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86 East 11th St., New York City

Daily Worker

CENTRAL ORGAN COMMUNIST PARTY U.S.A. (SECTION OF COMMUNIST INTERNATIONAL)

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U. S. COURT RULES AGAINST HERNDON

Illinois Unemployed to March to State Capital Today

MASS HUNGER SWEEPS OVER ALL OF STATE

Plans Are Speeded for
Another March in
Chicago May 28

CHICAGO, Ill., May 20.—Mass
hunger swept across the state of
Illinois yesterday, gnawing into the
vitals of more than 1,500,000 persons.
At the same time new thou-
sands were added to the lists of
distressed and starving unemployed
in Cook County and the down-state
counties.

The situation of the unemployed
has never been at a more critical
stage. Since yesterday no more
grocery orders have been issued in
Cook County. Forty-eight thousand
families in this county alone will
be entirely without food by tomor-
row morning. An additional forty
thousand persons in shelters for the
homeless will likewise be cut off all
subsistence.

Sunday and Monday were food-
less days for the unemployed.

Meanwhile, the Unemployment
Councils are broadcasting a call for
a mass march to Springfield to-
morrow, when the Legislature re-
convenes to vote on a measure that
will increase the state sales tax 3
per cent.

Demands of Jobless

The marchers will demand imme-
diate appropriation of \$7,500,000 sur-
plus in the State Treasury and a
tax on large incomes and inheri-
tances for relief of the jobless. The
marchers will press for a defeat of
the sales tax and will demand that
all evictions of unemployed be
stopped.

Workers will go to Springfield by
freight, on foot, and in cars, it was
announced by the Unemployment
Councils. The Workers Alliance of
Springfield, an organization of un-
employed, will picket the capitol
tomorrow morning.

Social workers, at a mass meet-
ing, voted to send carloads of dele-
gates to the State capital to join
the marchers.

Clayton Smith, president of the
Cook County Board, said that the
county is reluctant to sell bonds of
the \$17,000,000 bond issue, of which
\$1,200,000 worth have already been
sold.

Among the unions to protest the
starvation of relief in Illinois

Three Major Immediate Actions

THURSDAY, May 23: Strike at 3 P.M.! March to UNION
SQUARE! Demonstrate against
the N.R.A., against the company-union Wagner Bill, for the 30-hour
week without reduction in pay, for increased wages, for social insur-
ance! All out to Union Square at 3 P.M. Thursday!

MONDAY, May 27: Rally at Madison Square Garden
at 8 P.M.! Answer the fascist
demagogue, Father Coughlin! Rally behind the Gallup miners and
Angelo Herndon! Support the peace policy of the Soviet Union
against the war provocations of Hitler!

THURSDAY, May 30: Rally to the support of the United
Youth Day demonstrations spon-
sored by the American Youth Congress, with which the Young Com-
munist League is affiliated! Aid in bringing the nation's youth into
the streets against war and fascism, and for their own youth demands!

'Daily' Barred USSR to Build To Krumbein 3 Air Giants

U. S. Prison Officials
Also Stop Paper to
Three Others

Charles Krumbein, New York dis-
trict organizer of the Communist
Party, who is serving an eighteen
months' sentence on a charge of
a technical violation of the pas-
port regulations, has been refused
permission to receive the Daily
Worker. Krumbein is at the fed-
eral prison at Lewisburg, Pa.

The ban was put on the Daily
Worker at explicit instructions
from the Bureau of Prisons of the
Department of Justice. Three other
prisoners had been receiving the
paper since June 4, 1934, and a
fourth since Aug. 20, 1934. It was
not until Krumbein arrived at the
prison on Feb. 8, that orders went
out from Washington to stop all
copies. Upon inquiry, the Daily
Worker was informed by Warden
Henry C. Hill that he had been
directed to withhold the paper from
the five workers.

