86] Murphy at 155 n. 38; Walker, ACLU, at 11.

[87] Unsigned letter to Mildred Gilbert, July 4, 1917 , Reel 45 NWPP; Wash. P. July 5, 1917 at 1.

[88] Picket Report, July 4, 1917, Reel 45 NWPP.

[89] Irwin at 229; Wash. Post, July 5, 1917, at 1; see Statement of Mrs. Helena Hill Weed, July 4, 1917,Reel 45 NWP;. Statement of Mrs. Abby Scott Baker, July 4, 1917, Reel 45 NWPP.

to be sent up for life."[90] Once again, the confrontation between pickets and onlookers erupted in violence. A notorious British suffragette, Kitty Marion, found herself in a fistfight with a man who tried to interfere with her distribution of suffrage literature during the march, reportedly delivering "uppercuts and other fancy blows with the precision and force of a professional pugilist" during a "knock down and drag out" fight.[91] Thirteen women, and two of their male assailants, were arrested at the end of the melee, characterized by the Washington Post as a "riot," but by the New York Times as a "comedy riot."[92]

After refusing to post bail and spending the night in the District Jail, ten suffragists marched into Judge Mullowney's courtroom on Thursday, July 5, to be tried on charges of unlawful assemblage and disorderly conduct. They once again rejected the offer of counsel, as Helena Hunt Weed, the daughter of a Connecticut congressman, explained: "[W]e think we understand our case better than any counsel could."[93] Once again, prosecutor Ringgold Hart called multiple witnesses to testify "that the militants were attracting a crowd and indulging in disorderly conduct." Weed "acted as chief cross-examiner," and "apparently gave the officers several unpleasant moments." Weed explained that she "was engaged in the peaceful and patriotic act of celebrating the Fourth, just as thousands of other citizens were, when she was stopped by the police."[94] The women again argued that any disturbance had been caused by unruly onlookers hoping to see a clash between suffragists and police.[95] But this time the defendants also blamed Judge Mullowney for telling them that they could protest lawfully as long as they kept moving.[96] As Mabel Vernon had done in the prior picket trial, Weed insisted that the torn banner be displayed in court.[97]

Frustrated by the unorthodox defense of these pro se defendants, the prosecutor pleaded with the court that the "women with their small knowledge of law were not confining themselves

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[90] Wash. Post, July 5, 1917, at 1; NY Times, July 5, 1917.

[91] Wash Post, July 5, 1917 at 1.

[92] Wash. Post, July 5, 1917 at 1; NYT July 5, 1917; Irwin at 22-30.

[93] Wash. Post, July 6, 1917 at 2, 6; Suffragist at 4, July 14, 1917.

[94] Wash. Post, July 6, 1917 at 2; New York Times, July 6, 1917 at 7.

[95] Wash. Post, July 6, 1917 at 2; Irwin at 230.

[96] Irwin at 230; Suffragist July 14, 1917 at 4:

[97] "At first she demanded that it be pinned on the curtain behind the bench, but the judge compromised with her by having it draped over the front of the bench, in view of the audience." Wash. Post, July 6, 1917 at 2; Irwin at 230.

to the point at issue."[98] Indeed, as Weed cross-examined the police officers, she told Judge Mullowny that "I am not a lawyer, and am not certain as to what I may properly ask," to which the judge replied: "You are doing a whole lot better than most lawyers."[99] In her summation, Lucy Burns explicitly asserted that the pickets were being punished for "the purpose of suppressing our appeal to the President of the United States, and not for the purpose of accusing us of violating the police regulations regarding traffic in the District of Columbia."[100] The normally unsympathetic Washington Post admitted that the women had "more than [held] their own at their trial."[101]

Judge Mullowney was unmoved. The next day, Friday, July 6, he found them all guilty, although his lecture from the bench suggests that he was less than comfortable with the choice presented to him. "I don't ask you to stop marching entirely," he explained. "I only ask you to keep away from the White House. You know the times are abnormal now. We are at war, and you should not bother the President."[102]

The defendants smiled and shook their heads at the judge, who even offered to advance them the money for their fines. In the friendly spirit that permeated the courtroom during sentencing, Helena Weed strolled up to the bench after sentencing to ask Judge Mullowney whether she could have permission to continue her knitting for the Red Cross while she was in jail, to which he cheerily assented.[103] Then the ten suffrage prisoners, "heads held high and smiling cheerfully," headed off to jail, singing in the prison van.[104] Quoting the Declaration of

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[98] Suffragist, July 14, 1917 at 4.

[99] Wash. Post, July 6, 1917 at 2; NY Times, July 6, 1917 at 7.

[100] Irwin at 231-32 (reproducing argument in full).

[101] Wash. Post, July 6, 1917 at 2. Ford at 149-50

[102] Wash. Post, July 7, 1917 at 2.

[103] Wash. Post, July 7, 1917 at 2. Equal time was now given to two men who had been convicted of seizing and tearing the suffragist banners, who were "soundly lectured" for committing an "unmanly, undignified act." Each was fined $25. In a gesture as "good Samaritan," Weed took matters into her own hands, offering to pay the fine for each of them. One, a sailor, quickly accepted her offer. Id.

[104] Id. The remaining two suffrage defendants, Hazel Hunkins and Kitty Marion, avoided the same fate at their trials the next day, as the prosecutor "intimate[d] that it makes his heart ache to prosecute the militants." Wash. Post, July 8, 1917 at 2. Hunkins later suggested that her release was not due to the tender sympathies of the prosecutor, but rather because of the surprise appearance in the courtroom of the pro-suffrage Senator from her state, Thomas J.

Independence in public had proven to be a criminal act.[105] The ten suffrage prisoners spent an uneventful weekend in jail, and were released on Sunday, July 8, "singing "'America' and other songs, accompanied by Warden Zinkham himself at the piano."[106]

IV. July - The Bastille Day Protest.

Despite the arrests, morale remained high within the NWP. But Alice Paul had become desperately ill, diagnosed with Bright's disease, an often-fatal condition for which there was little effective treatment. Working up to the last minute, Paul was taken to Baltimore for emergency medical treatment around Monday, July 9, with great concern about whether she would ever return.[107] For the next month, NWP activities would be overseen by Lucy Burns and other organizers, with limited direct input from Paul until her eventual return on August 11.[108] Even without its redoubtable leader, the NWP continued with plans for a picket on Bastille Day, July 14.[109]

Walsh of Montana, that resulted in an "awful change in their attitude." Unsigned, but likely Hunkins to Mildred [Gilbert], July 12, 1917, Reel 45 NWPP.

[105] Ironically, on that same date, a protester named Harry Aurin received ninety days in a New York workhouse for distributing passages from the Declaration of Independence and the Thirteenth Amendment to the audience at a patriotic rally. The magistrate declared that these excerpts "give an entirely wrong impression of what the Declaration of Independence is intended to be," and that the circular was "for the sole purpose of inciting those who already disagree with the course of the Government in its relation to the war now existing." He also chided Aurin that he had probably been advised by "astute counsel" "that if a section of the Declaration of Independence were printed no harm could come to you . You have found that that is not so." NY Times, July 7, 1917. Somewhat surprisingly, on July 17, 1917, New York Supreme Court Justice Hendrick freed Aurin on habeas corpus, explaining: "Every one in this country has the right to criticize the Government and the laws that exist, and has the right to agitate for the repeal of a law so long as those acts are not accompanied by violence or statements which night be interpreted as inciting other people to break the law." NY Times, July 18, 1917.

[106] Wash. Post, July 9, 1917 at 2.

[107] A number of letters address Paul's illness. See, e.g., Hazel Hunkins to Anna Constable, July 9, 1917, Reel 45 NWPP; Letter to Mrs. Vaughn ; July 9, 1917, Reel 45 NWPP. Paul's constitution was far hardier than it appeared; she would live another sixty years, surviving almost to her ninety-second birthday.

[108] Irwin at 232; Hazel Hunkins to Sarah C. Grant, July 23, 1917, Reel 46 NWPP.

[109] Recruitment of women to be arrested for suffrage was already proving to be difficult. One erstwhile picket worried: "I think I can stand a week all right, but I should think twice

The paths of the militant suffragists in Washington and the advocates of free speech in New York were about to converge. The newly organized NCLB held a luncheon meeting in New York City on Friday, July 13, chaired by Progressive Party activist Amos Pinchot, to protest censorship by Postmaster General Albert Burleson. Among the publications Burleson had recently excluded from the mail was *The Masses*, edited by liberal activist Max Eastman. Eastman immediately took the government to court, and that very day United States District Judge Learned Hand had granted an order to show cause why Burleson should not be enjoined. Eastman told his audience that "as men had been put in jail for quoting the Declaration of Independence and the Bible, some one would be given a life sentence for quoting President Wilson in the wrong connection." In fact, he quipped: "You can't even collect your thoughts without being arrested for unlawful assemblage."[110]

The NCLB luncheon featured an array of prominent progressives and free speech activists, many of whom had been only recently converted to the cause of civil liberties by the high-handed tactics of Administration officials like Burleson. Among them were two high-ranking federal officials with direct ties to the militant suffragists in Washington. One official was Frederic Howe, the federal Commissioner of Immigration, a progressive activist and strong supporter of President Wilson, who had become increasingly disillusioned over what he considered to be wholesale abrogations of civil liberties [111] His wife, Marie Jenney Howe, was an ardent feminist who had recently spoken at the NWP welcome breakfast for the July 4 suffrage prisoners. [112]

More significant was the presence of Dudley Field Malone, holder of the most powerful federal position in New York , the Collector of Customs, a position described as " the political representative of the national administration in New York City."[113] At age thirty-seven, Malone was a close confidante of President Wilson who had contributed significantly to Wilson's narrow

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about doing it if there is any strong probability of a longer sentence, merely because lack of air, food and sleep (for I don't suppose I should eat or sleep much) might affect my health, and I can't invoke my father in expenses for 'repairs.'" Katharine Fisher to Mabel Vernon, July 11, 1917, Reel 45 NWPP. Two months later, Fisher was arrested on the picket line and sentenced to thirty days in the Occoquan workhouse. Stevens at 359.

[110] NY Times, July 14, 1917 at 6.

[111] See generally Frederic Howe, Confessions of a Reformer.

[112] Marie Jenney Howe was the founder of Heterodoxy, an association of progressive and radical women. A number of members of Heterodoxy ended up in prison for suffrage picketing in 1917, although Howe was not among them. See generally Judith Schwarz, Radical Feminists of Heterodoxy: Greenwich Village 1912-1940 (rev. ed. 1986).

[113] NY Times, Nov. 11, 1913 at p. 6.

re-election victory by spearheading his successful campaign in California. Well-known for his skills as an orator, Malone was about to become the central Administration figure in the impending picket uproar.

Malone found himself troubled by press censorship, but he tempered his remarks at the NCLB lunch, noting mildly: "I don't think there is a Postmaster in the country competent to decide what magazine shall go through the mails, and I do not think that the suppression without sufficient reason of any periodical is a contribution to the country's welfare."[114] Several members of the NCLB were scheduled to meet with Postmaster Burleson on the following Monday, July 16, and a number of the men present at the Friday luncheon, including Dudley Field Malone, traveled to Washington, D.C.

On Saturday, July 14, a large crowd gathered along the regular route of the suffrage pickets to watch the expected arrests, with the suffrage pickets "ready for the worst."[115] The NWP had devised two new twists in the picket strategy. First, the party had recruited women of social or political prominence to lead the pickets, a strategy that had often been successful in the British campaign. Second, the banners contained nothing more inflammatory than the French motto "LIBERTY, FRATERNITY, EQUALITY," and the traditional demands to Wilson to take action on the suffrage issue.[116] No doubt aware that roughing up wealthy society women could have serious political ramifications, the police were exquisitely courteous as they arrested the pickets, as the police captain "would remove his cap, bow, and quietly advise [each woman] of the law against such assemblage."[117] Apparently assuming that the NWP would have preferred a riot, the press reports agreed that the demonstration had been a "fiasco"[118] and a "failure,"[119] although one report conceded that there would still be substantial publicity value from the demonstration.[120] The women were released from the District jail on bond later that day, with their trial set for Monday, July 16.

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[114] NY Times, July 14, 1917.

[115] [Hazel] Hunkins to [Beulah] Amidon, July 14, 1917 Reel 45 NWPP.

[116] Suffragist of July 21, 1917 at 7-8.

[117] NY Times, July 15, 1917 at 13; Irwin at 233. There were no physical attacks from the crowd, which "applauded or jeered good-naturedly, made no attempt to seize the banners, and quietly moved away after the arrests had been made." Record of Picket Arrests, July 14, 1917 NWPP Reel 45.

[118] Wash. Post, July 15, 1917 at 1.

[119] NY Times, July 15, 1917 p. 15.

[120] Wash. Post, July 15, 1917 at 1.

