

Ruthenberg Convicted

By Jay Lovestone

"SINCE the Prosecution got licked in the Foster case things are dead in St. Joseph. That fellow Walsh sure is a great lawyer," said the farmer taxi-driver who drove me from Niles to the courtroom at St. Joseph, Michigan.

The Department of Justice spies and the State Attorney-General's office were hard hit by their failure to convict William Z. Foster. They changed their tactics a little. Contrasted with the country-wide publicity given the preparations for the Foster trial, the atmosphere about the Ruthenberg case was ominous. No sensational stories heralded the coming conviction. Burns' agents no longer boasted so loudly. And the people of Berrien County, the real people who work and live there, had changed their minds a little. Many of them changed their old notions about the terrible "Reds" who invaded the mighty valleys and towering sand-dunes bordering peaceful Lake Michigan.

Mrs. Minerva Olson of the Foster jury told me: "Many of us here don't see anything in all this newspaper talk about foreigners and secret activities. My uncle was a member of the Cumberland Scouts in the Civil War. But who were his ancestors? Weren't they supposed to be the cast-offs of Europe? Indeed, what organization doesn't do its business in secret, whether it be a political party or a corporation? In the last few days there has been a great change of sentiment here. A number of neighbors have telephoned me telling of their own change."

A Michigan Central Railroad switchman told me that the "Reds" stood no chance with the public before the Daugherty injunction, but now "there is many people around here for 'em."

And in a mock-trial of Foster by the Senior Class of the Benton Harbor High School the pupils' jury brought in a unanimous verdict for acquittal in less than twenty minutes.

It was in this small town of St. Joseph—thus reborn—that Charles E. Ruthenberg, Executive Secretary of the Workers Party, followed Foster in the second of a series of Communist trials.

The Reaction Better Prepared

But the State had learned much from its mistakes in the first case. The Prosecution lost its air of overconfidence, very much to its advantage. It carefully avoided the costly mistake of questioning the defense witnesses about the principles of Communism. Attorney General Smith concentrated on tearing out text from general context. To leave undisturbed the artificially fostered prejudices afflicting the jurymen, the Attorney General rested his case on his selected documents. And he rested them well with damaging effect on the defense.

The Communist Party on Trial

In the Ruthenberg trial the issue was much more clearly drawn than in Foster's. Foster was not a member of the Communist Party. He merely attended a session of the Communist convention to present the industrial problem.

Ruthenberg, however, was a member of the Central Executive Committee of the Communist Party. The prosecution of Foster was an attack on the trend of the working masses toward Communism. But trying Ruthenberg meant a direct attack on the Communist Party as an organization—the Party struggling to establish itself as a living, fighting force in the class struggle between the workers and the employers.

The capitalists had burned their fingers by the publicity given to Communism in the Foster case. Herein lies the decisive reason for the conspiracy of silence surrounding the second Communist trial. The capitalist newspapers would not dare say another word about the real meaning of Communism, though, of course, when Ruthenberg was convicted the *New York Times* found room for the story on the first page.

Choosing Ruthenberg's Peers

Everything was peaceful in St. Joseph as the trial opened. Sleepy Hollow atmosphere reigned supreme in the court room. In questioning the prospective jurors Assistant Attorney General Smith told them that the Communist meeting in Bridgeman advocated larceny. Walsh, for the defense, gave them an education in the history of the American Revolutionary War and the Civil War.

The jury chosen consisted of eight farmers, one Standard Oil Salesman, one Standard Oil gas service station man who was an American Legionnaire, a fruit buyer, and a shoe merchant who was president of the Benton Harbor Chamber of Commerce and a member of such privately owned and privately operated law-preserving bodies as the Rotary and Kiwanis Clubs. The Prosecution saw to it that the jury picked would be full-fledged property owners. Ora Scherer, the only union man in the panel, who admitted he once overheard the word "amalgamation" at a meeting, was peremptorily challenged. Roy Aiken, a box-factory worker, also fell by the wayside when he could not prove clear and undisputed title to his house which appeared on the assessment roll in his sister's name. Under the laws of Michigan only those who are genuine property owners can qualify as jurors.

The jurors who admitted expressions of opinion were challenged by the defense. But the Court disallowed these challenges upon a mere promise to waive their opinions. It was the failure of the Court to grant the defense such challenges that brought on the quick exhaustion of its five peremptory challenges.

The Case in Full Swing

The Judge conducted himself with an air of simplicity and in an umpire-like fashion. Until he gave his instruction to the Jury he was more of a referee than a Judge. But with the Prosecution the case was totally different. Most of the time Assistant Attorney General Smith was plainly in an ugly mood.