When the Daily Worker protested
to the Bureau of Prisons, F. Lovell
Bixby, assistant director, wrote in
reply:

"I am sure that you will under-
stand that in the management of
penal institutions it is not possible
to allow prisoners all of the privi-
leges which they might enjoy as
free citizens. We have given care-
ful consideration to your request

Workers Express Grief
In Deaths at Crash
of Maxim Gorky

(By Cable to the Daily Worker)
MOSCOW, May 20.—From all
countries of the world, even from
the countries of fascist repression,
the workers and their parties sent
their expressions of sympathy for
the loss of the forty-eight Soviet
shock-brigaders and members of
the crew of the airship Maxim
Gorky.

Knowing that no structural fault
but only an avoidable accident was
responsible for the catastrophe, the
Soviet government has ordered the
construction of three powerful air-
planes of a similar type and of
similar size as the Maxim Gorky.
The new giants will be named the
Vladimir Lenin, the Joseph Stalin
and the Maxim Gorky.

From the Central Committee of
the Communist Party of Germany
came the following telegram:

"We German Communists, who
have made and are making every
day such heavy sacrifices in the
struggle against a fanatic fascism,
feel with particular pain our great
loss—the energetic persons devoted
to the cause of socialism who lost
their lives in the catastrophe of
the airplane Maxim Gorky.

"But we are most deeply con-
vinced that the Communist Party
of the Soviet Union and the great
sons and daughters of the country
of the October Revolution, ever
resolutely advancing in the struggle
for the future of the world, will

200,000 PARIS TOILERS HAIL COMMUNARDS

Communists, Socialists
Commemorate First
Proletarian State

PARIS, May 20.—Overshadowing
completely the celebration of Joan
of Arc Day, the observance yester-
day throughout France of the first
proletarian dictatorship in history,
the Paris Commune, was a day of
reviewing the working class forces
and of putting forward with re-
newed vigor the slogan of "Soviets
everywhere!"

As more than 3,000 Mobile Guards
and police stood by, not daring to
interfere, 200,000 Communists and
Socialists marched, red banners and
streamers flying, to the famous wall
of Pere La Chaise Cemetery where
thousands of Communards were
slaughtered by the French bour-
geoisie in 1871.

Twenty white-haired veterans of
the Commune reviewed the great
demonstration as it passed by and
shouts of "Down with fascism!" and
"Soviets everywhere!" were eloquent
of the militant and iron strength of
the united front of the Socialist and
Communist Parties.

The oath, taken each year by in-
creasing thousands of toilers, never
to forget the memory and lessons
of the Paris Commune, was spoken
this time with especial emphasis at
this moment of fascist aggression,
in France as well as in Germany.

At Nantes, where the city admin-
istration is Socialist-controlled, the
failure of the officials to adhere to
their party's discipline encouraged
the fascist "Patriotic Youth" to at-
tack the united front demonstration
there.

Wide Anti-Fascist Front

(By Cable to the Daily Worker)

PARIS, May 20.—The anti-fascist
masses of France countered the
challenge of Joan of Arc Day here
by antedating their traditional
demonstration commemorating the
bloody suppression of the Paris
Commune on May 26, 1871, and
carrying it out yesterday.

The widest assemblage of trade
union, political, professional and
religious groups participated in the
commemoration parade. It was in
fact the first joint demonstration

FUR WORKERS DEMONSTRATE AGAINST NRA

New York Meeting Hails
the Convention of
Industrial Union

Thousands of fur workers as-
sembled in an open air meeting at
noon yesterday, on the corner of
29th Street and Seventh Avenue,
demonstrated their support to the
decisions of the fur convention,
which came to a close at midnight
Sunday, as reported by speakers
and concluded with a mass parade
against the N.R.A., "which is re-
sponsible for the continuation of
contracting and other evils in the
trade."

The fur workers hailed the deci-
sion of the convention for the es-
tablishment of a powerful inde-
pendent Fur Workers International
Industrial Union to fight against
contracting, spied-up, runaway
shops and other evils, and to con-
tinue at the same time the struggle
for the establishment of one union
in the trade.

Joseph Winogradsky, manager of
the Fur Workers Industrial Union,
who among others addressed the
meeting, denounced the Jewish For-
ward for the malicious falsification
in yesterday's issue of the resolu-
tion on unity adopted by the To-
ronto convention under pressure of
the membership.