The NWP spent Sunday considering how to pursue a defense in what was likely to be a hostile courtroom. One of the defendants was long-time NWP organizer Doris Stevens, a twenty-nine year old Nebraska native with a penchant for the unconventional.[121] The involvement of Doris Stevens in the weekend demonstration would escalate the simmering conflict between the pickets and the Wilson Administration. Unknown to most of her colleagues at the NWP, Doris Stevens had been carrying on a passionate and secret love affair with Dudley Field Malone for over a year at the time of her arrest.[122] Perhaps not coincidentally, Malone had attended the Bastille Day demonstration and was predictably outraged by the police response, visiting District Commissioner Louis Brownlow to complain with "a protest loud and long."[123]

That Sunday, Stevens had tea at the Chevy Chase Country Club with Malone, who introduced her to United States Attorney General Thomas Gregory. No fan of either woman suffrage or free speech, Gregory commented to Malone that he had heard that he had been "mixed up" with the suffrage pickets the day before, and then said that if he were a policeman, " I'd just take a hose out with me and when the women came out with their banners, why I'd just squirt the hose on them . . . If you can just make what a woman does look ridiculous, you can sure kill it." Gregory was apparently taken aback by the lack of enthusiasm Stevens and her companion showed for his practical suggestion, and upon being informed that Stevens had been one of the pickets arrested the day before, he fled the scene "gurgling."[124]

On Monday morning, July 16, spectators crowded into Judge Mullowney's courtroom to watch the spectacle of the largest picket trial to date.[125] Among the onlookers in the packed courtroom were four lawyers who had been present at the Friday luncheon of the NCLB: Dudley Field Malone, Frank Walsh, Frederic Howe, and Amos Pinchot. Malone was not the only lawyer with a personal interest in the trial. Frank Walsh, a Progressive labor lawyer best-known at the time for having chaired the influential Commission on Industrial Relations, also

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[121] See generally Leila J. Rupp, "Feminism and the Sexual Revolution in the Early Twentieth Century: The Case of Doris Stevens," 2 Feminist Studies 15 (1989).

[122] Stevens had met Malone in June 1916. Malone was a married man, whose father-in-law was one of the most powerful members of Tammany Hall, but he quickly embarked on an affair with Stevens, writing emotional letters to her about the "'critical and bad' situation at home, promising that he had not had a single drink and that he was spending his evenings 'stag,' and pledging his devotion to the 'love of my heart.'" Rupp at 294, n. 16.

[123] Brownlow describes Malone as a "friend" of Doris Stevens in his autobiography. Brownlow at 78.

[124] Stevens at 116-17. Stevens does not identify her companion, but Malone later made reference to the incident in a speech. See NY Times, Dec. 10, 1917 at 13.

[125] Record of Picket Arrests, July 14, 1917, NWPP Reel 45 .

had a personal tie to the proceedings through Doris Stevens; he had been involved in an affair with her when she left him for Malone.[126] Less intimately connected to the proceedings were Commissioner of Immigration Howe, connected to the NWP through his formidable wife, Marie, and Amos Pinchot, whose wife apparently was a member.[127] Other well-connected supporters of the women in the dock sat anxiously in the crowded courtroom. J. A. H. Hopkins, Wilson's 1916 campaign coordinator for New Jersey, was present to support his wife, Alison, who had been among the first pickets arrested on Saturday. Gilson Gardner, a lawyer and well-known newspaper columnist, watched as his wife Matilda marched into the courtroom with the other prisoners.

Tension ran high as prosecutor Ringgold Hart began the procession of police witnesses to testify with "a unanimity that was machine-like," about the "the dense crowds which had to be cleared."[128] Acting as counsel, Doris Stevens cross-examined Police Captain Flather, who testified that "he did not have a sufficient number of policemen on hand to disperse the crowd, and that in his opinion the whole Police Department could not have driven the crowd away."[129] To the surprise of many in the audience, Dudley Field Malone now took the stand for the defense. Under questioning from Stevens, his secret paramour and future wife, Malone told Judge Mullowney that he had witnessed the demonstration, and that "any policeman in the country could disperse a small crowd without any trouble."[130] Mullowney "squirmed on the bench," muttering: "You are from New York," under his breath, and asked Malone whether he himself could have dispersed the crowd. When Malone answered: "Surely," Mullowney irritably asked him: "Well, then, do you want a job on the Washington police force?" The New York Times reported: "Mr. Malone smilingly declined. He had a better job now, he said."[131] Despite the drama, the trial recessed for the day without a verdict.

Anticipating more spectacle, crowds again flocked to police court on Tuesday, July 17. Although Judge Mullowney disliked the political theatrics regularly staged by the NWP in his courtroom, he permitted each of the defendants to speak on her own behalf before he entered a

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[126] Rupp, "Feminism," at 294.

[127] Irwin at 147.

[128] Descriptions of the trial come from The Suffragist of July 21, 1917 at 7 and the New York Times of July 17, 1917 at 9. Doris Stevens describes the trial in great detail in Jailed for Freedom, but her account does not mention the participation of Dudley Field Malone, possibly in an attempt to conceal her personal involvement with him.

[129] NYT July 17, 1917 at 9.

[130] NYT July 17, 1917 at 9; Suffragist at 8 (July 21, 1917).

[131] NYT July 17, 1917 at 9.

verdict. The predictable result was a two hour session of "stormy"suffrage speeches that all but overwhelmed the trial itself.[132] The suffragists "argued with the court, said the trial was a farce, and charged that the Wilson Administration was behind the prosecutions." As the prosecutor vehemently objected, Judge Mullowny threatened to clear the courtroom because of "outbursts from the women defendants which bordered on contempt of court," in what was "by far the liveliest session the police court has seen in many a day."[133]

The theme of freedom of speech explicitly came to the forefront in many of the speeches, as the pickets insisted that their constitutional rights were under attack by the police campaign against them. NWP Vice President Anne Martin spoke first, delivering an address that the NWP would later have printed as a pamphlet for distribution:

> By the first amendment to the United States Constitution, in the so-called Bill of Rights, we are guaranteed the right to petition peacefully to the government for a redress of grievances . . . The right of American women to tell the truth about our government, about democracy, and to work for democracy, must be maintained. We stand on the Bill of Rights. We would hinder, not help, the whole cause of freedom for women, if we weakly submit to persecution now.[134]

The other defendants quickly followed suit.[135] Tempers continued to flare as one defendant described the trial as a "ridiculous farce," causing the judge who had "frazzled his nerves" to exclaim: "Here I have shown you ladies every consideration since the trial began and have gone out of my way to be patient, and yet you announce it has been a farce. I am astounded."[136]

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[132] Wash. Post, July 18, 1917 at 1; Record of Picket Arrests, July 14, 1917,NWPP Reel 45

[133] NY Times, July 18, 1917.

[134] Suffragist, July 21, 1917 at 8; Statement of Miss Anne Martin, July 11, 1917, Reel 45 NWPP; WP July 18, 1918 at 1.

[135] Stevens at 104; Suffragist, July 21, 1917 at 8.

[136] Wash. P., July 18, 1917 at 1. Judge Mullowney had hardly been the model of judicial neutrality during the picket battles. When one defendant reopened an old wound, exclaiming that it had been an "insult" at the June trial for him to have called the Russian banner "seditious and treasonable," the angry judge retorted: "The United States Attorney consulted me about the banner, and I know the words on it are treasonable and seditious." The revelation of this ex parte contact with federal lawyers prompted outrage, and an NWP report claimed that their protest "forced Judge Mullowney to admit that the censure on the part of the women before him was deserved." Suffragist of July 21, 1917, p. 8.

By this point, a summation seemed anticlimactic, but Doris Stevens rose to her feet to argue one final time for acquittal, as their only crime was that "they peacefully petitioned the President of the United States for liberty." Stevens asserted that the distinguished ancestors of some of the defendants, "signers of the Declaration of Independence, jurists, Senators, and Ambassadors," were looking down in spirit for a "declaration of their rights." Making an explicit claim under the Bill of Rights, Stevens concluded: "We were acting on our constitutional rights in picketing, and were within these rights when arrested by the police. These constitutional rights cannot be abrogated by any city ordinance."[137]

Unmoved by the invocation of the dearly-departed luminaries or of the Constitution itself, Mullowney immediately found all the defendants guilty. Apparently consulting with the District Commissioners prior to sentencing, the judge shocked most onlookers by sentencing the pickets to either a substantial fine or six months in the prison workhouse at Occoquan, Virginia, a "savage sentence" in the eyes of the NWP.[138] The women "seemed momentarily stunned" by the harshness of the sentence, as were Malone and his NCLB colleagues in the audience. [139] Outraged, Dudley Field Malone swiftly sought permission from the court to advise the defendants before they decided whether or not to pay the fine, to which Judge Mullowny readily assented. But the die was cast. Anne Martin exclaimed: "We refuse to pay the fine because we're not guilty, and we're prepared to serve sentence."[140] One press report alleged that Judge Mallowney's eyes "filled with tears" as the women filed out.[141] "Good-by, girls, and good luck!" was the reported cry from "sister suffragists," while one elderly woman, with tears in her eyes, said "They're doing it for us," with a catch in her voice.[142]

Enraged by the outcome of the trial, Malone told the assembled press corps that the women had been denied their constitutional rights to petition the government for a redress of grievances, and then headed directly to the White House to take his complaints to the President

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[137] Stevens at 104-05; Suffragist, July 21, 1917 at 8.

[138] Wash. Post, July 18, 1917 at 4; Suffragist, July 21, 1917 at 8; Stevens at 105.

[139] One eyewitness later reported: "Five lawyers, among them men of national legal reputation, witnessed the proceedings. All agreed that the verdict was contrary to the weight of the evidence, that the sentence was excessive and that the judge had given such unmistakable evidence of bias that the case should be thrown out of court." Allen McCurdy, Suffragist of August 11, 1917.

[140] NY Times, July 18, 1917.

[141] Suffragist,August 4, 1917 at 9, quoting Chicago Tribune of July 7, 1917.

[142] Wash. Post, July 18, 1917 at 4.

himself.[143] Wilson initially agreed to give Malone, "of whom he is personally very fond," a brief interview, but Malone did not emerge from the White House for forty-five minutes, "to the derangement of the President's regular afternoon motor ride."[144] The meeting plainly had gone badly. Malone "came away visibly perturbed" after his interview with the President, as "his face and manner showed evidence of great emotion," and there were rumors that he had resigned his lucrative federal post.[145] Although neither Malone nor Wilson discussed the substance of their discussion with the press, Wilson's closest personal advisor, Colonel Edward House, recorded in his extensive diary the version that he had received from Malone, which was "not a pleasant thing:"[146]

Woodrow Wilson was firmly convinced of his own rectitude in all matters, and not a man who welcomed dissent. A keenly sensitive and emotional person, he demanded total loyalty from his subordinates and could be easily wounded by perceived slights. His devoted wife Edith, who loathed all suffragists on general principle, described Malone in her diary as a "traitor," and fretted about her beloved husband: "My Precious One did not come home from the office until six-thirty and was so weary it broke my heart to look at him. He loved Dudley and said he felt like someone had died."[147]

While the firestorm in Washington raged over the sentences, the suffrage prisoners were transported to the Occoquan Workhouse, some twenty miles south of Washington, D.C., in Lorton, Virginia. The workhouse was a recent penological innovation, much praised by District officials as a modern and humane alternative to prison.[148] But conditions at Occoquan were far from humane, and for the next four months, imprisonment there would be the principal threat used by law enforcement authorities against the suffrage pickets. After "a few well-chosen words of welcome" from Superintendent Whittaker, the matron ordered the suffrage prisoners to don prison dress. [149] Unlike the practice at the District Jail, the women would receive no visitors

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[143] NY Times, July 18, 1917 at 1 ("[T]he indignation he felt over the manner in which the suffragists had been treated, stood out in his trembling voice, his nervous energy, and his emphatic statements.")

[144] NY Times, July 18, 1917.

[145] Id.; Wash. Post, July 18, 1917 at 4.

[146] House to Wilson, Wilson Papers, vol. 43 at 283 (July 26, 1917)

[147] Alden Hatch, Edith Bollins Wilson: First Lady Extraordinary (1961) at 80.

[148] The site later became known as the Lorton Reformatory. See Brownlow at 78.

