Dear Jim, 8/17/84

If I hadn't overreacted to the spraying yesterday I'd probably have done more today and not read the NYTimes story on the internal dissention within the ACLU. My protime was over 28 Monday, my own doctor is away, and his assodate, worried, I think overreacted and told me not to take any anticoagulent that day. After two days of the ~~xxx~~ usual dosage it was only up to a little over 14 yesterday. He told me not to take any extra then and I haven't, but I think he was wrong. So, it knocked me out after I did one trip of spraying and I remained inside and took it easy. I felt OK after twice as much today, but as I was sitting and sweating it out I read the story and then sat and thought about it. And decided to write him. As I hope he does not resent.

I'd just finished the letter when Les phoned. He was impressed with the arguments I'd given him and he's decided to do a story. But on a different basis, from his own thinking. It is simple and correct: if they did not intend to lie, deceive and misrepresent why, of all the possible formulations, did they resort to the one they used before the courts. And all that would be before the Supreme Court if the case went there?

He's tried to phone Whittaker, who isn't in. He wanted to ask me about phoning Schaitman or others and I suggested he await her return because while all the signatories are responsible, she is the author. He suspects that when she is back he'll be referred to the flacks and I said then would be the time to phone others and then he could also say that she/they refused to talk about it.

I told him I'm not in any rush, that the only other one I'd likely talk to is Lardner, and that I'll not as long as he is considering it anyway. She is due back the 24th.

This is just to let you know. I think it best that we just keep quite and let what happens happen. I've sent him nothing not in the case record.

About this, that is. I've sent him other records as I made copies for Theoharis, and he was entertained. Also reminded. About the denied leaks.

I told him I'd not been able to decide if Hoover's notes were intended to cover Hoover's ass or or if the others were conning him. He is inclined to think that Hoover had a pretty good idea what was going on and did not disapprove.

Best,

The A.C.L.U.'s Increasing Dissent From Within

By DAVID BURNHAM
Special to The New York Times

WASHINGTON, Aug. 13 — A few weeks ago, the southern California affiliate of the American Civil Liberties Union challenged the staff of the A.C.L.U.'s Washington office, saying that a recent decision by the staff would increase the risk of illegal abuses by the Central Intelligence Agency.

The subject of the California group's anger was a move by the Washington office to support legislation exempting some Central Intelligence Agency files from the requirements of the Freedom of Information Act.

The affiliate's expression of dissatisfaction with the Washington office was not new or unusual. Increasingly, some A.C.L.U. members are saying that decisions by the office here reflect a compromise of principles and ideals by the hierarchy of the 64-year-old organization.

Defenders of the Washington office do not deny a shift has taken place. They argue, however, that it is a shift in strategy, not principle, forced on the A.C.L.U. by the shift to the right

'The hard truth we must face is co-option and the legitimating of otherwise indefensible acts.'
—Mae Churchill

that has occurred on the Supreme Court in recent few years. Where once the civil liberties group could rely on a liberal Court for the remedies it sought, they say, it and other liberal organizations must now turn to Congress, an institution more liberal than the current Court but nevertheless a place where a certain amount of give and take and compromise is required.

Mae Churchill, a long-time critic who was a leader in the California affiliate's formal protest, is not persuaded by this explanation. "The New York and Washington offices of the A.C.L.U. seem to have become a part of the establishment," she said. "They have become comfortable with the Washington bureaucrats."

"The A.C.L.U. used to be known for its defense of the Bill of Rights," she continued. "It is that defense which is being compromised by entering into negotiations with an Administration, like the current one, which is reactionary. The hard truth we must face is that in today's political scene the net effect of participating in the formulation of laws affecting civil liberties is co-option and the legitimating of otherwise indefensible acts."

Mrs. Churchill added that several recent decisions of the A.C.L.U. were reminiscent of the early 1950's when the organization seemingly lost its commitment to civil liberties in the intense anti-Communist sentiments of the McCarthy period.

'A Fair Amount of Dissent'

Mark Lynch, a litigating attorney for the organization in Washington, disagrees with Mrs. Churchill. "We always had a fair amount of dissent," he said. "But the conflicts within our organization seem to have increased recently because the change in direction of the Supreme Court has forced us to change our tactics."

Mr. Lynch said that in the years of Chief Justice Earl Warren, the A.C.L.U. almost always could rely upon the Federal courts to defend the civil rights of individuals, a political reality that allowed the organization to take more absolute positions in its legal briefs.

"Now the Court has become much more conservative," he said. "This means we must turn to Congress in our efforts to defend civil liberties. Working the legislative arena requires an entirely different approach than the courts. When you are talking with a House member or senator, you have to be ready to negotiate and compromise; absolute positions of

principle cannot always be maintained."