County Prosecutor Gore fired the first gun with a long-winded harangue about the "nefarious band of conspirators stealthily tucked away in the woods and planning to strike terror into the hearts of the law-inspiring citizenry of the country." He charged Ruthenberg with violating the criminal syndicalist law by "assembling with the Communist Party of America."

Frank P. Walsh countered for the Defense with a history of the Communist movement in America and the activities of Ruthenberg therein.

Sheriff Bridgeman then mounted the witness stand. On cross-examination by Walsh, he confessed that the raid was engineered by the Department of Justice, that at the time of the raid he did not know that a law was being violated, that raiders were not armed with a warrant for arrest or search but only with revolvers. The Sheriff also declared that the Communists did not have a single weapon of any kind on them. Bridgeman was followed on the stand by Federal Detectives Shannahan, Loebel, and Wolfe. These spies testified as to their onslaught on the seventeen Communist workers and as to their confiscation of the papers and documents. At this point the Judge denied Walsh's motion for a return of Ruthenberg's papers illegally seized by the Burns crew.

In the midst of the detectives' testimony the State Attorney General Daugherty, fresh from his inspiring investigation of the immoral activities of the House of David, made a dramatic entry into the court room to lend moral support to the prosecution and the stool pigeons.

Then the Federal anti-labor submarine, "K-97," of the United States underground navy, Francis Morrow, took the stand. He struggled desperately to repeat the lies he told in the Foster trial. When confronted with a stenographic report of his former lies, Morrow sought safety in blaming his memory. His imagination was working overtime and running amuck until he was pulled out by Smith. The Assistant Attorney General turned to drawing blood out of the heavily loaded columns of a Bukharin pamphlet, various theses of the Communist International, and what was once the 1921 Program of the Communist Party of America. A monotonous, soporific reading of the obsolete document closed the case of the Prosecution and helped make the Jury more drowsy than ever.

The Defense

The case of the Defense was opened with a battle royal. Ruthenberg, who had testified as an expert on Communism in the Foster Case, was the first to be called to the stand by Walsh. Because of his experience with such expert testimony, Attorney General Smith, with a mouth as open as the Southern Pacific, battered away at the air for three-quarters of an hour, in protest against the admission of Ruthenberg's testimony. He called to his rescue his own Five-Foot Shelf of fossilized law books. In exactly less than one minute, Walsh deftly and suavely disposed of Mr. Smith's verbose effusion, law volumes and their dust included. When Walsh calmly called Smith's attention to the fact that Ruthenberg was not being called to act as an expert, but merely to state his intent and purposes and, as a member of the Central Executive Committee, what the Party really advocated, the Attorney General was withered by a scornful glance from the Court stenographer. The latter had been subjected to a terrific task in taking down Smith's tirade. For over an hour these exercises in legal sophistry were protracted.



William Gropper

"One must have the courage to deliver Europe from the Bolshevist plague"

—Conradi, murderer of Vorovsky.

Judge White closed the dispute by allowing Ruthenberg to continue but cautioning him to be brief. Ruthenberg then told about the Communist Movement and its theory and practice. His testimony was more brief than in the Foster case. The prosecution was bent on preventing a complete exposition of Communist principles. In his cross-examination of Ruthenberg Smith showed that he still remembered the painful drubbing he received in the Foster case. This time the Assistant Attorney General did not disturb the prejudices of the jurors and cut short his examination of the defendant.

In the midst of the direct examination of Ruthenberg, the writer was called to the witness stand by Frank P. Walsh. The Attorney General jumped to his feet at once and protested that a co-defendant had no right to testify. Walsh informed the court that I had requested to be permitted to testify. Assuring the Judge that I had made this request I was allowed to take the stand after being informed that in so doing I waive all immunity as to incriminating myself by my own testimony.

The writer testified that the Central Executive Committee of the Communist Party had given up its separate program and had decided to have but one program of communism in America—the program of the Workers Party. Mr. Grey of the defense counsel then proceeded to read the report of the Executive Secretary of the Communist Party. Nowhere in the report was a word mentioned about armed

force or violence. It dealt with the controversy in the Party as to open organization, and sketched at length the activities for the year in the trade unions, the relief field, in strikes, and amongst the farming masses. The jurors appeared interested and listened. The report definitely established that so far as its practical activities were concerned the Communist Party could and did function openly and that nothing the communists had done in the past year was in violation of the State law.

Then the Program of the Workers' Party was read to the Jury over the strenuous objections of the Prosecution. Charles Krumbein and Caleb Harrison followed me on the stand for the defense. Their calm, unconcerned manner somewhat upset the Assistant Attorney General. County Prosecutor Gore is said to have remarked that they were the best witnesses he had ever come across.