[149] The Post scoffed that the "ladies, being of wealth and distinction, usually had maids to attend to or help them out in such important details as dressing and undressing." Wash. Post,

except for their lawyer, if desired, and would be expected to work like other prisoners.[150]

On Wednesday, July 18, Wilson had another unpleasant confrontation with an aggrieved male supporter of suffrage, as long-time Wilson stalwart J.A.H. Hopkins spent forty-five minutes trying to convince Wilson that he should pardon the pickets after "one of the most outrageous and farcical procedures" he had ever seen. Hopkins and his wife Alison had recently been dinner guests of the Wilsons at the White House, but now Alison had just spent her first night in the Occoquan workhouse. Hopkins challenged Wilson directly: "How would you like to have your wife sleep in a dirty workhouse next to prostitutes?"[151] Wilson proved to be far more conciliatory than expected. As Hopkins later reported the conversation, Wilson asserted that the pickets were "absolutely guiltless," and that the Russian banner was neither "treasonable [nor] seditious." The two men discussed a pardon, although Wilson cautiously noted that pardoning the women would be a temporary solution, as only passage of a constitutional amendment would resolve the simmering suffrage issue.[152]

Later that day, Malone and Hopkins joined a delegation to Occoquan to confer on strategy for a "prolonged confab."[153] Malone was pressing hard for an appeal to be taken from the convictions, and had consulted with a number of lawyers, including Frank Walsh and George Gordon Battle, a former partner of Malone's father-in-law James Gorman, and a well known civil libertarian.[154] While Gilson Gardner, whose wife was at Occoquan, argued for making a "test case" of some of the more frail prisoners, Alice Paul rallied her strength from her hospital bed to dissent, indicating in a telegram that she favored an appeal only if it were taken for all prisoners. "If only taken for one, our position illogical; if for all, could go out each week and appeal each time." [155]

Women who had been accustomed to a privileged position in society naturally found it

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July 18, 1917 at 1.

[150] WP July 18 1917 at 1. When some of the new prisoners told their fellow inmates why they had been arrested, the wardess announced: "You must not speak against the President; and don't forget you're on government property and may be arrested for treason if it happens again." Stevens at 110.

[151] Stevens at 110.

[152] J.A.H. Hopkins to Edwin Webb, August 9, 1917, Reel 46 NWPP.

[153] Wash. Post, July 19, 1917 at 4.

[154] See Murphy, Civil Liberties at 169

[155] Telegram from Dora Lewis, Reel 45 NWPP.

difficult to adapt to the rigid bureaucratic rules of the workhouse.[156] Placing wealthy white women in a prison workhouse inevitably raised issues of class and race. Like most of American society in 1917, most prisons were racially segregated. Whether by accident or by design, however, prison officials at Occoquan did not segregate the incoming suffrage prisoners, all white, from the predominantly black population. The Post chortled that the women were being treated equally to the current inmates, and that the matron, the "big boss," "knows neither class nor color." Such new-found official commitment to racial equality struck many suffrage supporters as disingenuous, at best. Although racial attitudes varied among the suffragists, most shared the prejudices common to their time, and considered the absence of a "color line" to be a deliberate insult.[157]

The incarceration of prominent upper-class women in the workhouse, a "stroke of good fortune" from the perspective of the NWP, had generated national publicity, and thus intense pressure on the President.[158] On Thursday, July 19, just two days after the women had been sentenced to Occoquan, the raging controversy finally forced the President's hand. Edith Wilson caustically noted in her diary: "Everyone agitated about those detestable suffragettes."[159] After his regular golf game, Wilson returned to the White House and signed a full pardon for all sixteen women.[160] His wife bemoaned his decision, writing: "Woodrow decided to pardon those devils in the workhouse."[161] "Highly indignant," Wilson now summoned District Commissioner Brownlow to his office and told him that "we had made a fearful blunder, that we never ought to have indulged these women in their desire for arrest and martyrdom, and that he had pardoned them and wanted that to end it." He emphatically warned him to make no further arrests without White House consent. Brownlow forcefully defended his policy of arresting the pickets, because "the nation was at war, [and] these riots were being misconstrued in Europe,"

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[156] The prison matron informed one suffrage prisoner: "If you have children you should stay home and mind them," to which she replied: "Men fight in the trenches for liberty, and I am willing to suffer a little for my convictions and my children." Wash. Post, July 19, 1917 at 1, 4.

[157] Wash. Post, July 19, 1917 at 1, 4 (noting "the numerically superior contingent of colored women, sentenced for drunkenness, larceny, and other crimes and misdemeanors.")

[158] Lucy Burns, Acting Chairman, to Alva Belmont, July 24, 1917, Reel 46 NWPP. The New York Times headline described Wilson as "shocked" by the jailing . NY Times, July 19, 1917, at 1.

[159] Hatch at 80.

[160] Phyllis Levin, Edith and Woodrow: The Wilson White House at 180 (2001). The pardon was written out by hand, and signed both by the President and the Attorney General. Pardon, Reel 45 NWPP.

[161] Hatch at 80.

and offered his resignation, a meaningless gesture that Wilson studiously ignored.[162]

The pardon did not immediately end the crisis, as some of the suffrage prisoners had asserted that they would not accept a pardon when they had done no wrong. The recalcitrance of the prisoners posed a potential public relations nightmare. Superintendent Whittaker took matters into his own hands, essentially ordering the prisoners to leave, and announcing loudly to his departing guests that if any of them were again sentenced to Occoquan, they would not receive the same "consideration" that they had been shown over the past two days. "I've been very indulgent with you, but I won't be again," he warned. Malone was "plainly agitated," asserted "heatedly" that the women had not received special treatment and that he himself would protect their rights should they be imprisoned again.[163]

Upon the victorious return of the suffrage prisoners to headquarters that evening, Malone asserted that the pardons stood as "an acknowledgment of the grave injustice done to 16 American women in their effort to obtain personal liberty by means of the passage of the Federal amendment."[164] Some women seemed convinced that the battle for woman suffrage would soon be over.[165] Yet other voices insisted that Wilson had acted solely out of chivalry, "after the husbands of several of the prisoners had interceded in their favor and after he had been told that some of them had small children at home needing their care."[166]

The NWP resumed its picketing campaign on Saturday, July 21, exactly one week after the Bastille Day demonstration, on the theory that the pardon had effectively declared the pickets to be "lawful,"[167] and that there had been "[c]omplete vindication of Woman's Party by the

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[162] Brownlow at 78-79.

[163] Wash. Post, July 20, 1917 at 5; NY Times. July 20, 1917 at 7. Stevens describes the incident as well, but there is no mention of Malone's presence. Stevens at 115-16.

[164] Wash. Post, July 20, 1917 at 5. Noted birth control reformer Margaret Sanger praised this "first bit of martyrdom the suffrage cause has extracted from its advocates in America," and noting that her own experience in prison had left her " longing for the time when the suffragists would go to jail for their cause, for <u>then</u> will women revolutionize the jails, clean them up and eventually abolish their need." Margaret Sanger to Anne Martin, July 19, 1917, Reel 45, NWPP.

[165] F. A. Harsh to Iris Calderhead, July 19, 1917; Mary Devine Carberry to Alice Paul, July 22, 1917, Reel 45 NWPP.

[166] Wash. Post, July 20, 1917.

[167] Hazel Hunkins to Mrs. Chas. F. Amidon, July 12, 1917 Reel 46 NWPP; Mabel Vernon to Mrs. Olive Halladay Holbrouck, July 23, 191, Reel 46, NWPP.

President."[168] For the time being, both the police and the press ignored them, in an apparently negotiated press blackout on coverage of NWP activities.[169] Soon thereafter, Senator Charles Culberson of Texas, the Chairman of the Judiciary Committee, introduced a bill on August 4 that would give the President what the Washington Post termed "drastic war powers" to combat espionage, and apparently would have authorized "the President at any time to prohibit any person from approaching or entering any place."[170] Alarmed at the possible effect of this bill on the picketing campaign, a number of representatives of the NWP testified before the Judiciary Committee to urge that any amendment to the Espionage Act provide specifically for suffrage picketing. One angry Party member wrote that evening: " This bill is worded very flexibly and obscurely and can cover anything under the sun, any where, by anybody, who happens to wants to do anything against anybody else. Really, I never hard of such an abominable piece of legislation in my life."[171]

V. August 1917 – The "Kaiser Wilson" Banners.

Desperation to keep the picketing campaign alive during a press blackout may have prompted the next move. The Executive Committee of the NWP met on Friday, August 10, and rejected a proposal made by Washington Times editor Arthur Brisbane to provide them with daily coverage on the back page of his newspaper, in return for an agreement to stop picketing Wilson.[172] Later that afternoon, Lucy Burns carried out a banner with the most inflammatory message to date:

KAISER WILSON
HAVE YOU FORGOTTEN YOUR SYMPATHY WITH THE
POOR GERMANS BECAUSE THEY WERE NOT SELF GOVERNED?
20,000,000 AMERICAN WOMEN ARE NOT SELF GOVERNED
TAKE THE BEAM OUT OF YOUR OWN EYE.

Burns later claimed: " I did not dream that "Kaiser" could be regarded as a personally

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[168] Vivian Pierce to Mrs. St. Clair Thompson, July 23, 1917, Reel 46, NWPP.

[169] Wilson himself recommended that the newspapers limit their coverage to a "bare, colorless chronicle [which] need not be made interesting reading." Lunardini at 113, 127; Ford at 156.

[170] Wash. Post , Aug . 5, 1917; Stevens at 131.

[171] Organization Secretary to Margery Ross, August 9, 1917 Reel 46 NWPP. See Suffragist, August 18, 1917 at 5.

[172] Lunardini at 127. See generally Morgan, Suffragists and Democrats, at 119-20.

opprobrious epithet, like liar or thief. It just meant, I thought, a certain type of government."[173] But she conceded that the lack of press coverage had motivated the epithet, explaining: "[W]e have to shout a little to make ourselves heard."[174] Even though there had been no violence for several weeks, the crowd reaction to the banner quickly turned to indignation and outrage, and a federal employee snatched the banner and ran away.[175] The same banner went out on Saturday, August 11, and Monday, August 13. Each time, it was torn down by the crowds, with no arrests made.[176]

Mocking the President of the United States by calling him by the name of the nation's most hated enemy seemed calculated to inspire an escalation of hostilities. Tuesday, August 14, would see the most violent day in the history of the picket campaign, as a full-scale riot erupted after the pickets brought out their Kaiser banners. Many men in the crowd, including a number of uniformed servicemen, attacked the banners and tore them to bits. A mob then chased several suffragists back to their headquarters at Cameron House, hurling stones and eggs. The attack soon spiraled out of control, as hundreds of people, mostly servicemen, surrounded NWP headquarters. One sailor climbed up a ladder to try to enter headquarters through the second story, but the women upstairs managed to push the ladder away. Two sailors wrestled with Lucy Burns on the balcony, and she would have been pulled over but for her "superb strength." Another rioter not only tore down the suffrage banners, but also tore down the American flags because it was "akin to sacrilege" for the NWP to fly such flags when they permitted "seditious statements to be made against the President." At some point, a bullet was fired through one of the windows, narrowly missing one suffrage leader.[177]

Representative Charles August Lindbergh, a maverick congressman from Minnesota, witnessed the rioting, and sent Wilson an outraged letter, describing the "illegal and indefensible acts performed by mobs composed principally of soldiers and sailors wearing the uniform of the United States and civil service employees from nearby executive offices in attacking defenseless

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[173] Lucy Burns to Aline E. Solomons, August 13, 1917 Reel 46 NWPP.

[174] Lucy Burns to Mrs. J. B. Rublee, August 20, 1917 Reel 47 NWPP. Alice Paul wrote to Frederic Howe's wife, Marie, to explain: "[T]he public had become so familiar with our usual type of banners that we seemed unable to arrest public attention and focus it on our campaign ." Alice Paul to Marie Janney Howe, August 24. 1917, Reel 47 NWPP.

[175] An internal NWP memo detailing the August picketing has the following brief description: "August 10 – Friday 'Kaiser Wilson' banner destroyed by gov. clerk. No police action." NWPP Reel 47. NY Times, August 11, 1917 at 16.

[176] NY Times, August 12, 1917 at 6.

[177] See NY Times, August 15, 1917 at 3; Irwin at 237; Stevens at 126; Letter, Lucy Burns to Editor, Richmond Evening Journal, August 14, 1917, Reel 46 NWPP.

women." Lindbergh concluded that "mob violence was being used as a brutal subterfuge to avoid a fair and square test of the question of the Right of Petition in the form that "picketing" takes."[178] The dense crowds were not cleared until late in the day, by which point most of the banners and flags had been destroyed. The police apparently had been ordered to arrest neither the pickets nor their attackers.[179]

Mob violence continued on Wednesday, led in large part by soldiers and sailors in uniform engaged in "many lively scrimmages."[180] Barely recovered from her near-fatal illness, Alice Paul had returned to Washington on August 12 to resume direction of the picketing campaign.[181] She joined the marchers on August 15, and "a man in sailor's uniform" snatched the regalia she was wearing and dragged her down the street.[182] Also knocked to the ground by rioting sailors was NWP organizer Beulah Amidon, daughter of United States District Judge Charles Amidon of North Dakota.[183] One former government official was threatened with lynching by the crowd when he tried to protect one of the pickets from assault.[184] The official NWP report counted 49 banners destroyed, and at least five pickets injured by members of the mob. [185] By now, the participation of so many servicemen in the riots prompted a stern warning from Secretary of the Navy Josephus Daniels against participation in any more "demonstrations."[186]

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[178] 44 Papers of Woodrow Wilson, pp. 198-206. Lindbergh's son, Charles Jr., was only seventeen at the time and had yet to take his first airplane ride.

