
The Second Round at St. Joseph

by C.E. Ruthenberg

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The first round of the 32 round battle to be fought at St. Joseph [Michigan] resulted in a draw. The jury disagreed on the question of convicting William Z. Foster on the charge of “assembling with” the Communist Party. In the second round the defense got a hard wallop in the verdict of guilty of the same charge against me.

The prosecutors had learned to plant their blows more effectively through the experiences of the first round. They had learned through the same experience that the tactics of the defense in making plain, direct, bold statements of Communist principles to the jury was the most dangerous kind of fighting and they planned an interference to prevent the jury from learning what Communists are really fighting for. These methods, and the fact that Foster was not a member of the Communist Party while I admittedly was a member of the Central Executive Committee of the party, explains the difference in the results of the second trial as compared to the first.†

The jury was of the same general type as the first. With two important exceptions. There were 9 farmers on the Foster jury and 8 in the second trial. In the second trial, however, the treasurer of the Benton Harbor Chamber of Commerce was a juror and one of the three remaining was a member of the American Legion; and one of the trump cards of the prosecution was a resolution of the Communist International referring to the strikebreaking activities of the members of the American Legion and calling them “the flotsam and jetsam of the war.” A new point developed about the Michigan jury system was that in order to qualify

as a juror it is necessary to be a real estate owner. This was brought out through the disqualification of a juror whose name did not appear on the assessment lists of the county, although he claimed he owned his own home. It explained the emphasis upon the question asked the jurors, whether they believed that property rights should be protected against the bad Communists, who it was insinuated, intended to take away their farms from the poor, mortgaged farmers.

Assistant Attorney-General O.L. Smith bore the brunt of the work of getting a conviction. It is rumored that he is looking forward to political preferment as a reward for his work in prosecuting the Communists. That may well be, for the capitalists are generous to the lackeys who serve them well. Smith does that. Whatever outward appearance of playing the game fairly and squarely he maintained during the Foster trial had been rubbed away by his defeat in that case. He played his part in the second trial as the ideal and typical capitalist prosecutor. Petty, tricky, nasty, he tried to make up through these qualities what he lacked as a legal tactician. County Prosecutor Gore is of an entirely different type. He does his duty decently. Fussy Max Berger, the Department of Justice expert loaned to the prosecution, goose-stepped back and forth, occasionally even becoming vocal when his superiors displeased him by their failure to grasp the proper method of attack from the Department of Justice standpoint.

The witnesses came upon the stage to do their turn in regular order. Sheriff [George] Bridgman was the curtain raiser. He told again how he had gone to

†- Ruthenberg is misleading at a minimum in this paragraph — William Z. Foster joined the Communist Party in 1921.

Bridgman with his crew of Department of Justice agents, state constabulary members, and deputy sheriffs, armed with revolvers and blackjacks, and had found 17 men lying about on the green lawn enjoying the morning sunshine or asleep in the cottages at the Wolfskeel resort. He couldn't give any reason for making the raid except that [Jacob] Spolansky of the D of J had asked him to. He said he didn't have warrants nor did he know when he set out that any law of the State of Michigan was being violated. Under cross-examination he tried to explain why he had lined up his 17 prisoners under shotguns to have their pictures taken and why he had chained them together and paraded them through the streets of St. Joseph to the city hall, but he made rather a mess of it.

Following the sheriff came Esther Mielke, a waitress at the Wolfskeel resort, who seemed entirely unnecessary as a witness and was probably put on to break the monotony.

The Department of Justice then took its turn in the spotlight. [Edwin C.] Shanahan told about how he had served his country in France; Spolansky repeated his tale of coming to these United States as a poor Russian emigrant and the various vicissitudes of his life up to the time he landed in the sheltering arms of Uncle Sam as a labor spy. [Maurice] Wolff expatiated on his long detective career. They had been through a dress rehearsal during the Foster trial and knew how to avoid the pitfalls. Their separate stories fitted together like a puzzle picture in which, after the way of putting it together has been found, all the devious curves and angles dovetail exactly.

One new witness for the Department of Justice appeared. This was Louis Loebel. Loebel was one of the four defenders of justice who participated in the raid. For some reason he had not been put on in the Foster trial. Now he came forward to make a mess of all the smoothness and niceness which Shanahan, Spolansky, and Wolff had presented to the jury.