The Forward left out numerous
points in the resolution leaving the
impression that the Industrial
Union would be dissolved immedi-
ately and that the F.W.I.U. has ob-
ligated itself to call on all the fur
workers to register with the Joint
Council of the Fur Workers Inter-
national Union, A. F. of L.

In reply to this statement Win-
ogradsky declared: "Until such time
as the committee of seven, set up
by the Toronto convention, will
take up with the administration of
our union the entire question, and
will work out plans jointly for the
transfer of the furrers on the con-
ditions put forth by our convention
and for the date of the elections as
well as the other demands included
in the resolution adopted by our
convention, not only will we not in-
struct our members to register any-
where, but will proceed in getting
the rest of the furrers, wherever

Denies Jurisdiction in Case; I. L. D., Pressing New Fight, Urges Mass Action for Negro

FIGHT FOR HIM TO BE REDOUBLED



ANGELO HERNDON

Dissenting Opinion by
Justices Brandeis,
Cardozo and Stone

WASHINGTON, May 20.—The
United States Supreme Court re-
fused today—by a vote of 6 to 3—
to set aside the conviction of An-
gelo Herndon, heroic 30-year-old
Negro, who faces a sentence of 18
to 20 years on a Georgia chain gang
on a charge of "insurrection."

The opinion was read by Justice
George Sutherland. Justices Louis
D. Brandeis, Harlan F. Stone and
Benjamin N. Cardozo dissented
from the majority opinion.

Basic Issues Evaded

Evading the basic issues of the
case, namely, the right to organize
Negro and white, the judges in
their majority opinion declined to
review the merits of the appeal,
declaring that the defense "did not
properly preserve the federal ques-
tions involved," in other words,
that the court had no jurisdiction.

The court did not go into the
legality of Herndon's conviction.

The International Labor De-
fense will immediately instruct
its lawyers to file a petition for
a re-hearing of the case by the
United States Supreme Court.
Anna Damon, acting national
secretary, announced yesterday,
after consultation with the I.L.D.
legal staff.

The details of questions to be
raised in the petition will be worked
out by the attorneys after they
have had opportunity to examine
the opinion of the court and the
dissenting opinion of the three
judges who did not concur.

Organized for Relief

Herndon, in the face of the
most vicious prejudice against the
Negro people, organized Negro and
white workers in a fight for relief
in Atlanta, where thousands were
starving as a result of unemploy-

U. S. Violates Gallup Pledge

(Special to the Daily Worker)
SANTA FE, N. M., May 20.—Two
hearings on deportation charges
have so far been completed before

'Act at Once,' Urges the ILD

The following statement on the
decision of the United States
Supreme Court, refusing to pass

(Continued on Page 2)

U. S. Court Rules Against Herndon

(Continued from Page 1)

ment. For this he was arrested on an old Civil War code, placed on trial for his life, and convicted by a "lily white" jury. He was sentenced to serve 18 to 20 years on a chain gang—a sentence which meant virtual death to the frail young Negro.

The opinion of the Supreme Court confined itself to the most obscurantist discussion of the legal aspects involved, completely evading the burning issues of the case: Herndon's heroic leadership of the relief fight in Atlanta, the discrimination against Negro jurors, the ranting, lynch-inciting speeches of the prosecutor, the elementary rights of the workers.

The majority opinion by Justice Sutherland declared:

Court Cites Technicalities

"On this appeal, the statute is assailed as contravening the due process clause of the Fourteenth Amendment in certain designated particulars. We find it necessary to review the points made, since this court is without jurisdiction for the reason that no Federal question was reasonably raised in the court below or passed upon by that court.

"It is true that there was a preliminary attack upon the indictment in the trial court on the ground, among others, that the statute was in violation of the Constitution of the U. S., and that this contention was overruled, but in addition to the insufficiency of the specification, the adverse action of the trial court was not preserved by exceptions . . . or assigned as error in due time. . . . The Federal question was never properly presented to the State Supreme Court unless upon motion for rehearing; and that court then refused to consider it.