[179] Irwin at 239; Stevens at 125. One man was arrested for disorderly conduct after tearing down banners . NY Times, Aug. 15, 1917.

[180] NY Times, Aug. 16, 1917 at 22; Wash. Post, Aug. 16, 1917 at 2.

[181] Doris Stevens to Mrs. Robert Adamson, August 13, 1917 Reel 46 NWPP.

[182] Wash. Post, Aug. 16, 1917 at 2; Stevens at 128.

[183] Stevens at 128. Amidon later complained: " It does not seem possible that it is 'free America' where the police refuse to protect you and your property from the assaults of hoodlums." Beulah Amidon to Irma Erwin Poppler, August 15, 1917 Reel 46 NWPP.

[184] NY Times, August 16, 1917 at 22.

[185] Reel 47 NWPP. Congressman Lindbergh visited the suffragists at their headquarters and "[s]everal of them showed wounds and contusions on their arms, necks and heads, as a result of the violence that had ben practiced upon them ." Wilson Papers at 109.

[186] Wash. Post, Aug. 16, 1917 at.2.

The situation deteriorated so much that District officials were forced to take action the next day. On Thursday, August 16, fifty police officers restrained "a throng of 5,000 eager spectators," and made some arrests when attackers "became too boisterous." Although it was reported that the pickets had been ordered not to carry Kaiser banners, no one was arrested for doing so.[187] One worried NWP supporter fretted that the clashes between pickets and enraged onlookers threatened to shift the focus from suffrage, writing: "What we have done recently, from the account received here seems to be really more appropriate to a "free speech" propaganda fight than to a suffrage issue? I am always in favor of sticking strictly to the issue of suffrage and not mixing up anything else with it."[188]

On Friday, August 17, newly-elected congressman John Baer of North Dakota introduced a resolution demanding an investigation of the suffrage riots, explaining: "As long as they are within the law they should be protected in following their purpose, without reference to various opinions as to whether or not that purpose be desirable."[189] At almost the same time, Major Pullman of the District Police informed Alice Paul that any future pickets would be arrested.[190] Despite Wilson's earlier admonishments about arresting the pickets, District Commissioner Brownlow now thought that the pickets had become "particularly belligerent." Upon informing Wilson of his decision, Wilson angrily responded: "The blood be on your head!"[191] That afternoon, the pickets marched out to the White House, but there was no mob there to greet them. Nevertheless, at four thirty that afternoon, as thousands of government workers flooded the streets after work, the police arrested six women for blocking traffic.[192]

On Saturday morning, August 18, six suffragists marched into Police Court for trial. But this time, Judge Mullowney was on his summer vacation, and the newly-assigned Judge Pugh "turned a deaf ear to their pleas," in a hearing that lasted only forty minutes. The suffrage defendants again asserted their constitutional rights, as one picket, "extremely dramatic in her defense," said: "My rights to peacefully petition in this manner for the privilege of suffrage is

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[187] Wash. Post, Aug. 17, 1917 at 7; NY Times, August 17, 1917 at 12 ("Two arrests were made, one of a man who had been active in heckling the pickets, and the other of a newspaper reporter who became indignant over an attack on some pickets and used his fists to emphasize his feelings."); Irwin at 240; Stevens, at 129. The NWP's internal report recorded the destruction of nearly 175 flags and banners, and several injuries to pickets. Reel 47 NWPP.

[188] Ethel Adamson to Alice Paul, August 16, 1917, Reel 46 NWPP.

[189] Wash. Post, Aug. 18, 1917 at 1.

[190] Irwin at 241.

[191] Brownlow at 78-79.

[192] Stevens at 130; Irwin at 243; Wash. Post, August 18, 1917 at 1.

guaranteed by the Constitution." Judge Pugh quickly found the six women guilty and sentenced them to thirty days in the workhouse at Occoquan, telling them: "It is useless to speak of peaceful picketing. You are not picketing peacefully. You are only advertising yourselves."[193]

As the six women were being taken to Occoquan, Democratic Senator Henry Lee Myers of Montana introduced a bill to outlaw future NWP protests, making it a federal crime in wartime to "carry" any "banner" referring to the President, the Vice President, the Constitution, "or the suffrage right of citizenship," that was "calculated to bring the President of the United States or the Government of the United States into contempt, or which may tend to cause confusion or excitement or obstruction of the street or sidewalks thereof or any passage in any public place." The bill was intended to halt the " harassment of the President" by convincing the pickets that the "the community and the nation at last are out of patience."[194] Myers, a suffrage advocate, expressed outrage at the "almost treasonous utterances" and "disgusting proceedings" of the militants, describing their actions as a "gross insult" to the President, and noting : "He is our President, and when he is insulted we are insulted."[195]

Bloodied but unbowed, the NWP announced its intent to continue picketing, while struggling internally to devise a legal strategy to keep their protest alive.[196] Confidential legal advice came into headquarters from Judge Charles Amidon, in response to a letter from his daughter, suggesting that the pickets take an appeal, which would be "good publicity and settle your legal rights."[197] After consulting with Dudley Field Malone, Paul retained local attorney Matthew O'Brien, said to be "an expert on the technique of police court procedure." O'Brien advised Paul that appeals from police court proceedings were extremely rare, but that if " we devote a great deal of attention to arranging all the conditions surrounding the arrest and the trial, it may be possible to obtain an appeal."[198] The real difficulty would be finding women who

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[193] Wash. Post, Aug. 19, 1917 at 1.

[194] Wash. Post, Aug. 19, 1917 at 1.

[195] NY Times, Aug 19, 1917. One Senator mocked the bill, insisting that perhaps "the Senator might with more effect propose an amendment to the Constitution preventing the President from pardoning out all malefactors after the law has had its due course." Id.

[196] NY Times, Aug. 21, 1917 at 6.

[197] Father to Beulah Amidon, August 21 1917 Reel 47 NWPP. Amidon would later be one of the few federal judges to oppose government suppression of speech during World War I. See Stone, Perilous Times at 164-67.

[198] Alice Paul to Dudley Field Malone, August 22, 1917 Reel 47 NWPP. Although O'Brien seemed to have the "technical knowledge," Paul asked Malone whether he could lend the prestige of his name to any future litigation. Lucy Burns received a letter two days later

would be willing to picket and face immediate incarceration in the Occoquan workhouse, with no prospect of a pardon. The situation seemed "desperate."[199]

Nevertheless, on Thursday, August 23, six intrepid pickets marched to the White House and were arrested while carrying banners with quotations from Wilson's speeches. NWP leadership apparently determined that the Kaiser banners would be too inflammatory to be the subject of a future appeal. The following day, these prisoners trooped into police court for trial before Judge Pugh, now represented by Matthew O'Brien.[200] After "sketchy but impassioned oratory from a few of the women,"[201] Judge Pugh lectured them, criticizing in particular their claim that they were exercising a constitutional right of petition:

> These ladies have been told repeatedly that this law was ample to prevent picketing in front of the White House, or anywhere else on the sidewalks of the District of Columbia; that it was not the fashion to petition Congress in that way, to stand in front of the White House, the President's mansion, to petition somebody else, a mile and a half away. The President does not have to be petitioned . . . You ladies observe all the laws that give you benefits, property rights that legislatures composed of men have passed . . . and those that are aimed at preserving the peace and good order of the community you do not propose to observe.[202]

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from a local lawyer stating: "while we are not trying to disparage the efforts of [O'Brien], we feel that it would have more weight before the public and in the Court, should you secure a man of some recognized standing in the Bar.. . . .I offer this only as a suggestion in the very best faith, and hope that you may be helped greatly should you decide to make a change in counsel." Garnett Underwood to Lucy Burns, August 24, 1917, Reel 47 NWPP.

[199] Alice Paul to Lucy Branham, August 22, 1917 Reel 47 NWPP. One party official explained: "[I]t does not seem at all probable that we will be even granted an appeal, to say nothing of winning an appeal, but we are going to make the effort, and if we lose the persecution by the government will be all the more clearly revealed." Iris Calderhead to Mary Bakewell, August 22, 1917 Reel 47 NWPP; Suffragist Sept 1, 1917 at 7.

[200] Wash. Post, Aug. 24, 1917 at 7. Dudley Field Malone declined the invitation to take part in the suffrage litigation "at present," although he cryptically told Alice Paul: "If you knew the state of my mind and the plans I am trying to formulate for useful action among the friends of the Suffrage movement, I am sure you would agree with me." Dudley Field Malone to Alice Paul, August 23, 1917 Reel 47 NWPP.

[201] Wash. Post, Aug. 25, 1917 at 7; NY Times, Aug 25, 1917 at 7.

[202] Irwin at 244-45.

The six pickets received the same sentence meted out to their colleagues: $25 fine or thirty days at Occoquan. As planned, O'Brien immediately rushed to Falmouth, Massachusetts, some five hundred miles away, to seek an appeal from Associate Justice Robb, of the District of Columbia Court of Appeals, who spent his summers there.[203] To the surprise of many, he emerged victorious from his visit to Judge Robb, sending a terse wire to Paul on Monday, August 27.[204]

The effect of this turn of events on the future of the NWP's picketing campaign was unclear, so Paul sent ten more women to the White House that day to test the effect of the appeal. All ten women were immediately arrested for "flaunt[ing]" banners "bearing inscriptions and quotations from President Wilson's speeches" at the White House.[205] After their conviction and sentencing on Wednesday, August 29, O'Brien again attempted to pursue an appeal on their behalf.[206] Judge Robb reluctantly granted an appeal for the second set of defendants "upon the representation by counsel that the ladies had not been fully advised after the issuance of the prior writ." Noting that "[t]he contention of the ladies that they have been illegally convicted in the police court merits an authoritative determination by the court of last resort," Judge Robb warned that he would not grant another writ if "the ladies in the future violate what the police court has declared to be the law." Indeed, Robb told O'Brien in emphatic terms that "[n]either the most persuasive lawyer nor the prettiest picket, nor both combined," could persuade him to grant another appeal.[207] Undaunted, the NWP picketed the September 4 parade led by the President himself in honor of newly conscripted soldiers, and twelve more women, including the intrepid Lucy Burns, soon were on their way to Occoquan.[208]

VI. September 1917 - Unrest.

The government finally seemed to have the upper hand with the pickets, who had been under constant official assault for nearly a month. Now assistance came from a somewhat

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[203] Wash. Post, Aug. 25, 1917 at 7; NY Times, Aug. 28, 1917; Irwin at 245.

[204] The wire read: "Writ of error granted." Matthew E. O'Brien to Alice Paul, August 27, 1917, Reel 47 NWPP.

[205] Wash. Post, Aug. 29, 1917 at 5.

[206] Wash. Post, Aug. 30, 1917 at 5.

[207] Suffragist, Sept. 8, 1917 at p. 7

[208] The banner read: "MR. PRESIDENT, HOW LONG MUST WOMEN BE DENIED A VOICE IN THE GOVERNMENT THAT IS CONSCRIPTING THEIR SONS," Irwin at 245; see Alice Paul to Mrs. W. D. Ascough, Sept 7, 1917, Reel 48 NWPP; Telegram, unaddressed, from Mabel Vernon, Sept. 5, 1917, Reel 48 NWPP.

unexpected quarter. On September 7, Dudley Field Malone made good on his earlier threats and resigned his powerful position as Collector of the Port of New York in protest of the imprisonment of splendid American women" for the " technical charge of obstructing traffic," a denial of "their constitutional right to petition for, and demand the passage of, the Federal Suffrage Amendment."[209] Malone had never regained the confidence of the White House after his emotional break with Wilson in July; indeed, he had been placed under surveillance by the Secret Service, which furnished Secretary of State William McAdoo, Wilson's son-in-law, with weekly reports on his activities.[210] Malone's falling star in the Administration, coupled with his genuine outrage over the handling of the suffrage prisoners, led him to conclude that he could do more good as a private citizen.

Malone's resignation made the front page of the New York Times and sent shock waves through official Washington. Wilson made no secret of his disdain for Malone's dramatic gesture, sniffing: "I must frankly say that I cannot regard your reasons for resigning your position as Collector of Customs as convincing, but it is so evidently your wish to be relieved from the duties of office that I do not feel at liberty to withhold my acceptance of your resignation."[211] Wilson privately confided to Colonel House that Malone was one of the "last men he would have suspected of disloyalty," to which House replied by saying that "he was not himself -- an excuse that [Wilson] seemed ready to accept."[212] Malone sent a pointed reply in which he reiterated his call for a federal suffrage amendment.[213]

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[209] NY Times, Sept. 8, 1917 at 1; Irwin at 246-48; 44 Wilson Papers at 167; Suffragist, Sept 14, 1917, at 6.