Loebel volunteered the information that long ago, before the beginning of his activities in the interest of justice, he had almost voted for me for mayor of Cleveland. He told of his work as a waiter, and how, after a number of years in this country he had gone back to Hungary for several years. Then he got in trouble. He informed the jury that he had returned to the United States and applied for first citizen papers on the day he

had landed, evidently hoping to impress the jury with his eagerness to become a citizen of this fair land! Unfortunately the law was against him. He found this out over Sunday [April 29, 1923] and when he resumed the stand on Monday morning he tried to explain away his error by stating that he had consulted his wife by telephone and found he was in error. His only contribution to the case of the prosecution was to contradict his fellow agents of justice on a few little points.

[Francis] Morrow, the government agent who attended the Communist convention, was rather a failure as a witness. In the Foster trial he had a real part to play. He had to prove that Foster did things which Foster hadn't done. He saw Foster filling out a questionnaire which Foster didn't fill out. He heard Foster read a speech from a manuscript which Foster didn't have. And similar things. But I admittedly had filled out the questionnaire which was presented to me in the Foster trial. I admittedly was a member of the Central Executive Committee of the Communist Party and attended the convention, so what was there for Morrow to add? Of course, if he had had a little imagination he might have had me telling every delegate at the convention to get their guns and start out with me to overthrow the government of the sovereign State of Michigan by "crime, sabotage, violence, and unlawful methods of terrorism" then and there, but that evidently did not occur to him.

After all the evidence was it, what had the People of the State of Michigan proved? Just this: The Communist Party held a convention at Bridgman, Michigan. I attended that convention, not as a delegate, but as a member of the Central Executive Committee of the Communist Party. Certain Communist literature was brought to Bridgman by various delegates, which was found on the grounds.

That was all. Not a single scrap of evidence that anything was said or written at Bridgman, Michigan, in violation of the criminal syndicalist law. Not a scrap of evidence that I had said anything or done anything at Bridgman, Michigan. I was there. Because I was there I violated the criminal syndicalist law. That was the crime which the People of the State of Michigan are trying to establish and punish, with up to 10 years in prison!

Oh, yes, there was one other point in the evi-

dence! Prosecutor Smith read at length from a pamphlet written by N. Bukharin, dealing with the struggle between church and state in Russia to show that the Communists were against religion. He stopped short at a point where Bukharin said: "Freedom of thought must be maintained; therefore the axiom that religion is a private matter." That was an important piece of evidence against me. It was conclusive proof that the Communist Party advocated "crime, sabotage, violence, and unlawful methods of terrorism as a means of achieving industrial and political reforms."

When I took the witness stand the task of the prosecution was to prevent me from telling the jury what Communism really meant and what Communists really advocated as the means of establishing a Soviet Government and the Dictatorship of the Proletariat. While under direct examination by Attorney Frank P. Walsh, I was interrupted every 2 minutes by Prosecutor Smith and cautioned by Judge [Charles E.] White to "be brief" and not to use any examples to illustrate the principles which I was endeavoring to explain to the jury. In spite of this I managed to squeeze in the statement that the Communist position in regard to violence in the class struggle was that history showed that no privileged class had ever surrendered its power without a resort to force to protect its privileged position and the Communists forecast that the struggle between the workers and capitalists would eventually take the same course.

When it came to the turn of the prosecution to cross-examine me, in place of spending 3 days on the cross-examination, as in the Foster trial, they dropped me after a few perfunctory questions, evidently fearing that the jury would get during the cross examination the explanation of Communist principles which they had prevented me from stating fully during the direct examination.

Jay Lovestone, Charles Krumbein, and Caleb Harrison took the witness stand for the defense to testify about the struggle within the Communist party over the question of the party coming into the open and the program of the party at the time of the Bridgman convention.

The argument to the jury made by Frank P. Walsh was a challenge. Walsh accepted the Communist analysis of the history of previous class struggle. "Who will dare say" he demanded "that what the Communists state about the struggles of the past is not the truth?" He showed the power of the capitalists in industry and politics today. While stating as his personal view that a way could be found to curb the predatory interests who are robbing the workers and farmers under the existing political system, he asked, "If these conditions are not changed, is not what the Communists say will come likely to happen and this struggle between those who are preying on the people and those who are robbed result in a struggle in which there will be a resort to force?"

Judge White in charging the jury gave the prosecution something to help them secure a conviction. In the Foster trial Judge White had state unequivocally that the Communists had the right to advocate the establishment of a Soviet Government in the United States. In my case he added that the prosecution claimed that the advocacy of Soviets in itself included the advocacy of violence as the Soviets could not be established without a resort to force and told the jury if it found this was true they must convict.

Reports had it that the jury was divided 9 to 3 on the first 2 ballots, but it seems the Chamber of Commerce and American Legion won the day, overcoming the opposition of the 3 who were not convinced by appeals to religious, patriotic, and class prejudices on which the prosecution rested its case.

Edited with a footnote by Tim Davenport.

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