Jerry F. Berman, legislative counsel in the A.C.L.U.'s Washington office, denied that the organzation was moving to the right. "We stand four square behind all the rights of free speech and privacy," he said, "and have worked with House and Senate members to prevent Congress from passing seriously troublesome legislation on issues like school prayer and to limit the C.I.A.-backed proposal to give it a total exemption from the Freedom of Information Act."

He said the recent trends in the Supreme Court were "ominous" for civil liberties. "Despite the many years when the Court was our principal ally," he said, "since the era of Chief Justice Warren Burger and Justice William Rehnquist, Congress has become far more sensitive to civil liberties."

'Often a Very Difficult Call'

Ramona Ripston, the director of the A.C.L.U.'s southern California affiliate, said she could understand both sides of the dispute. "Anyone who has worked in the legislature knows there has to be some give and take," she said. "The question is what kind of compromise. There have been some decisions made at the national level which we would not support. But this often is a very difficult call."

There have been many separate skirmishes in the continuing war to define the correct position for the nation's oldest and largest civil liberties organization.

Several years ago, for example, Mrs. Churchill and her allies in Los Angeles opposed the A.C.L.U.'s involvement in the drafting of a law that requires the Government to obtain a secret warrant from a special and largely secret Federal court when it wants to conduct electronic eavesdropping device on a spy. The organization has always maintained that all wiretaps, even those with a warrant, violated the right, under the Constitution's Fourth Amendment, to be free from unreasonable search.

A more recent example of the conflicts within the A.C.L.U. concerned legislation designed to set Federal standards for regulation of the cable television industry. Mr. Berman, in his role as the organization's legislative counsel, worked hard with a number of industry lobbyists to gain approval in the House Energy and Commerce Committee for an amendment that would sharply limit the right of law-enforcement agencies to obtain information about individual subscribers. Several days later, however, the A.C.L.U. put out a press release attacking the overall bill because of other aspects of it.

Strident Dissension

But spokesmen from both camps agree that the struggle over the C.I.A.'s responsibilities under the Freedom of Information Act best illustrates the increasingly strident dissension within the A.C.L.U.

The act requires Government agencies to make most records available to citizens and corporations that ask for them. Most C.I.A. information is exempt, although the agency is required to search all its files when a request is made for certain data. The proposed legislation would allow the agency to omit one category of files when it makes a search.

The defenders of the A.C.L.U.'s position on the issue contend that the pending legislation will actually shorten the time it takes the C.I.A. to respond to requests because it more closely defines the files the agency must comb. These defenders also say that if the civil liberties group does not support this proposal, alternative legislation might be adopted that would totally remove the intelligence agency from requirements of the information act.

Critics argue, on the other hand, that the pending legislation already would provide the C.I.A. what amounts to a total exemption from the law, "permitting the agency to cover up illegal domestic spying and other wrongdoing."

This particular challenge was serious enough that Morton Halperin, director of the A.C.L.U.'s Center for National Security Studies, flew to Los Angeles to defend the decision before a meeting of the California affiliate. Despite Mr. Halperin's effort, the executive committee of the affiliate voted to oppose the position of the Washington office and then informed a number of members of Congress of its opposition to the legislatrion.

This action, in turn, was considered by the national board of the A.C.L.U. It approved a resolution saying the Washington office's decision in the C.I.A. matter was within the approved policy of the A.C.L.U. The Californians were also reminded of a long-standing rule forbidding affiliates from having contact with members of Congress outside their areas.

Mr. Mark Lynch
122 Maryland Ave., NE
Washington, D.C. 20002

8/17/84

Dear Mark,

Today I was given a copy of Burnham's 8/14 Times piece and I thought about it while resting after a bit of minor exertion was a little too much. As a result I decided to write you as perhaps others have not. (I was aware of your/ACLU position but I was not aware that you lacked unanimous support within the ACLU.)

On the question of compromise, as it is called, with the CIA with regard to amending FOIA, and in general when faced with reaction, there are several factors that, depending on view, may or may not be regarded as interrelated. Questions as well as factor:

What is best for the country; what is best for the ACLU; what is best for those directly involved.

Because I am older I can remember more and because of my own experiences, I have lived through more. While you and probably your associates have not, personally, lived through such experiences, the ACLU as an organization has. And as an organization I wish it would bear in mind Santayana's wisdom, that those who do not remember the past are doomed to relive it.

In a recent letter to DJ OIP Huff I referred to the frameup by the Dies committee, lustily supported by Hoover and his FBI. I had entirely different purposes in writing him so what I said to him does not include what is relevant herein.