[210] Agents reported the time Malone spent at work as well as the time spent in Washington in pro-suffrage activities. The final report was condensed and sent to Wilson on September 7, 1917. Sally Hunter Graham,"Woodrow Wilson, Alice Paul and the Woman Suffrage Movement," 98 Pol. Sci. Q. 665, 671-72. (1983-84). Graham's assessment of the incident may not be entirely reliable, as she suggests that this surveillance intimidated Malone into bureaucratic anonymity, apparently unaware that Malone soon caused a national furor by resigning.

[211] 44 Wilson Papers at 190 (Sept. 12, 1917). Ford suggests that part of the reason for his resignation was " the fact that he was very much in love with Doris Stevens." Ford at 172

[212] 44 Wilson Papers at 185; Diary of Col. House, Sept. 10, 1917.

[213] 44 Wilson Papers at 200, 208; Malone to Wilson Sept 15, 1917. Mystified by Malone's resignation over a matter of such minor importance as woman suffrage, one editorial scoffed: "[I]t is a pity [Malone] let a lot of urgent females pull his leg, and it is doubtful if statesmanship will lose much if he sticks to the practice of law." Life Magazine, Sept. 20, 1917 at 70. Another editorial attacked the "emotional Mr. Malone," and claimed that his demand for

Malone turned his attention to pursuing charges against the officials at Occoquan for harsh treatment of the suffrage prisoners.[214] But the simmering antagonisms between the suffrage prisoners and the other inhabitants of Occoquan finally erupted into a prison "mutiny" with racial overtones, when a controversy over medical treatment for one of the suffragists erupted into fisticuffs between suffragists and prison guards, assisted by black female inmates.[215] Confirming the image of militant suffragists as lawless, violent women who would not submit to prison discipline, the incident provided an excuse for postponing any further investigation until "the conditions of unrest, excitement, and disquiet at Occoquan have been overcome."[216]

NWP organizers found that the charges of treason and disloyalty leveled against the pickets had seriously weakened their ability to market the suffrage message.[217] Paul continued to defend picketing as "exceedingly useful" because it kept suffrage "constantly" before the eyes of the President and Congress, an issue which otherwise would have evaporated "in the general absorption in the war."[218] But members of Congress continued to attack the pickets as "iron-

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suffrage as a war measure was "so silly and yet so plain an attempt to discredit the President that one cannot but wonder whether he did not see forced retirement in store and beat the President to it." Sept. 10, 1917 Reel 48 NWPP. Malone's successor**,** Byron Newton, promptly criticized suffragists as reflecting the "freaks of their sex," announcing: "I believe that the war may be a blessing to our country, in checking what I regard as a menace to civilization -- and by menace I mean that group of restless, abnormal women who seem to have a perverted and diseased ambition to do everything and anything except those things which God Almighty and nature designed them to do." NY Times, Oct. 4, 1917.

[214] Record of W.H. Whittaker, Reel 49 NWPP. Alice Paul to John Joy Edson, Sept. 29 1917 Reel 49 NWPP

[215] NY Times, Oct. 5, 1917. See Statement, undated, Oct. 1917 Reel 51 NWPP. (Burns "set upon by five or six sturdy colored girls who tried to beat and choke her, pulling her hair down over her face and knocking her about so she was quite exhausted."); Alice Paul to Mrs. James D. Winsor, Oct. 6, 1917 Reel 50 NWPP.

[216] Stevens at 231-32; Suffragist, Oct 20, 1917 at 5.

[217] Alison Hopkins to Beulah Amidon, Sept. 17, 1917 Reel 48 NWPP ("The general attitude is, that we are at War, and must therefore, suppress all news which tends to show the country is divided.")

[218] Alice Paul to Mrs. McArthur Hunter, Sept, 19, 1917 Reel 48 NWPP.

jawed angels" who were "bewildered, deluded creatures with short skirts and short hair."[219]

VII. October 1917 - Alice Paul Goes to Prison.

The beleaguered NWP persisted in its attempts to keep the picketing alive, at least until Congress concluded its session in late October. On Saturday, October 6, Alice Paul herself led the suffrage pickets to the White House, where they were soon arrested for obstructing traffic.[220] With Paul's arrest, the inevitable climax to the many months of suffrage agitation seemed close at hand.[221] Her arrest caused great consternation within the ranks. Doris Stevens later recalled that the prosecutor had "[m]any times" shaken his finger at Paul during previous trials, threatening: "We'll get you yet . . . .Just wait; and when we do, we'll give you a year!'"[222]

With Paul at the helm, the suffrage trials took a new twist. On Monday, October 8, Paul led the suffrage defendants in refusing to participate in the proceedings in Judge Mullowney's courtroom, either to stand to be sworn or to question witnesses.[223] In an allusion to Susan B. Anthony's trial, Paul explained: "We do not wish to make any plea before this Court. We do not consider ourselves subject to this Court since, as an unenfranchised class, we have nothing to do with the making of the laws which have put us in this position." Judge Mullowney responded irritably: "Unfortunately, I am here to support the laws that are made by Congress, and, of course, I am bound by those laws; and you are bound by them as long as you live in this country,

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[219] Progress was being made in the House of Representatives, which was under the twin pressure of the lobbying campaign by NAWSA and the NWP picket battle. For the first time, the House created a Woman Suffrage Committee with jurisdiction over the proposed Susan B. Anthony constitutional amendment. On September 24, after a "warm" debate, suffrage was added to the list of essential emergency war measures. NY Times, Sept. 25, 1917; see Lunardini at 129-30.

[220] One sympathetic observer noted that on the previous day, "I had seen dense crowds watching the World Series returns, with mounted police to clear a space for the cars. There were no arrests for blocking traffic." Irwin at 252-53.

[221] Alice Paul telegram to Elsie Hill, Oct. 6, 19197 Reel 50 NWPP. The decision had already been made to forego counsel, as no more appeals could be taken. "[S]ince we know in advance that we will be convicted . . . we of course do not want to undergo the expense which counsel involves unless it accomplishes something." Alice Paul to Alison Hopkins, October 2, 1917, Reel 49 NWPP.

[222] Stevens at 211.

[223] Irwin at 253; Suffragist of Oct 13, 1917.

notwithstanding the fact that you do not recognize the law."[224] Nevertheless, he suspended the imposition of sentence, and released all the pickets on bail, despite Paul's fervent objection that they should be treated the same as the other prisoners then languishing in Occoquan.[225]

By mid-October, the superheated atmosphere of war mobilization had generated widespread hostility to all forms of dissent. The pickets who regularly marched out to the White House to demand the right to vote seemed to many to be of a piece with draft opponents, anarchists, socialists, and other unpatriotic troublemakers. As if to emphasize that connection, the suffrage prisoners still held at Occoquan began to draft a formal request for treatment as political prisoners. Superintendent Whittaker continued to threaten the women, telling one prisoner: "We are going to stop this picketing. If it costs the lives of some of your women, and it will cost the lives of some of these women, we are going to stop it."[226]

There had been internal discussion for some time within the NWP about seeking the status of political prisoner for incarcerated pickets. As Alice Paul's trusted lieutenant, and the highest-ranking NWP official held at Occoquan, Lucy Burns became the spearhead of the strategy, drafting a document to demand formal recognition of the status of political prisoner. Burns was a veteran of the British suffragette campaign herself, and familiar with the arguments made by the WSPU in England for political prisoner status. After Burns was sent to solitary confinement in early October, this "forlorn piece of paper" made its way around the prison "through holes in the wall surrounding leaden pipes, until a finished document had been perfected and signed by all the prisoners." This extraordinary petition, described as the "first organized group action ever made in America to establish the status of political prisoners," proclaimed: "This action is a necessary protest against an unjust sentence." The women demanded, among other things, that they be exempted from prison work, be permitted their own clothes and food, and be allowed to see counsel and other visitors regularly.[227]

The demand to be treated as political prisoners may well have been the most potentially explosive of all the tactics used by the militants during the picket battles of 1917, for the simple reason that the government had begun a coordinated campaign to arrest war protesters, conscientious objectors, socialists, anarchists, radicals, and anyone else who posed a potential threat to war mobilization. If the government were to acknowledge political prisoner status for the suffrage prisoners, there would be no way to prevent other protesters from demanding the same treatment. The petition for political prisoner status was smuggled out of prison, and sent to

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[224] Stevens at 212.

[225] Irwin at 254; Stevens at 213.

[226] Affidavit of Margaret Wood Kessler, Oct. 20, 1917 Reel 50 NWPP.

[227] Stevens at 175-79.

the District Commissioners on Monday, October 15, 1917. [228] This protest proved to be the last straw. The twelve suffrage prisoners were immediately transferred out of Occoquan and taken directly to the District Jail, where they were put in solitary confinement for the remainder of their terms.[229] The Commissioners later asserted in response to the petition that "political prisoners do not exist, because 'In America, there is no need for such a thing as political prisoners.'"[230] Wilson himself told one correspondent: "We have no political prisoners, and could not under the law."[231]

Expecting full well to be imprisoned, Paul intended to picket one last time, on the theory that "[i]f we are going to be sentenced, we fell that we might as well use ourselves for another picket so as not to waste ammunition."[232] On Saturday, October 20, she marched out to the White House with several other women, carrying as her final protest a banner with Wilson's slogan in support of the Liberty Bonds Campaign: "THE TIME HAS COME TO CONQUER OR SUBMIT. FOR US THERE CAN BE BUT ONE CHOICE. WE HAVE MADE IT."[233] All the women were arrested and scheduled for a return visit to police court the following Monday. Although Paul knew well what was in store for her, even a political activist as dauntless as she had shown herself to be must have had some trepidation about what might befall her in jail, especially as the horror stories began to come back from recently freed prisoners.[234]

On Monday, October 22, Alice Paul went on trial with three other women, and the prosecution made a cursory showing of obstruction of the sidewalks.[235] Judge Mullowney did

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[228] Suffragist, Nov. 3, 1917 at 8.

[229] Stevens at 178-79; Alice Paul to Mrs. William U. Watson, October 20, 1917 Reel 50 NWPP.

[230] Stevens at 180.

[231] Lunardini at 135-36..

[232] Katherine Fisher, Reel 51, NWPP.

[233] Stevens at 213.

[234] One colleague, Caroline Katzenstein, reported that Paul had apparently heard some "harrowing things about Occoquan" that were said to have made Paul "a bit nervous," although she continued: "Miss Paul is not always easy to read." Caroline Katzenstein to Mrs. Lawrence Lewis, Oct. 15, 1917 Reel 50 NWPP.

[235] The full trial transcript has been preserved in NWP party records, at Reel 50. It is dated October 21, which would have been a Sunday, and which is obviously a typographical error. See also Stevens at 214; Irwin at 256; Ford at 174.

not invite Paul to testify, but merely asked her whether she wanted to question the witness. When she declined, he immediately replied: "Have you anything to say before I pronounce sentence?" Paul again announced: "[W]e do not consider ourselves subject to the jurisdiction of this court nor to the laws or rules of this court. We have had no voice in the making of these laws, and do not consider that we should be bound by them." Mullowney was unimpressed by the argument of the women before him, noting that this was just a "rehash of what one of you ladies told me at my house when she called on me the other evening. I gave her illustrations of just how this obstruction clause was violated, and she seemed to see it. And she said to me before she left, "Your head is so full of technicalities that you cannot see justice.'" Calling Paul's position "radical, " Mullowney swiftly sentenced her to six months in prison, explaining that the NWP pickets had "force[d]" him "to take the most drastic means in my power to compel you to obey the law."

Paul made a brief statement after her sentencing, proclaiming: "We are being imprisoned, not because we obstructed traffic, but because we pointed out to the President the fact that he was obstructing the cause of democracy at home, while Americans were fighting for it abroad."[236] She returned to NWP headquarters to wrap up her business before being taken to the District Jail, "working and dictating practically until the Black Maria came!"[237] Amid the flurry of correspondence she sent before her imprisonment, Paul sent a typically laconic note home to her mother, reassuring her: "Please do not worry. It will merely be a delightful rest."[238]

For the prisoners, the District Jail had distinct advantages over the workhouse. The confined women were no longer twenty miles from headquarters, and some felt that the prison staff was far more humane at the Jail.[239] Any prospect that Paul might serve an uneventful term at the jail evaporated within twenty four hours. Paul demanded that the women be given fresh air, and when her request was denied, she smashed open a shuttered window with her personal copy of Robert Browning's poems.[240] On Wednesday, October 24, the NWP announced that Alice Paul would be demanding the status of a political prisoner. In response, jail officials

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[236] Stevens at 214; Suffragist Oct 27, 1917 at 4.

[237] Virginia Arnold to Mabel Vernon, Oct. 23, 1917 Reel 51 NWPP.

[238] Alice Paul to Mrs. William M. Paul, October 22, 1917, Reel 51 NWPP. Paul also wrote a form letter to her supporters, imploring them to protest against her imprisonment. Alice Paul to Mary Ingham, Oct. 22, 1917, Reel 51 NWPP

[239] Undated to W. Ely Ainge, Oct 22, 1917 Reel 51 NWPP.