In cross-examining the defense witnesses Smith was as sore as a boiled pup. As a cross-examiner he had very little qualification and still less scruples. He was as adroit as a hippopotamus. With Ruthenberg he took no chances. He had been licked and licked soundly once before in his attempts to make Ruthenberg misrepresent Communism. Instead of subjecting him to a three-day grilling as in the Foster case, Smith fretted for only an hour.

But with me the situation was different. I was on the stand nearly two and a half days and the Attorney General exerted himself to his utmost in his attempt to badger me.

"You are a Jew, aren't you?" yelled Smith at me. He would continually shoot at me long, confused questions encumbered with heaps of implications. Quite often he lost control of his vocabulary as well as his temper. Smith made many futile attempts to picture the Communist Party as a monstrous octopus whose vicious tentacles strangled many organizations. At the eleventh hour of his barrage Smith made a desperate but unsuccessful attempt to link the Communist Party with the Herrin struggle. As he went on he tired considerably. In his cross-examination of Krumbein and Harrison his surliness subsided somewhat.

A local priest sat through many of the sessions. He seemed to be especially interested in the cross-examination of the defense witnesses. Anent his interest and feelings, an executive of a St. Joseph factory told me an interesting story. He said: "My friend, we in town are with you. That priest over there is all for you. He has been blessing you and wants to see you all be well and do well. Keep up the fight. We here have got no darned use for the Attorney General's arrogance nor for his flock of detectives."

So rocked was the prosecution by the defense that it sent an emergency call for a reinforcement of stool pigeons. In response to a midnight SOS, one Spozza, who had recently been expelled from the Workers Party as a spy, turned up the next morning. However, he was turned down the very next afternoon. The State did not dare use him.

Smith opened the closing speeches for the State. A great deal of his time was consumed in calling the defense witnesses names. When he ran out of vile adjectives he turned to frantic ravings about the glories of Americanism pure and simple. These were interspersed with an hysterical recital of "bloody" paragraphs from various pamphlets and articles introduced in evidence. On the whole it must be admitted that the Attorney General this time marshalled his "force and violence" documents much more effectively than in the Foster case.

Replying for the defense Attorney Grey disproved carefully and clearly Smith's assertions, insinuations and implications. Mr. Grey showed that in his article "Soviets or Parliament" Ruthenberg merely advocated the Soviet form of government and that such advocacy was held to be legal by the Court in the Foster trial.

County Prosecutor Gore followed Smith for an hour. He did his best.

Frank P. Walsh closed for the defense with a masterly address. After giving an analysis of the development of society through the great class struggles, Walsh went on to say: "Coming down to the present day, what do Communists say? Today a new oligarchy rules. A few parasites own the great industries. The great trusts, with their control centering in the banking houses in Wall Street, control the wages which the workers in the factories receive, the prices they pay for the things they buy, and also the sale of product of the toil of the farmer upon the land..."

"Who will dare challenge that history does not show the facts as stated by the Communists? We may hope that the final working out of the problem will come otherwise than through civil war, but the facts of the past struggles and of the present cannot be denied.

"This, and this alone, is the only reference to force by the Communists. There is no evidence that the Communists have advocated the use of force or have used force in any act or crime such as is defined in this Statute."

Court's Instructions—The Verdict

Except for an additional instruction Judge White practically gave the same ones as in the Foster case. But this new instruction proved to be fatal to Ruthenberg's case. The court charged that the advocacy of Soviets and of the dictatorship of the proletariat might impliedly be taken as an advocacy of force. This instruction by itself was enough to upset the chances for a fair consideration.

For over four hours the Jury deliberated. In the first two ballots the vote was nine to three for conviction. After the third ballot the jurymen marched into the court room in single file. With shamed faces and drooping heads they turned to the Judge.

The clerk mumbled the roll and called on Foreman Thomas Smith to rise.

"What is the verdict?" asked the clerk.

Turning his head away so as not to face Ruthenberg, the foreman muttered: "Guilty."

"After a long and tedious case," in the words of the Judge, Ruthenberg's twelve peers carried out the prosecution's request to put Ruthenberg in the penitentiary for "the safety of the greatest nation on God's green earth."

Ruthenberg was unmoved by the decision. A slight shrug of the shoulders and an expression seeming to say, "Well, it is all part of the struggle," was his answer to the verdict.

Ruthenberg is a battle-scarred veteran in the class war between the workers and their exploiters. Every condemnation received at the hands of the oppressors of Labor is to him only an added inspiration to more zealous efforts in behalf of the working class.