

Fred Warren Convicted by a Packed Jury (May 15, 1909)

It was the common remark of the spectators at the trial of Fred D. Warren, managing editor of the *Appeal to Reason*, which opened before Judge Pollock of the federal court at Ft. Scott, Kansas, on May 4th [1909], that he would be tried by a packed jury. The evidence of this was so apparent and striking as to make it self-evident. Not by Socialists alone was this said, but by others who personally knew the jurors, their politics, and their prejudices.

Under the federal law the United States Marshal for the district impanels the jury. He can choose whomsoever he pleases. In the panel from which the Warren jury was chosen there was not one who was not known to be an opponent of socialism, if not a hater of the *Appeal to Reason*. It was a jury of Republicans. It was impaneled to convict and so began at last the Warren trial.

For over two years this case has been hanging fire. Four separate times the government asked for a postponement. Contrary to the expectations of the prosecution the interest did not die out, but increased. Only in one respect were the government's expectations realized and that was in the enormous expenses to which the *Appeal* has been subjected and which it was hoped would be the means of putting it out of business.

Of course, the prosecuting attorney, Bone,¹ knew that he could secure a conviction, for he knew that his friend the United States marshal would furnish the material for the right kind of jury. But the court feared the effect of a conviction and at a previous trial the judge took occasion to say that it might result in increasing the power of the publication aimed at instead of abating the nuisance.

All the government wanted was a conviction and Warren's lawyers were given to understand that if they would enter a plea of guilty the defendant would be released on a small fine. This was refused. The prosecution then declared that if they were compelled to fight they would fight to win and the defendant would get the limit. To this Warren answered that he would a thousand times rather accept the limit than to be so cowardly as to surrender to the enemy to his own personal benefit.

The chief witness of the prosecution proved to be ex-Governor Taylor, of Kentucky. The case of Mr. Taylor need not be discussed here. For several years he was a fugitive from justice, making his residence in Indiana and not venturing to return to Kentucky, where he was under indictment and where a large reward was offered for his return. The Republican governor recently elected in Kentucky issued a pardon to ex-Governor Taylor and it has been strongly intimated that the Warren trial was held in abeyance until this pardon was granted so that he might appear at the trial without an indictment hanging over him. Be this as it may, it is at least an interesting coincidence that the Warren trial has been postponed for over two years and that it was called just after the governor of Kentucky granted a pardon to ex-Governor Taylor so that he might testify against the defendant.

Ex-Governor Taylor was placed upon the stand, but his examination was very brief. He was simply identified as the ex-Governor for whose return Editor Warren had offered a reward of \$1,000.

Post Office Inspector Chance was placed on the witness stand and testified that Warren had told him that he had destroyed the mailing list and that he could not, therefore, say whether or not the letter containing the offer of the reward for the return of Taylor had been sent to the person named in the indictment. In making this statement Chance told a deliberate lie. Warren never said any such thing. The postmaster of Girard, who was present during the conversation, testified against Chance upon this point.

This falsehood was uttered to convict Warren in the minds of the jury of having destroyed the evidence against him. As a matter of fact, the mailing list was not destroyed, nor did Warren say it was, nor did anyone think such a thing until Chance invented the lie to serve his malign purpose.

The evidence was soon in. The fact is the prosecution had no evidence at all, or anything worthy to be called by that name. It was the flimsiest case ever tried outside of a mock court. The spectators smiled audibly at the face that was being enacted in a so-called temple of justice.

The defense put Comrade George D. Brewer,² former manager of the mailing department, on the witness stand and he testified that so far as he knew no letter offering the reward complained of had been sent to the person, one Pierson, named in the indictment. Brewer testified that the mailing lists had been carefully examined and that they contained no such name and that so far as he knew nothing had been sent to that person from the *Appeal* office. When it is taken into account that Brewer had complete

charge of the mailing department at the time, his evidence is conclusive upon that point.

The letter upon which the indictment was based and out of which the whole case grew was alleged to have been sent to a person named Pierson in California, and this was the letter filed in evidence against the *Appeal*. But, strange to say, Pierson, who is responsible for the prosecution, has not been heard of and no one knows if he be dead or alive or even if there be such a person. In his argument to the jury Attorney Darrow did not hesitate to say that Chance, the post office inspector, very likely had a confederate and that Pierson was the fictitious person to whom this matter was sent as the basis of his prosecution of the *Appeal*. It would have been very easy for anyone to do this very trick and it would not be at all surprising if there was no such person as Pierson and that a letter was directed to him by some post office sleuth as a means of indicting and prosecuting the *Appeal*.