My associate then was the late Gardner "Pat" Jackson, ardent ACLUer and close friend of all its top people. He had been on the Sacco-Vanzetti committee and he then was John Lewis's legislative rep, through Labor's Non-Partisan League. He was, as I recall, quite close to Roger Baldwin. I recall his account of an event when they once summered together.

Forget about the kid, me. Pat was a mature man, as ardently anti-Communist as one can be, and without possibility of any question, the victim of a vicious and deliberate frameup by reactionaries. But the ACLU was then following an earlier policy of what it quite genuinely regarded as compromise, intended to save those it regarded as liberals and not communists from the Dies gang and their many and influential associates.

Aside: most of those who suffered and suffered greatly were not communists and numerically very few real Communists were victimized at all. What the ACLU regarded as compromise and expected to work out that way ended up as capitulation to reaction, with those it expected to benefit from the "compromise" its victims.

When when Pat Jackson, who had this long life of real dedication to and effective work on behalf of liberal causes, including the ACLU, needed counsel to represent him, neither the "compromise" oriented ACLU nor any other of the extraordinarily large number of liberal lawyers would represent him. (And as a byproduct me.) I do not recall all of them because I was not with him when he approached most of them. When I was with him I recall quite clearly our trip to Dean Acheson's law firm (he and Pat were friends), Covington, Burling. We saw the prestigious liberal, Charles Horsky. He turned Pat down flat. I have a way of remembering the last visit because we left the office with Acheson, walked down to the NW corner of 15 and Penna., and there Justice Frankfurter, Pat's Sacco-Vanzetti committee associate, picked Acheson up and they drove off together. This was my only introduction to or meeting with a Justice when he was a Justice.

We wound up with conservative counsel, arranged for by Drew Pearson, who had been used as the leadin for the frameup.

Then the Dies gang, already holding up Dave Pine's confirmation as district court judge, rushed a law through the Congress. It was still on the books during Watergate, when Weicker referred to it when he threw Colson out of his office, a law making it a crime to interfere with the proper functioning of a Congressional committee. It was to get Pat and me.

Then there was another proposed "compromise," carefully leaked to Pat and our counsel separately, just be quiet and play dead, not to cause any ripples so the whole thing could be wiped out in our favor quietly. Pat and the lawyer, Edgar Turlington, believed it. I didn't even stop to think about it. I did as they asked and I was silent, too. Until the lawyer for the dirty little fascist who had done this for Dies had a qualm of conscience. Earlier he had dated my wife. When I was out of town he phoned and asked her to join him for lunch because he had to see her, and when she was in his office he made a real point of shuffling a few papers in front of her eyes before excusing himself for an errand he told her would take 10-15 minutes. She got the cue and as soon as he left she read the papers he had called to her attention. She then got hold of Pat, who simply would not believe that his friends of the compromise would doublecross him for their compromise. So, she phoned me at my mother's and I returned immediately, to prepare to defend myself.

And I did, despite the constant cautions I received from Pat and Edgar, who The USSR were telling him their version of what I was doing before the grand jury. Day after day as Ed Fihelly tried to phony up a case for indicting Pat and me. I was only a kid, and what was happening was outside my personal experiences, but I knew I had to take Fihelly's grand jury away from him - and I did. Had I not, Pat and I would have been indicted. Instead, we were not and the Dies agent was. F. Hellymade a real effort!

The principled compromise of that era perpetuated the evil Dies represented and symbolized and it really did nothing else. That was inevitable, but those who had a theory that some benefit might come from their compromise did not see it. Had they recalled history, here and abroad, they would have been aware that it is ever so. The dedicated wrong of reaction may go through the motions, but they do not compromise. They pretend to compromise to prevail.

Some years later the Truman State Department decided to agree to a "compromise" with House Republican extremists where were hardly-hidden anti-Semites and Ameriform fascists. Their compromise was to get a minor provision of an appropriation bill approved in return for what amounted to a pogrom, the firing of 10 liberals. Who also were authentic scholars for the most part and within my group the others were proteges of Margaret Mead. We turned out genuine, honest research and papers and the reactionaries could not abide that. With State they were led by the late John Peurifoy, later the ambassador and key to our overthrow of the democratic Guatemalan government.