[240] See Stevens at 215; Suffragist, Nov. 10, 197 at 7; Affidavit of Caroline Elizabeth Spencer, Oct. 24, 1917 Reel 51 NWPP. It is unclear whether Paul's action deliberately invoked her prior window-breaking campaign in a London jail in July 1909, or whether she simply saw this as the most expedient way to open a window.

immediately suspended all mail and visitation privileges for the "martyrs," making communication with the outside world virtually impossible.[241]

VIII. November 1917- The Hunger Strike.

The following week would bring two dramatic developments in the 1917 struggle for woman suffrage. On Tuesday, November 6, New York finally passed into the suffrage column after a hard-fought campaign. The energetic forces of NAWSA had spearheaded the battle, and much of their opposition to the NWP's militancy grew out of fear that the suffrage pickets would antagonize male voters and doom the New York battle. But this great victory gave incalculable political momentum to the movement, with the significance of the doubling of the number of eligible voters in a state with so many presidential electoral apparent to politicians on both sides of the issue.

The second development was the long-dreaded announcement that Alice Paul was on a hunger strike. Paul and labor activist Rose Winslow had been severely weakened by the bad diet of "almost raw salt pork, some sort of liquid, . . . bread and occasionally molasses." Winslow fainted as soon as she got to the exercise yard, and Paul was "too weak to move from [her] bed." Both women were removed on stretchers to the prison hospital on Monday, November 5, where they decided to hunger strike, the "ultimate form of protest left us – the strongest weapon left with which to continue within the prison our battle against the Administration."[242] Despite the immediate offer of an improved diet, including milk and eggs, Alice Paul refused to eat. "If we are to be starved, I prefer to be starved at once," Paul announced. "There is no use giving us special food today and not tomorrow simply to keep us alive as long as possible." Prison officials were "taking the strike calmly and waiting for Miss Paul to get hungry enough to eat."[243] Rose Winslow joined the hunger strike the next day.[244]

Paul's refusal to eat raised the stakes in the picketing battle enormously. Although identified most closely with British suffragettes and Irish political rebels, the hunger strike had occasionally been employed in America by fervent supporters of various political causes.[245]

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[241] Unsigned to Joy Young, Oct. 26, 1917 Reel 51 NWPP; Virginia Arnold to Mrs. Richard Wainwright, Oct. 26, 1917 Reel 51 NWPP.

[242] Stevens at 216-17.

[243] NY Times, Nov. 7, 1917 p. 13.

[244] NY Times, Nov. 8, 1917; see Stevens at 220-21.

[245] On April 25, 1914, the New York Times reported the case of Becky Edelsohn, an "IWW agitator," who began a hunger strike, which apparently lasted for nearly fifty-six hours, describing it as the " first to be attempted in this country." Lumsden 130-31. That same year,

Officials had worried for months about the possibility of a suffrage hunger strike, because of the devastating publicity that forced feeding of female prisoners had generated during the height of the British suffrage agitation. Indeed, the short sentences originally imposed on the first American suffrage prisoners in June and July had been designed in part to forestall any possibility of that British tactic taking hold on this side of the Atlantic. But over the ensuing months, frustration over the inability to halt the picket campaign by imprisonment had led to the imposition of increasingly harsh sentences on recalcitrant defendants.

Now that the moment finally was upon them, District officials had no idea how to proceed. On Wednesday, November 7, as Alice Paul lay calmly in her hospital bed, prison authorities called in the eminent alienist Dr. William Alanson White, the psychiatrist in charge of St. Elizabeth's, the government insane asylum, to "talk with and examine if necessary" the recalcitrant suffragists.[246] When White entered Paul's room, he asked the attendant: "Does this case talk?" to which Paul replied "gaily," "Indeed I'll talk." White replied: "Tell me about suffrage; why you have opposed the President; the whole history of your campaign, why you picket, what you hope to accomplish by it. Just talk freely."[247]

Even in a hospital bed, Alice Paul did not have to be asked twice to deliver the suffrage message. She sat up, propped herself up "for a discourse of some length," and delivered what she later described as "one of the best speeches I ever made." As she spoke, Paul noted that White seemed particularly interested in her views on Wilson, asking her at one point: "But isn't President Wilson directly responsible for the abuses and indignities which have been heaped upon you? You are suffering now as a result of his brutality, are you not?" Thinking that White was seeking a factual response, Paul replied earnestly that she did not know whether Wilson was "personally acquainted in any detail" with the current controversy over prison conditions. She was soon horrified when White held up a small light to her eyes as she was talking and peered at her. With "sudden shock," Paul realized that the questioning was "an attempt to discover in me symptoms of the persecution mania. How simple he had apparently thought it would be, to prove that I had an obsession on the subject of President Wilson!"[248]

Happy with the results of this examination, Dr. White invited District Commissioner

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radical journalist Upton Sinclair pursued a brief hunger strike after having been arrested for protesting against oil billionaire John D. Rockefeller. The most recent hunger strike had been that waged by Margaret Sanger's sister Ethel Byrne after her conviction for distributing birth control literature in January 1917. NY Times, Jan. 23, 1917; Suffragist October 6, 1917.

[246] 44 Wilson Papers 559-61 (Nov. 9, 1917).

[247] Stevens at 221.

[248] Stevens at 221-22.

Gardiner to join him on Thursday morning, November 8, to convince Paul and Winslow to abandon their protest.[249] Now aware that she was under psychiatric scrutiny, Paul observed that whenever she mentioned Wilson's role in blocking suffrage, White would "turn to his associate with the remark: 'Note the reaction.'"[250] Paul insisted: "We are political prisoners and must be therefore be treated unlike other prisoners."[251] White would not agree to have Paul committed to St. Elizabeth's Hospital.[252] After lengthy interviews with Paul and Winslow, prison officials concluded that there was no way to broker an end to the dispute. Commissioner Gardiner turned to Dr. Gannon, head doctor at the jail, and simply said: "Go ahead, take her and feed her."[253]

Placed on a stretcher, Paul was carted off to the prison psychopathic ward for forcible feeding. She was held in a cell under almost constant surveillance by a nurse, who peered at her once an hour, day and night, with a flash light, which she called the "most terrible torture." Indeed, upon objecting "mildly" to a blood test administered by a young doctor, Paul was informed: "you know you're not mentally competent to decide such things."[254]

The forcible feeding, perhaps the most horrific of all the violence brought to bear on protesting suffragists, began late in the day on Thursday, November 8. It would continue, three times a day, for almost three weeks.[255] The New York Times reported that the "greatly exhausted" Alice Paul had been forcefed after seventy-eight hours of refusing to eat, in an effort to keep her alive.[256] She was denied access to her own physician or attorney.[257] Paul had endured nearly a month of forced feeding in a London jail in 1909, and the horrors of it had

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[249] 44 Wilson Papers, 559-61 (Nov. 9, 1917)

[250] Stevens at 222.

[251] 44 Wilson Papers at 560; see Gertrude Crocker to Beulah Amidon, Nov. 8, 1917 Reel 52 NWPP.

[252] Paul Interview at 231. White later expressed tremendous admiration for Paul, stating that he felt himself "in the presence of an unusually gifted personality." Stevens at 226..

[253] Stevens at 222-23.

[254] Stevens at 223.

[255] Stevens at 223.

[256] NY Times, Nov. 9, 1917, at 13.

[257] NY Times, Nov. 9, 1917 at 13. Lucy Burns sent out a wire reporting the force-feeding and noting that Paul had been denied access to see her "own doctor, counsel or sister. Telegram, Lucy Burns, Nov. 9, 1917 Reel 52 NWPP.

nearly broken her health. Paul's sister, Helen, gave an impassioned interview to the press, in which she reported telling the warden that "he would kill my sister if he forcibly fed her. She has never been able to tell me about her experience in England, it was so horrible, and I know she cannot go through with it again."[258] District officials painted a rosier picture, claiming that forced feeding had been done so to patients "every day" at St. Elizabeth's for twenty years with "no ill effect." The official report of the forcible feeding described it as almost a pleasant event, in which the "patients" swallowed the feeding tube "willingly," in which there was "no more than the ordinary discomfort attending such a course of feeding."[259]

The news that Paul had been sent to the psychopathic ward sent shock waves through the NWP, who feared an "[a]ttempt to railroad [her] to the insane asylum."[260] These fears were not without merit. Paul later reported that the nurses had warned her that she could be committed to St. Elizabeth's solely on the signature of two examining psychiatrists, without recourse to trial or assistance of counsel.[261] She now feared Dr. Gannon as she had never feared any other human being, as he told her: "I will show you who rules this place. You think you do. But I will show you that you are wrong."[262]

IX. November 1917 - The Endgame.

The fateful day of the final "long picket" finally arrived on Saturday, November 10, with forty-one women marching out to the White House from NWP headquarters.[263] Among the first-time pickets was a twenty-year-old writer named Dorothy Day, later the well-known founder of the Catholic Worker movement. Day had just begun working for the radical

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[258] NY Times, Nov. 9, 1917 at 13.

[259] 44 Wilson Papers 559-61 (Nov. 9, 1917)

[260] Telegram, Matilda Gardner to Ella J. Abeel, Nov. 9, 1917 Reel 52 NWPP; Agnes Morey to Jane Ad[d]ams, Nov. 10, 1917, Reel 52 NWPP.

[261] Stevens at 225-26.

[262] Stevens at 225.

[263] Although some were prison veterans, including Paul's closest confidantes Lucy Burns and Dora Lewis, others were socially prominent women who had never before courted arrest, such as Anna Kelton Wiley, whose husband Harvey was the director of the federal government's food program, and Elizabeth Thatcher Kent, wife of former congressman and Tariff Commissioner William Kent. NY Times, Nov 11, 1917.

newspaper *The Masses*, which had been under siege from Postmaster Burleson since July.[264] She recalled a "religious fervor about the silent proceedings," although there were some stones thrown and some indignant men "wanted to know if the President did not have enough to bother him, and in wartime too!"[265] The procession was reported to be "one of the quietest and at the same time most sedately spectacular of all the picketing affairs yet staged."[266] All forty-one women were arrested, released on bail, and instructed to return on Monday.[267]

Rather than observing a day of rest on Sunday, the NWP decided to take advantage of the brief respite given to the pickets before their almost-certain incarceration on Monday. Much to the shock of local officials, the forty-one defendants, joined by "some fifty other suffragists," marched in "double file" to the District Jail, to demand to see Alice Paul.[268] The women first tried to see Warden Zinkham, but were rebuffed by his wife, who told them: "The poor man is prostrated." Undeterred, the demonstrators then walked around the perimeter of the jail, pushing past guards who tried to send them away. They finally spotted Alice Paul at an upstairs window, and gathered below while she described the conditions as "intolerable" and urged them to "make it clear from the first that you are political prisoners and demand that you be treated as such. Your number will make it impossible for them to do anything but grant your demands." She also told them that the force feeding was "worse than in England."[269] No women were arrested during this extraordinary demonstration.

The next day, Monday, November 12, the beleaguered Judge Mullowney oversaw the much-anticipated trial of the forty-one pickets for obstructing traffic, before a "packed" courtroom.[270] "[L]ike clock work," the prosecution presented "somewhat contradictory

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[264] Day had no interest in the cause of woman suffrage, but a friend persuaded her to come to Washington to picket to show support for the rights of political prisoners. Dorothy Day, The Long Loneliness, at 72.

[265] Day at 73.

[266] NY T Nov. 11 at 1 (Wilson was returning from his afternoon motor ride with his wife, and "could not help seeing the huge throng clustered before the White House."); see also Suffragist, Nov. 17, 1917.

[267] Day at 73.

[268] NY Times, Nov. 12, 1917 at 8; Irwin at 256-5; Stevens at 217-19.

[269] NY Times, Nov. 12, 1917.

