
Foster's Fate With Jury on Issue of Free Speech

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ST. JOSEPH, Mich.— Tears were drawn from jurors by both prosecution and defense in the closing arguments of the William Z. Foster trial for "unlawful assembly" with the Communist Party in the Berrien County woods last August.

Male members of the jury wept when Attorney General O.L. Smith offered his four little boys to his country for the next war. The proposed gift came as a climax to a denunciation of the nation's foes, among who he placed Foster because of the defendant's admitted desire for a government by workers and small farmers in this country, along the Russian Soviet model.

Defense Counsel Frank P. Walsh also drew tears on the war issue. The woman member of the jury cried when Walsh told of the departure of his 18 year old son for camp in the recent war and showed how much better the world would be if there were no war and pacifists had their way. No tears trickled down the woman's cheek when the prosecutor placed "his" boys at the disposal of the war machine.

Both arguments had wandered somewhat from the case at issue because of the injunction by the prosecution of the anti-war activities and subsequent conviction of C.E. Ruthenberg, principal defense witness and a codefendant of Foster.

Appeals to history were made by the opposing attorneys, often to the same events, as when the state bade the jury choose between Christ and Pilate and thus convict Foster, while the defense

cited Christ as a martyr to his hopes of a new social order.

Charges are Toned Down.

The case went to the jury after instructions by Judge Charles E. White. It is the first test of the wartime criminal syndicalism statute of Michigan.

With opening of the trial, the charge against Foster was reduced to that of "assembling with an illegal organization," such charge being based upon Foster's visit as a fraternal delegate to the Communist convention held at Bridgman, Mich., and which was raided by government authorities Aug. 22, 1922.

As the prosecution failed to prove that Foster, or the Trade Union Educational League of which he is Secretary-Treasurer, had any official connection with the Communist Party of America, the jury's verdict must be based upon its interpretation of the provisions of the state criminal syndicalism law.

There seems to be a strong public spirit of opposition toward the whole proceeding, evinced not only by discontent over the expense, but also through protest against enforcement of the all too comprehensive statute under which such prosecutions would be permitted.

The jury's decision will also be influenced by the point set forth by Defense Attorney Frank P.

Walsh that if Foster is liable because of his admitted visit to the Bridgman convention of Communists, then there would be practically no limit to the possible enforcement of such a ruling. Walsh clearly indicated how such a precedent would hold liable for participation any sort of casual visitor to such group gatherings.

When the case for prosecution was closed Walsh, in his motion for a directed verdict, advanced argument that while the Bridgman convention was proved and admitted to be an assembly of the Communist Party of America, it had not been shown that there was any act there committed in violation of the criminal syndicalism act; that no person or group had there advocated, by word or in writing, any act of violence or sabotage, or any other unlawful methods, as means by which to accomplish industrial or political reform; that the prosecution has not claimed that such infringements of the law had been even attempted in the state of Michigan; that it has not been proved that an organization now exists, or has ever existed in this country, for the purpose of advocating such infringements of the law; and yet the charge against Foster is that he assembled with such a group; that even if it were proved that a political party did exist which advocated such infringements of the law, then the only charge upon which this defendant might be held liable would be that of association with such an organization. Walsh showed that a search of all authorities, throughout the European countries, will not show any statute law that holds such association to constitute any offense beyond that of a misdemeanor, under correct interpretations of the law; that in the Bridgman convention certain individuals were elected to office; resolutions were introduced upon but one subject — that covered by report of adjustment committee; and certain other committees were formed; that the records show no incitation to disorder or to a breach of the peace of the state of Michigan.

Foster Takes Stand.

Foster testified that he had been born in Massachusetts 42 years ago. He has been a worker all his life and is now Secretary of the Trade Union Educational League. This league, he said, is an autonomous body, comprising trade unionists of all parties and of no party and working for industrial unionism. When asked what the relation of the Communists to the league was, he stated that the Communists supported the league and its program and constituted about 10% of its membership.

At the Bridgman convention, which he attended on invitation, he showed how the radical and progressive workers in the past had failed because of the policy of withdrawing from the unions and criticizing them from the outside. Opposed to this old policy, he said, the radicals must get into the unions, abandon the idea of merely talking, and instead, go to work doing the everyday tasks of the labor struggle, and gain the confidence of the membership.

"You were opposed to Mr. Grable, the deposed head of the Maintenance of Way Union, were you not?" asked the prosecution in cross-examining Foster.

"I was," Foster answered, "he betrayed the interests of the men who elected him and of the railroad workers as a whole, and as a result he was deposed."

Foster gave an extemporaneous talk in the convention, he said on cross-examination, but that this was in no way a report or set speech and was made from no notes or manuscript. This is in direct contradiction to the testimony of the state's star witness, Francis A. Morrow, the US government spy, who claimed that a manuscript was used by Foster on this occasion. Foster denies that he received, upon his arrival at the convention or at any time thereafter, a "portfolio," as described by the witness Morrow; or that he at any time received or filled out the questionnaire which Morrow claims to have seen him have in

the convention.

Syndicalism is Defended.

Foster was again on the state, undergoing cross-examination by the state. The prosecution, in default of better ammunition, spent its time on a syndicalist pamphlet written by Foster and Earl Ford 11 or 12 years ago and since repeatedly repudiated by Foster, who states that he now follows the communist instead of the syndicalist philosophy.

The difference he made clear in the following words:

The syndicalist holds the idea that through the labor unions, leaving aside political action entirely, he would make a direct assault upon the capitalist system and take charge of the industries directly with the unions, and then proceed to operate these industries, through the unions and without a state government. He has nothing in common with political action or the state.

The communist, on the other hand, believes in political action; he believes in the organization of a party to carry on political activities. All of which is anathema to the syndicalist

One of the principal weapons in the arsenal of syndicalism is that of sabotage — as read by you in that book. The communist repudiates sabotage and condemns it in principle. The communist and the syndicalist movement at the present time are antagonistic movements. The syndicalists have an international of their own, and the communists have a separate international, because the two movements found that they differed on so many fundamental points that they do not go along together.

That is the principal difference: the communists believing in political action and capture of the state — and the syndicalists absolutely repudiating those things.

The town of St. Joseph has been following the trial with an interest rather friendly to the defense than otherwise. Scores of housewives crowded the courtroom. A local hardware store advertise a special kind of cook stove which will, so they claim, enable the lady of the house to attend the "red trial" and at the same time have a hot meal ready for hubby when he comes home to get the latest news and the usual dinner. If the attendance at the trial was any criterion, this hustling businessman must have sold a lot of these stoves.

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