

Panel II: Free Speech as a Suicide Pact

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A decade after the ACLU first defended Benjamin Gitlow's right to advocate revolution, the organization litigated another case bearing the defendant's name: *Gitlow v. Kiely*. Like the first, the second case involved Gitlow's distribution of a communist organ called the *Revolutionary Age*; like the first, the second ended in defeat for the ACLU and its client. Yet the latter iteration also differed markedly from the former, not least because the new *Revolutionary Age* emerged from a fracture within American communism and Gitlow's expulsion from the CPUSA.

The years between the first and second *Gitlow* cases witnessed dramatic changes in political and economic conditions and in American attitudes toward freedom of speech. During that period, the ACLU's lawyers and leadership reconceived the organization's positions on administrative censorship, executive clemency, judicial review, and state and federal power. As the 1930s began, however, these shifts had not yet produced a corresponding transformation in constitutional law sufficient to protect radical agitation. Through the lens of the second *Gitlow* case, this paper explores the reception of the ACLU's litigation strategy of the early 1920s, including its audacious defense of speech advocating violence. It argues that the organization's approach in *Gitlow v. New York* inadvertently served as an obstacle to subsequent litigation and may ultimately have slowed judicial expansion of the First Amendment.