[270] Stevens at 194; Dora Lewis to Mrs. O.H.P. Belmont, Nov. 13, 1917 Reel 52 NWPP.

testimony as to the composition of the crowd."[271] Most of the women made "brief speeches," in which they denied any wrongdoing. Anna Kelton Wiley, whose husband had been a prominent supporter of Wilson during his reelection campaign, asserted : "To say that we 'broke traffic regulations' when we exercised our constitutional right of petition is therefore unconstitutional."[272] When the speeches were over, Judge Mullowney deliberated "a long time" before suspending sentence.[273] Like the Bastille Day demonstrators, many of these women were wealthy and well-connected, and the sentencing of those women to the workhouse had led to political disaster. "The truth of the situation is that the court has not been given power to meet it," the judge lamented. "It is very, very puzzling."[274] The unrepentant Dora Lewis, a wealthy Philadelphian who was one of Paul's closest supporters, later wrote gleefully to NWP patron Alva Belmont to report: "We had a wonderful time in court yesterday."[275] Determined to force the hand of the government, most of the defendants returned to the White House that very afternoon to picket and were once again arrested and released on bail. Oddly enough, for the first time in many months, the crowd was "wonderfully sympathetic," admiring the "pluck" of the bold pickets.[276]

This bald defiance placed additional pressure on District officials, who also had to grapple with the reappearance of Dudley Field Malone as a thorn in their sides. Malone had demanded access to Paul at the District Jail, and was rebuffed, although she apparently had been allowed other visitors.[277] The following day, the NWP continued its two-pronged attack, sending pickets back to the White House, and sending Malone back to the District Jail to see Alice Paul. With the police mysteriously absent from the White House gates, many of the thirty-one women who returned to picket were "roughly handled" by the crowd, but were soon arrested and held at the District Jail without bail.[278] On the other front, Malone sought a writ of habeas corpus to see both Paul and Winslow. "If he is refused," mused Dora Lewis, "it will, of course, enrage the country; if he is successful, we have gained our point and counsel would then be permitted to see

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[271] Suffragist at 6-7, Nov. 17, 1917.

[272] NY Times, Nov. 13, 1917..

[273] NY Times, Nov. 13, 1917.

[274] Stevens at 194.

[275] Dora Lewis to Mrs. O.H.P. Belmont, Nov. 13, 1917 Reel 52 NWPP.

[276] Dora Lewis to Mrs. O.H.P. Belmont, Nov. 13, 1917 Reel 52 NWPP; Irwin at 260; Stevens at 194.

[277] Dora Lewis to Mrs. O.H.P. Belmont, Nov. 13, 1917 Reel 52 NWPP.

[278] NY Times, Nov. 14, 1917 at 6; Day at 73

them at any time, so we win out either way it goes."[279]

Malone's persistence prevailed, and he finally met with Paul, who now had been confined to the psychopathic ward for nearly a week. He raged to reporters that he was "shocked" by Paul's treatment, as she was "imprisoned in a room in the midst of insane patients, whose shrieks she can hear day and night." Noting that Paul had been "repeatedly" interviewed by "alienists," Malone asserted that Paul was "more sane than any of the administration officials who have been responsible for this outrage."[280] Probably in response to Malone's threat to go to court to have Paul transferred, officials returned her to the prison hospital the next day, where she probably expected to have contact with the new batch of suffrage prisoners likely to be sent over by Judge Mullowney that afternoon.

Judge Mullowney had other plans for the women standing before him for sentence on Wednesday, November 14. After enduring speeches reflecting the "righteous wrath" of the suffragists, he sentenced the thirty-one pickets to terms ranging from six days to six months, with "ringleader" Lucy Burns receiving the maximum sentence, and seventy-three year old picket Mary Nolan receiving the lightest one.[281] But much to the horror of the prisoners, the women were swiftly herded into cars and taken to the Occoquan workhouse rather than the District Jail.[282] The prospect of imprisonment at Occoquan terrified many of the women, some of whom were veterans of the Bastille Day siege.[283] Their fear would prove to be well-founded.

Upon arrival at the workhouse, the prisoners demanded political prisoner status, refusing to give their names or any other background information. Dora Lewis, a wealthy and well-connected Philadelphian who was one of Paul's principal advisers, asked to see the superintendent before the women were taken to their cells, but was ignored. The time for talk was over. The "Night of Terror," as it would later be called, was about to begin.

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[279] Dora Lewis to Mrs. O.H.P. Belmont, Nov. 13, 1917 Reel 52 NWPP; Dora Lewis to Frank Walsh, dictated in courtroom Nov. 13, 1917, Reel 52 NWPP.

[280] NY Times, Nov. 14, 1917; Suffragist at 5 (Nov. 24, 1917) (reporting that Malone had applied to "Chief Justice Stafford" on habeas to see Paul and Winslow); Stevens at 225.

[281] Day at 73; NY Times, Nov. 15, 1917. Nolan objected to her light sentence, saying that her nephew was "fighting for democracy in France," and that she "should be proud of the honor to die in prison for the liberty of American women." Stevens at 195

[282] Judge Mullowney may have been instructed by the District Commissioners to send the women to Occoquan in order to keep them separated from Alice Paul . Stevens at 206.

[283] Day at 74.

Superintendent Whittaker finally appeared at ten o'clock that night, "storming into the room, leaving the door open on the porch," from which the women could hear the ominous sound of the "shuffling feet of many men."[284] At his gesture, a large contingent of men, who looked "as much like tramps as anything," flooded into the room, seized the women bodily, and dragged them off to their cells. "You shut up. I have men here to handle you," Whittaker announced.[285] Dorothy Day recalled being in "the midst of a milling crowd of guards being pummeled and pushed and tackled and dragged, so that we were scarcely conscious, in the shock of what was taking place."[286] The women were quickly dragged into punishment cells, as a uniformed guard cried: "Damn you, get in here."[287] Lewis herself, "doubled over and handled like a sack of something," was thrown against an iron bed; her companions thought she was dead. Another woman "had a bad heart attack and was then vomiting," but cries for medical attention were ignored by the guards.[288] Lucy Burns herself was handcuffed to the bars of her cell for hours as punishment for calling out to her fellow prisoners.[289] "Whittaker came cursing outside the bars, threatening her with a strait jacket, a gag, everything but the whipping post and bloodhounds which we had heard were part of the setup at Occoquan."[290] Two men dragged Dorothy Day into the same cell with Burns; she recalled that they "lay there talking of Conrad's novels for some time," but the next day Burns was moved to a padded cell.[291]

Whether at the direction of District officials or by his own design, Whittaker had used brutal violence to try to bring the suffrage prisoners to heel. But the plan was soon to backfire, as the lawyers for the NWP shifted into high gear to protect their clients. Rumors of the vicious handling of the Occoquan prisoners leaked out almost immediately, with one concerned husband hearing that they had been "subjected to indignities that are comparable only with those met on the Western front."[292] Matthew O'Brien tried to see his clients at Occoquan the following day, Thursday, November 15, but Whittaker turned him away, doubtless concerned that the lawyer

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[284] Day at 75; Stevens at 196 (quoting affidavit of Mary Nolan).

[285] Stevens at 196..

[286] Day at 76.

[287] Stevens at 197.

[288] Stevens at 198.

[289] Day at 76; Statement of Miss Lucy Burns, Reel 52 NWPP.

[290] Stevens at 198.

[291] Day at 76; Stevens at 197.

[292] Henry Butterworth to Virginia Arnold, Nov. 15, 1917 Reel 52 NWPP.

would see the physical condition of the beaten women.[293] Undeterred, O'Brien obtained an order in police court, signed by both Judge Mullowney and Judge Pugh, to permit him to interview Lucy Burns, Dora Lewis, and Eunice Brannan.[294] Despite some blustering about ignoring the order, Whittaker ultimately submitted and admitted O'Brien to the workhouse.[295]

O'Brien was as enraged at the treatment of the women at Occoquan as Malone had been at the treatment of Alice Paul. He unleashed a fiery statement to the press, charging prison officials with "most brutal and illegal treatment" of the thirty women in custody, alleging that a detachment of United States Marines had been sent up from Quantico "to guard the grounds and prevent friends of the suffragists from getting inside the prison grounds."[296] He further proclaimed that the women had been punished merely for refusing to wear prison clothing and to give their names to prison officials, which they had no obligation to do, as "[i]n refusing to talk, the women were exercising their constitutional right of free speech. The guarantee of free speech carries with it the right to withhold your speech if you so desire."[297]

The news of the ruthless treatment afforded the suffrage prisoners made national headlines, but not in Washington, D.C., where there had been a press blackout imposed by local Washington newspapers.[298] Nevertheless, rumors circulated that President Wilson himself "met with the commissioners yesterday afternoon to decide what to do about the suffragists."[299] A number of the women who had been attacked during the Night of Terror were due to appear in police court that Friday for resentencing on additional charges, but now the government announced that they would not be produced in court, "as some official referred to in court as

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[293] Doris Stevens to Dudley Field Malone, Nov. 16 1917 Reel 52 NWPP.

[294] Order, Nov. 16, 1917, Reel 52 NWPP.

[295] Doris Stevens to Dudley Field Malone, Nov. 16 1917 Reel 52 NWPP.

[296] NY Times, Nov. 17, 1917; Suffragist of Nov. 24, 1917, at 4.

[297] NY Times, Nov. 17, 1917; Statement by Matthew O'Brien, undated, Reel 52 NWPP.

[298] Although the New York Times considered the drama to be front-page news, the Washington Post studiously ignored the raging battle over the handling of suffrage prisoners. Doris Stevens noted that though the story of the brutality had left them "simply shocked to the core," the local press had ignored the story entirely, in a "conspiracy of silence," noting that "[n]ot a word of the terrible story appeared in the morning papers." Doris Stevens to Spencer Miller, Jr.. Nov. 17, 1917 Reel 52 NWPP.

[299] Stevens reported that she had it on "excellent authority" that the President was "entirely satisfied" with the way things are being handled. Stevens to Ethel Adamson, Reel 52 NWPP, Nov 16, 1917.

'higher up,' had forbidden their removal from the workhouse."[300] Doris Stevens speculated that authorities had prevented them from coming to court "for fear they would tell of the dreadful things that have happened to them since arriving at the workhouse."[301] At the same time, Alice Paul was being held incommunicado at the District Jail.[302] The warden told Matthew O'Brien "frankly" that the commissioners had ordered that "absolutely no one was to see her," and it was rumored that Attorney General Thomas Gregory, was "giving advice as to what would be a good disposition of Miss Paul."[303]

Brute force had not broken the spirit of the militants at Occoquan. Soon after the Night of Terror, most of the suffrage prisoners began a hunger strike, which was to go on for the next ten days, leaving workhouse officials in a quandary about how to proceed.[304] With more than two dozen women refusing to eat, the situation threatened to spiral out of control, despite such tactics as trying to tempt the suffragists with appetizing foods like fried chicken in an effort to coax them into eating.[305] Dorothy Day recalled that she "would have preferred the workshop and prison clothes to the hunger strike," and that the mental anguish was almost as acute as the physical pain.[306]

As of Friday, November 16, the situation at Occoquan and the District Jail seemed so dire that the only option remaining was emergency relief from the courts. Dudley Field Malone turned his attention to Alice Paul, trying to obtain a court order that would give her full access to counsel. Matthew O'Brien drew up papers to challenge the confinement of suffrage prisoners in Occoquan, on the technical grounds that they had been sentenced in the District of Columbia and could not lawfully be sent to prison in Virginia. On Saturday afternoon, November 17, O'Brien sent a copy of the petition to NWP headquarters, apologizing that it was "not a neat job of typewriting as I did it myself," and then headed to Norfolk to file his petition. Oddly, despite the great secrecy, "a detective suddenly appeared to accompany Mr. O'Brien from Washington to Norfolk, during his stay in Norfolk, and back to Washington," leading the suffragists to conclude

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[300] NY Times, Nov. 17, 1917 at 1.

[301] Doris Stevens to Ethel Adamson, Nov. 16, 1917 Reel 52 NWPP.

[302] F. to Mrs. Thomas Hepburn, Nov. 16, 1917 reel 52 NWPP . Hepburn, an active member of the NWP, was the mother of the acclaimed American actress Katharine Hepburn, then still a child living in Connecticut.

[303] Stevens to Ethel Adamson, Nov. 16, 1917 Reel 52 NWPP.

[304] Stevens at 200

[305] Suffragist Nov. 24, 1917.

[306] Day at 78.

that their telephones were wiretapped.[307] Nevertheless, United States District Judge Waddill granted the writ and set a hearing for ten days later, on November 27.[308]

The resort to federal court caused such alarm within the Administration that an unnamed emissary approached the remaining NWP leadership with the "guarantee" that the prisoners would be removed from Occoquan to the District Jail "within a week" if the habeas petition were dropped.[309] Government authorities feared both the adverse publicity and the possibility of a broad court ruling banning the long-standing practice of sending District prisoners to Occoquan. Rather than accept the offered deal, O'Brien successfully persuaded the court to move up the habeas hearing to Friday, November 23, and to require Superintendent Whittaker to give O'Brien "the full and free opportunity to consult" with his clients in confidence.[310]

Desperate to avoid a courtroom spectacle, workhouse officials now moved to blunt the impending legal attack by transferring Lucy Burns and Dora Lewis to the District Jail.[311] Their condition was so weak after seven days of refusing food that they were forcibly fed at Occoquan by Dr. Gannon of the District Jail before their removal.[312] The one advantage of this illicit government maneuver was that the two NWP leaders could now confer with Alice Paul and Rose Winslow in the hospital ward.[313] Paul could only monitor events indirectly from jail, although she had sporadic contact with her colleagues who called to her through her window.[314] She had rebuffed a surprising offer earlier that week from journalist David Lawrence, a close confidante of Wilson and later a founder of the newsmagazine U.S. News & World Report. Although

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[307] Stevens at 207 ("It was evident that the Administration was cognizant of every move in this procedure before it was executed."); Matthew E. O'Brien to Doris Stevens, Nov. 17, 1917 Reel 52 NWPP.