Some of my then associates and in particular the still-employed wife of one, wanted to pursue what was described as a compromise by some eminent scholar who proposed it: keep quiet, try to resume a normal life, and perhaps your names, still not leaked, will not be leaked and you can live again. We were fired under the unConstitutional McCarran rider. I had no charges against me, and indeed, none were possible, and I had no hearing. I don't know about all the others, but this was true of my group. I knew that it was only a question of time before reaction would seek the other half of its pound of flesh and tried to organize a defense. The mere inference that we were reds (I have no reason to believe that any one of us was, although some years earlier one had quit the CP.) was enough to keep the ACLU from representing us. So, I went to the leader of the National Lawyers Guild, who I'd known years earlier, Marty Popper. He was willing to represent us, but before he'd do anything at all, including estimating the ultimate fee and costs, he wanted $5,000 in advance. From the unemployed, some still getting enlisted mens' pay or only recently returned to civilian life. We didn't have it and as unemployed and likely unemployable we couldn't get it.

I then arranged for Arnold Fortas and Porter to represent us, and they did without fee. I'd known Thurman Arnold when he was in Anti-Trust and I helped him and I'd known

Paul Porter slightly through Pat Jackson. And in the end, instead of a compromise that would have ruined the scholars for life, for they'd never be able to teach again, we got a public apology from the State Department and they did return to teaching, except for one who preferred other work within his field.

As for State, its "compromise" laid the foundation for the McCarthy massacre and, of course, the successes of the incredible Peurifoys of the land.

My experience is consistent with what history teaches us, when one compromises on principle it is never a real compromise and one compromises himself.

There is also the question of the other party to the compromise. History is clear enough, reaction does not keep its word. And although there are some in the CIA who consider themselves and are sometimes referred to as liberals, they serve reaction and kid themselves and others.

Barnyard offals are more valuable than the CIA's word. They never keep it unless keeping it serves their interest as they see their interest, not as you see it. I know of no exception, and this includes their word to the courts. I doubt if you understand that to those people what is to most of us wrong is right and proper. Indeed, to them their mendacity is the ultimate in patriotism. They genuinely believe that they serve a higher purpose that the rest of us do not and cannot appreciate, that they alone understand this, and that anything they believe can or will further their ends is right and necessary, no matter how dishonest it may be by normal and accepted concepts.

Once again we are in a great demon era and all else is sublimated to what is considered to be a defense against this great demon. What tragedies this has meant in the past, from which we should profit in the present, and what evil it in the end leads to! With virtually everyone not part of the great demon the victims. And the most basic principles and rights also victimized.

There is no way you or anyone else can get the CIA to keep its word. And there is no way in which, if it doesn't want to - and it does not and it will not because it dares not - speed up and improve FOIA disclosures.

If there is anything they do not want to disclose, they will swear that it is exempt under your amendment and there is nothing, as a practical matter, that anyone will be able to do about it.

What I am saying is that if you succeed you will fail because it will make only one difference - they will have a persuasive argument they do not have now.

The two other questions relate to the person and to the organization, the ACLU and you and your associates. I have no doubts about your sincerity at all. As I in the past had no doubt about the sincerity of others who genuinely sought what they regarded as compromise. But I also have learned from the past that what is most important for the individual and organizations like the ACLU is the preservation of integrity. In retrospect, when we can look back and see what we did not consider and when we can evaluate what happened.

As a practical matter, in the present situation and if it continues, it really makes little difference if your compromise is enacted. There still will not be any disclosures the CIA does not want to make. You will have accomplished nothing but you will have given them an immunity bath. They have done much wrong, it ought be aired, and those wrongs ought be ended. I do not want you to get to my age and look back with regrets over the present.

As I remember it, the ACLU was some years recapturing the prestige it enjoyed before its compromise on the phony issue of reds and the Un Americans.

If we are in for a period of greater reaction, history teaches that the best prospects for survival and ending it come from standing without compromise on

principle. This is a position without taint and one that in retrospect is understood and respected.

I've not been close to this. I know none of the details. I've had a slight correspondence with your associate Adler only, and I sent him an internal record that reflects the real CIA, not a CIA that will keep its word. But I've lived longer, Mark, had my own experiences and was mature enough to understand what was going on during one of the most terrible eras of man's history.

Whatever happens is not going to make any significant difference to me personally. While I'd like very much to get some of what they withhold, particularly as it relates to me (and I'm certain if really disclosed would reflect its anti-publishing activities), at my age and in my health it is not an absolute essential.

But I do think the wiser course today, if it is still possible, is to try to get this entire matter set over for the next Congress. If it is not a better Congress, that will not make any real difference because, I am certain, if you get what you want you will have defeated yourself in your objectives and they will have less trouble doing what they are going to try to do and will probably succeed in in any event. Slight as the chance may be, I think it is better to hope for a better Congress.

Whatever you do or do not do, I hope that you reach my age and look back without regrets on your younger days. None of us can avoid making mistakes and we all do. We have no trouble living with the realities of life. It is in the area of principle that we can have problems and doubts when we look back.

Best wishes,

Harold