Question of Procedure

"The long-established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it. . . .

"Petitioner, however, contends that the present case falls within an exception to the rule—namely . . . the question respecting the validity of the statute as applied by the lower court first arose from its unanticipated rights under the Constitution.

"There is no doubt that the federal claim was timely if the ruling of the State Court could not have been anticipated. . . . The whole point, therefore, is whether the ruling here assailed should have been anticipated. . . .

Sees a Precedent

"On March 18, 1933, several months prior to the action of the trial court . . . (Georgia) State Supreme Court had decided Carr v. State. In that case section 86 . . . was challenged as contravening the Fourteenth Amendment. The court in substance construed the statute as it did in the present case. . . .

The decision here quotes an opinion declaring legislature has authority to "forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated" and remarks that the language is similar to that in the cases at Lloyd, III, and Giltow v. New York.

"Appellant, of course, cannot plead ignorance of the Carr case and was therefore bound to anticipate the probability of a similar ruling in his own case. . . . It follows that his contention that he raised the federal question at the first opportunity is without substance, and the appeal must be dismissed for want of jurisdiction."

The minority opinion by Cardozo, with Brandeis and Stone concurring, declared:

"It is a novel doctrine that a defendant who has had the benefits of all he asks, and indeed of a good deal more, must place a statement on the record that if some other court at some other time shall rule the statute differently, there will be a denial of liberties that at the moment of the protest are unchallenged and intact. Defendants charged with crime are as slow as are men generally to borrow trouble of the future.

"We are told, however, that protest, even if unnecessary at the trial, should have been made . . . in con-

nection with the appeal. . . . The decisions relied upon are Carr v. the State (No. 1), and Carr v. the State (No. 2). The first of these cases was decided in November, 1932, before the trial of the appellant. . . . The second was decided in March, 1933, after the appellant had been convicted, but before the denial or submission of his motion for a new trial. Neither is decisive in the question before us now. . . .

No Chance to Argue

What was brought into the case upon the motion for rehearing was a standard wholly novel, the expectancy of life to be ascribed to the persuasive power of an idea. The defendant had no opportunity in the State court to prepare his argument accordingly. He had no opportunity to argue from the record that guilt was not a reasonable inference or one permitted by the Constitution. . . . The argument thus shut out is submitted to us now."

Second Recent Issue

The opinion in the Herndon case is the second momentous decision to be handed down by the U. S. Supreme Court in recent weeks, the last one being on the Scottsboro case, which was reversed, thus upholding the contention of the International Labor Defense that Negroes were systematically barred from jury service.

The Herndon case, which, like the Scottsboro fight, has aroused worldwide interest, arose after Herndon was arrested for organizing Negro and white workers in Atlanta, Georgia, in a fight for relief. He was indicted and sentenced to serve eighteen to twenty years on the Georgia chain gang on an old "insurrectionary" law passed in the Civil War days.

Courageous Speech to Jury

Herndon was defended by the brilliant Negro attorney, Ben Davis, Jr., now editor of the "Negro Liberator." In his speech to the jury Herndon courageously exposed his prosecution as a weapon of the white bosses to block the growing unity of Negro and white. His speech aroused tremendous interest throughout the South.

"You may jail me; you may kill me," Herndon said defiantly. "But a thousand Angelo Herndons will come forward to take my place."

Convicted by a picked all-white jury, Herndon was kept a prisoner in Fulton Towers Prison, Atlanta, for nineteen months. Fulton Towers is one of the oldest and worst prisons in the country, and Herndon was continually persecuted by his jailors. He was tortured and for a time was compelled to remain in his cell with a corpse. Herndon was constantly being framed-up by his jailors and thrown into solitary.

Ill in Prison

On one occasion he wrote from his cell:

"Since getting out of solitary confinement I have been very ill. In fact I have been so weak that I could hardly pick up a book; and all this comes as a direct result of my continued imprisonment, to say nothing of the tedious and excruciating days that I have been subjected to all these months. I am suffering from constant violent pains in the stomach and incessant vomiting caused by intolerable prison food. Through my sickness I am gradually losing the sight of both eyes.