[308] Suffragist, Nov. 24, 1917 at 5.

[309] Stevens at 207.

[310] Order, Nov. 20, 1917, reel 52 NPP; Suffragist Nov. 24, 1917 at 5.

[311] Suffragist, Nov. 24, 1917 at 5. .

[312] Stevens at 201.

[313] NY Times, Nov. 20, 1917; .Suffragist, Nov. 24, 1917 at 5;. Stevens at 194, 197-99, 201-02. Whittaker tried to evade service of process so that he could avoid producing the prisoners at the November 23 hearing, keeping himself "discreetly hidden for several days," but O'Brien's persistence ultimately succeeded. Suffragist, Nov. 24, 1917 at 5; Stevens at 209.

[314] Stevens at 217-19; CMF to Mary Ingham (talked to Paul "this morning") Nov. 22, 1917. Reel 52 NWPP

denying that he was acting as an emissary of the Administration, Lawrence tried to broker a deal with Paul, asking her whether she would call off the picketing campaign if the suffrage amendment could be passed through at least one house of Congress that year.[315]

With every effort to avoid judicial resolution now exhausted, the parties headed to federal district court in Alexandria, Virginia on Friday, November 23. Spectators and reporters packed the courtroom as Judge Edmund Waddill, "a mild mannered, sweet-voiced Southern gentleman," took his seat on the bench.[316] Dudley Field Malone and Matthew O'Brien, "belligerent in every nerve," represented the twenty-six prisoners. The "dapper" Frank H. Stephens, Assistant Corporation Counsel, and Richard H. Mann, United States Attorney for Virginia, represented the government. The courtroom drama unfolded almost immediately as a long line of prisoners staggered into the courtroom, "haggard, red-eyed, sick." Eunice Brannan, a society woman who was the daughter of famed newspaper publisher Charles Dana, "collapsed utterly and had to be carried to a couch in the ante-room."

Two prisoners subject to the habeas corpus writ were missing. Neither Lucy Burns nor Dora Lewis had been produced in the courtroom, as they both had been hastily transferred to the District Jail before service of the writ. O'Brien sharply challenged the government's assertion that the women were "too sick" to appear, contending that the authorities had deliberately defied the court's order to produce them. Judge Waddill insisted that the women should be produced the next day, and proceeded with the hearing. The court also made quick work of the government's opening contention that the federal district court in Virginia lacked jurisdiction to hear a case involving prisoners of the District of Columbia. Judge Waddill had previous experience with litigation challenging conditions at Occoquan, and he briskly announced that he had no intention of dismissing the writ in a case "concerning twenty-five or thirty ladies." He added that the descriptions of their treatment was "bloodcurdling; it was shocking to man's ideas of humanity if it is true. They are here in court, and yet your answer denies all these facts which they submit. It is a question whether you can do that and yet deny these petitioners the right of testimony."[317]

For the first time in months, the suffragists found themselves before a judge who seemed sympathetic to their plight. Malone and O'Brien took advantage of the forum to present evidence of the harsh treatment meted out to the suffrage prisoners. Prisoner Eunice Brannan lacked the strength to testify, but her husband, a prominent physician, testified that "the suffrage

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[315] Stevens at 226-27; see generally Lunardini at 136-37. Lawrence later denied that any such deal had been offered. Flexner at 386 n.19.

[316] The following description of the hearing is drawn from the Suffragist, Dec. 1, 1917 at 4 and Stevens at 232-34.

[317] Stevens at 235.

prisoners were deliberately terrorized when they entered Occoquan and were treated with great brutality by the men guards, who handled them and knocked them about with the fury of thugs, under the immediate direction of Mr. Whittaker himself."[318] Despite testimony about brutality at Occoquan, the only legal issue presented by the habeas petition was whether the District could lawfully have its prisoners transferred to serve their sentences in Virginia. In response to Zinkham's claim that his decisions on transfer to the workhouse were guided by "humanitarian motives," the judge interjected that "two of these ladies were old and one of them is a delicate lady," and expressed dismay at the wholesale shipment of suffrage prisoners to Occoquan. Malone asserted that even if the Commissioners had the power to commit prisoners to Occoquan at their discretion, it had not been contemplated by Congress that it should be used in such a "scandalous fashion."[319]

The next day, Saturday, November 24, the suffrage prisoners received a long-awaited victory when Judge Waddill held that they had been held illegally in Virginia for offenses committed in the District of Columbia. Judge Waddill did not address the issue of the conditions at Occoquan or of the legality of the underlying convictions.[320] Instead, he opined:

> The locking up of thirty human beings is an unusual sort of thing and judicial officers ought to be required to stop long enough to see whether some prisoners ought to go and some not: whether some might not be killed by going; or whether they should go dead or alive. This class of prisoners and the number of prisoners should have been given special consideration. The two humble negroes that I liberated from that institution six years ago got the same relief and remedy that I think these thirty women are entitled to. There cannot be any controversy about this question . . . You ought to lawfully lock them up instead of unlawfully locking them up.

The government took an immediate appeal, which apparently would have entitled the defendants to release pending its resolution, but the women decided that it would be preferable to finish their sentences now, rather than face the possibility of returning later if Judge Waddill's ruling were reversed.[321] Refusing to accept parole may also have been a tactical move to keep pressure on District authorities, who now faced the prospect of subduing not only Alice Paul, but nearly

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[318] NY Times, Nov. 25, 1917.

[319] Stevens at 235-39.

[320] NY Times, Nov. 25, 1917. The Court of Appeals for the Fourth Circuit later reversed this order in Whittaker v. Brannan, 252 F. 556 (4th Cir. 1918), holding that transfer of prisoners to Occoquan was consistent with the provisions of the applicable statute.

[321] Stevens at 239-40.

thirty of her most fervent supporters, once they were all reunited at the District Jail. Their fears were realized within hours, as a number of the women sent from Occoquan to the District Jail immediately began a hunger strike.[322]

District officials now scrambled to find a way to remove the pesky women from their custody without handing them a public relations victory. On Monday morning, November 26, Judge Mullowney wrote a letter to Superintendent Zinkham of the District Jail, which read: "I understand there are certain prisoners in your custody, committed by this Court, whose physical condition is such that further imprisonment might be dangerous to their health. If such is the fact, please let me have the names of such prisoners."[323] Zinkham replied the following day, Tuesday, November 27, recommending discharge of twenty-two suffrage prisoners because of the "exigencies of the war," which had reduced the medical staff at the jail, thus making it "exceedingly difficult to care for these troublesome [prisoners]," and because of ongoing health risks posed by the hunger strikes.[324] By November 28, Judge Mullowney had ordered the release of all remaining suffrage prisoners.[325] In NWP circles, however, the capitulation of the government to the hunger strikers was viewed as a tremendous victory. They immediately began to marshal evidence for a civil suit against the government for unlawful imprisonment.[326]

X. January to March 1918 – Victory in the Court of Appeals.

On January 8, 1918, six weeks after the unconditional release of the Occoquan prisoners, a three judge panel of the District of Columbia Court of Appeals heard oral argument on the pending appeal of the convictions of two sets of August pickets.[327] Matthew O'Brien and Dudley Field Malone represented the defendants, with O'Brien apparently handling the

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[322] Day at 82, 83.

[323] Alexander R. Mullowney to L.F. Zinkhan, Nov. 26, 1917 Reel 52 NWPP.

[324] Zinkham to Mullowney, Nov. 27, 1917 Reel 52 NWPP.

[325] Zinkham to Mullowney, Nov. 28, 1917 Reel 52 NWPP. Stevens at 241.NYT Nov. 28, 1917.

[326] NYT Nov. 29, 1917; Doris Stevens to Mrs. John Winters Brannan, Nov. 26, 1917 Reel 52 NWPP,

[327] The Court of Appeals was the predecessor to the modern United States Circuit Court for the District of Columbia, although its status as a federal court remained ambiguous until 1934. See John G. Roberts, Jr., What Makes the D.C. Circuit Different? A Historical View, 92 Va. L. Rev. 375 (2006); Susan Low Bloch and Ruth Bader Ginsburg, Celebrating the 200th Anniversary of the Federal Courts of the District of Columbia, 90 Geo. L.J. 549 (2002).

argument himself. Corporation Counsel Francis Stevens represented the District, and faced a skeptical bench. Justice Charles Robb asked the government attorney: "Suppose some upholders of Billy Sunday should go out on the streets with banners on which were painted some of Billy's catch phrases, and should stand with their backs to the fence, and a curious crowd gathers, some of whom created disorder and threw stones at the carriers of the banners. Who should be arrested, those who created the disorder, or the banner carriers?" He and his colleague Josiah Van Orsdel scoffed at the response that "both parties" should be arrested, when "the banner carriers were perfectly peaceful." In his reply to the court, Matthew O'Brien puckishly insisted that "the honorable Justices obstruct traffic, according to learned counsel's definition, when court adjourns, and they walk down the street together."[328] He denied the claim that the women were "wilfully and deliberately harassing and annoying the President of the United States," insisting that the women were well within their constitutional rights."[329]

Two months later, on March 4, 1918, the Court of Appeals handed the NWP a major victory in *Hunter v. District of Columbia*, reversing the convictions of the pickets on the ground that the information filed against them had been insufficient to charge a criminal offense. The government's argument that the information tracked the language of the statute on unlawful assembly proved unavailing, because "[i]ts mere repetition in the information, without averments disclosing the particulars of the alleged offense, states nothing upon which an issue can be formed."[330] Here, the court explained, "[s]o far as the information enlightens us, the defendants may have assembled for a perfectly lawful purpose, and, though to a degree obstructing the sidewalk, not be guilty of any offense." Reprising a theme from oral argument, the court continued: "It would hardy be contended, therefore, that if defendants had met on one of the spacious sidewalks of Pennsylvania avenue to conduct a peaceable conversation, though in a degree inconveniencing pedestrians, they would be guilty, under the statute, of crowding and obstructing the sidewalk." The court concluded:

> In the present case, there is nothing to inform defendants of the nature of the acts which are relied upon by the prosecution as constituting alleged obstruction of the sidewalk, or that would enable defendants to make an intelligent defense, much less to advise the court of the sufficiency of the charge in law to support a conviction. For aught that appears in the information, the court could assume that defendants were creating a riot or menacing the safety of pedestrians. The information is too vague, general, and uncertain to meet the requirements of the established rules of criminal pleading and is, therefore,

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[328] Irwin at 267-68; Suffragist of January 8, 1917.

[329] Suffragist, Jan. 12, 1918 at 9.

[330] Hunter v. District of Columbia, 47 App D.C. 406, 408 (Ct. App. D.C. 1918).

insufficient in law.[331]

Although the opinion nowhere addressed the First Amendment, its holding that the suffrage pickets had been routinely arrested and incarcerated without legal basis seemed to be complete vindication of the militant position, and a rare victory for protesters during World War I.

XI. The Beginning of The End.

The immediate legal battle was over, but the final push for a constitutional amendment had just begun. On January 9, 1918, just one day after oral argument in *Hunter*, Woodrow Wilson publicly called for passage of the woman suffrage amendment. The President's "change of heart" came as a "great surprise" to the public and to suffrage supporters. He urged his fellow Democrats to vote in favor of the amendment as an "act of right and justice to the women of the country and of the world." Alice Paul applauded his support, but recognized the struggle ahead: "It is only the women who have labored and sacrificed who know fully what victory means, but all Americans must be proud to have our country join the liberal nations of the world in which women share full liberty with men."[332] The House of Representatives passed the amendment on January 10, 1918, with precisely the two-thirds vote required.[333] The NWP gleefully noted that this historic event occurred one year to the day from the first picket line at the White House.[334]

Although victory seemed within the grasp of the suffrage movement, it would take more than two and a half more years before the Nineteenth Amendment would become part of the Constitution, years of struggle and turmoil that would once again send militant suffragists back to the barricades and Alice Paul back to prison. Future historians would debate the role the pickets played in forcing the hand of Washington politicians on the suffrage issue, but the NWP had no doubt about what they had achieved. "The picketing at the White House gates needs no vindication," announced one NWP leader. "Nothing succeeds like success. . . To-day, after . . . visualizing by processions, mass meetings, demonstrations, and finally by the historic picket line, the determination of women not to be governed without their consent, suffrage has been forced into the national arena, and victory is assured."[335]

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[331] Hunter at 408; NY Times, March 5, 1918. Press reports noted that the National Woman's Party was threatening to bring more than 200 lawsuits against the government

[332] NY Times, January 10, 1918 at 1.

[333] NY Times, Jan. 11, 1918 at 1.

[334] Elizabeth S. Rogers to Member of National Advisory Council, January 26, 1918.

[335] Elizabeth S. Rogers to Member of National Advisory Council, January 26, 1918.