The little courtroom at Fort Scott was packed with interested spectators. So large was the crowd that the judge had to issue an order placing guards at the doors to keep the throng out. Notwithstanding this, they packed the hall to the stairways and nine out of every ten were in hearty sympathy with the defendant.

Warren was attended by Wayland, Debs, and the whole *Appeal* staff, besides a number of comrades who went up from Girard. The comrades of Fort Scott and vicinity were on hand early and remained without even going to their meals until the verdict was rendered.

At 4 o'clock in the afternoon on the second day of the trial the case went to the jury after being ably argued by the counsel for the defense and after receiving the instructions from the court which, it must be said in justice to the judge, were perfectly fair and free from reasonable objection. The jury at once retired and remained in session 22 hours. Notwithstanding the fact that the jury was packed, there were three of its members who had consciences which would not permit them to be a party to such an unwarranted and outrageous prosecution. Their better natures revolted and they refused to lend a hand to such persecution and it was only after a siege of 22 hours that they were finally overruled by their brethren and persuaded to abide by the verdict of the majority.

The verdict of guilty was not a surprise. It was expected. It would have been a surprise only if it had been otherwise.

Immediately the verdict was rendered the lawyers for the defense entered a motion for a new trial. This motion will be argued in ten days from the time it was entered. In the meantime sentence is suspended.

The maximum penalty is five years in the penitentiary at hard labor and a fine of \$5,000. It is this that has been hanging over Warren's head during the past two years. Ordinarily the suspense would be great, but in this case the defendant has been serene, feeling in his heart that he had committed no wrong but that he was being persecuted for no other reason than that he was the editor of a powerful socialist paper which the plutocratic administration had determined to put out of existence.

Whether Warren is finally sentenced or not, there is a mighty issue involved in his case. No one in his sane mind supposes for an instant that Warren is being prosecuted for violating the postal laws. Thousands of similar publications have been made all over the country, but no one has ever dreamed of prosecuting a person offering a reward for a fugitive from justice. Had Warren been a Republican or a Democrat this case would never have been heard of.

But he is a Socialist and the editor of a powerful socialist paper which is a thorn in the flesh of the grafters now in control of the government and for years they have had their sleuths on his trail and have been watching for some chance to strike the blow and to cripple if not destroy the paper of which he is the editor.

The prosecution may take advantage of the power they have to fine and imprison Warren, but they would better beware of the day to come. Nothing would so thoroughly arouse the people of this country as the conviction of Warren upon this flimsy charge. It would be a monstrous outrage which fair and honest people, regardless of politics, would condemn and it would be certain to react powerfully upon those responsible for it.

Moreover, this prosecution, based upon an envelope quite likely made to order, must be regarded as an attack upon a free press. If the editor of the *Appeal* can be sent to the penitentiary simply because he is a socialist, some other man, or any other man, can be convicted for being something else, and in that case the freedom of the press is destroyed and a censorship is established as odious and infamous as that which prevails in Russia and Mexico.

¹ Harry J. Bone (1862-1918), prosecutor in the Fred Warren case, was an 1885 graduate of Cumberland University law school of Lebanon, Tennessee. He was several times a Republican candidate for the Kansas legislature during the 1890s, winning a seat in 1894, working as an assistant US district attorney after leaving office. Bone ran unsuccessfully for election as attorney general of Kansas in 1902 but was named private secretary to Kansas Governor Willis J. Bailey following his defeat. Bone again became an assistant prosecutor in the fall of 1904 and made use of his connections in the Republican establishment to win appointment to the position of US attorney for Kansas in the fall of 1905.

² George D. Brewer (1877?-1967) was born on a farm near Marion, Kansas, on which he worked until the age of 17. He left farming to become a railroad brakeman, interrupting this career to join the army during the Spanish-American War. Stricken by typhus during military training in Tennessee, Brewer never saw action in the war. He mustered out at the end of the conflict and returning to work as a brakeman until suffering a permanent injury to his left foot and ankle in a car-coupling accident. An ardent Populist in the 1890s, Brewer turned to socialism after reading a radical newspaper in a public library in 1900. He enrolled in Ruskin College of Trenton, Missouri, in 1901, remaining there until going to work on the editorial staff of the *Appeal to Reason* in 1903. Brewer, a Socialist national committee member, was the author the book *The Fighting Editor; or, Warren and the Appeal*. (Chicago: Charles H. Kerr & Co., 1910) and was the focus of two major political campaigns, losing as a Socialist candidate for Congress in the Kansas 3rd CD in 1912 and winning election to the Kansas legislature in the 20th district in 1914. Brewer later left the Socialist Party and moved to the Upper Midwest, where he was active in the Non-Partisan League.