"You must realize that I've been in here for a long time now, and so long as we let the case lag on, so much the better for the capitalists and their framers of me. Keep them on the merry-go-round where they will be forced to keep their feet to the fire, and we can surely look for much speedier action, with the resuscitation of some achievements that we might not have seriously anticipated."

Bail Is Raised

Last July the International Labor Defense intensified its campaign to force Herndon's release on bail. The Georgia authorities at first refused to set bail, but later agreed to fix bond at \$15,000, never expecting that the sum would be raised. Workers all over the country enthusiastically responded to the I.L.D. appeal for the bail fund, and in several weeks the required amount was raised.

Early in August, 1934, Joseph Brodsky, chief counsel for the I.L.D., flew to Atlanta with the \$15,000 bail fund and brought Herndon back with him, upon his arrival at Pennsylvania Station, the "young American Dimitroff" was welcomed by a cheering throng of 10,000 workers.

Since his release from prison, Herndon has addressed scores of

'Act at Once,' Urges the I.L.D.

(Continued from Page 1)

the Negro people struggling for national liberation.

Rehearing Can Be Forced

"The united power of the teiling masses of the United States saved Angelo Herndon from the chain-gang once, won his temporary freedom, and brought his case before the United States Supreme Court.

"The I. L. D. will instruct its attorneys to take immediate steps for a re-hearing in that court.

"The same mass action and protest which has saved him so far, which has saved the Scottsboro boys for four years can, intensified, force the United States Supreme Court to grant this rehearing and act favorably upon it.

"Upon the demonstrations, meetings, protests, and other actions which will now be organized, rests the fate of Angelo Herndon.

Tear Veil Aside!

"The veil of technicalities which the United States Supreme Court has sought to place around its support of southern lynch-rule and reaction, must be torn away. The smokescreen is already exposed by the dissent of three of the justices of the court, not on a matter of testimony or argument, but on a point of law.

"We call on the justice-loving people of the United States, and especially upon the Negro masses, the trade unionists, the unemployed, and the members of the Communist Party, all of whose basic rights are directly attacked in the decision of the court handed down today, to join in the mightiest protest action, to force the court to free Herndon. Act at Once!

"Call special protest meetings, immediately. There are only a few days in which to act. Bring this matter into every meeting held, on whatever subject.

"Resolutions demanding that the U. S. Supreme Court rehear the case must be passed at every one of these meetings.

"Funds must now more than ever be raised to carry on this campaign, to take the necessary legal steps to save Angelo Herndon from a living death on the chain-gang. They should be sent at once to the I.L.D., Room 610, 80 East 11th Street, New York City.

"Defend your rights! Don't let them send Angelo Herndon back to the chain gang."

Ethiopia Asks League Action

GENEVA, May 20.—As discussion of Italian war preparations against Abyssinia opened at the initial session of the Council of the League of Nations, a telegram was received from Haile Selassie, the Ethiopian king, insisting that the Council act immediately to prevent the invasion of the Negro country. Under League regulations, the acting chairman of the session is Maxim Litvinoff, Soviet representative.

The session of the Council will witness further attempts on the part of three major imperialist powers, Italy, France and Great Britain, to sidetrack interference with Mussolini's plans to raid Ethiopia. Both the French and British governments have separate agreements with Italy, the purpose of which is to share the loot to be gained through the Italian adventure. British industrialists have been promised the water rights to Lake Tanya, situated in Ethiopia, and France, in return for passivity in Italy's action against Ethiopia, secured the backing of Italy for French policies in Europe.

The news has reached here that Haile Selassie, hoping to raise additional defense revenues, has partly abolished the feudalism existing in Ethiopia by making an end to chattel slavery. This will cause the burden of taxation to fall on all individuals rather than only upon the former slave-owners, it was stated.

meetings attended by thousands of workers throughout the country. Undaunted by the latest developments in the case, Herndon yesterday expressed the greatest faith in the ability of the workers to free him from the clutches of the Georgia jailors.