

COURT REVERSAL FREES FIVE REDS

Smith Act Convictions Are Upset in Connecticut for Insufficient Evidence

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NEW HAVEN, Sept. 11—The conviction of five Communists for conspiracy to teach and advocate the overthrow of the United States Government by force was reversed today by the United States Court of Appeals for the Second Circuit.

Judges Charles E. Clark and Sterry Waterman held that their conviction by a jury last March was not warranted by the evidence presented by the Government. Judge Carroll C. Hincks dissented.

The five freed by the Appeals Court were:

Mrs. Martha Stone Asher, 45 years old, of Newark, N. J., formerly of Paterson, N. J.

Joseph Dimow, 36, New Haven, state press secretary of the Communist party in Connecticut.

Simon Silverman, alias Sidney Taylor, 41, of New Haven, party chairman.

Robert C. Ekins, 47, of Old Saybrook, a sculptor and state party secretary.

Jacob Goldring, 40, of Trumbull, state committee member and organizer.

Federal District Court Judge Robert P. Anderson had sentenced Mr. Dimow to three years in prison. The four others had received four-year terms. They were free on bond pending the appeal.

United States Attorney Simon S. Cohen, who prosecuted, said he was "amazed at the reversal."

The majority judges noted in their decision that a recent Supreme Court decision had clarified the requirements for a conviction under the Smith Act.

Judges Clark and Waterman said they were loath to disturb a jury verdict but added "where the jury's finding is not supported by the record it is our duty to reverse." They held that the "circumstantial proof" of the Government was "too full of gaps."

The judges wrote: "We would mock both fair trial and free speech as meaningful constitutional guarantees were we to ignore the deficiencies of this record."

The Government's "strongest single example" of an inflammatory remark, attributed to Mrs. Asher, was not strong enough, the two judges stated.

'Bloodshed' Remark Noted

Questioned by a non-Communist union steward at a social gathering on how far the party would go to obtain its objectives, Mrs. Asher replied: "If necessary we'll have bloodshed."

The judges said that this was a "far cry from advocating and teaching the duty and necessity of overthrowing the Government of the United States, which was the crime charged in the indictment."

The second "most damning statement," according to the judges, was made by Mr. Goldring to a Government witness when both were officers of the Communist party in Bridgeport. Mr. Goldring was said to have declared:

"Communism in the United States can never be achieved through the use of the ballot. Communism would be achieved either through an international revolution or through the conversion of an imperialistic war into one of a revolutionary nature."

This, the court observed, "was good proof of the specific intent of Goldring, but it is not an example of incitement."

Judges Clark and Waterman said that to convict the five the Government would have to prove that they had conspired with "top-echelon Communist party leaders." They said the Government attorneys had failed to prove this.

In dissenting, Judge Hincks wrote that "recognition of Marx, Engel, Lenin and Stalin as authoritative exponents of the Marx-Leninist classics" was evidence of belief in the violent overthrow of government.

Eight persons had been defendants in the five-month trial. James C. Tate, 48, of Hartford, was found guilty and given a suspended sentence. He did not appeal. Alfred Marder of New Haven was acquitted.

The jury was hung on the charges against Sidney S. Resnick, 34, of New Haven. Judge Anderson later dismissed the charges against him.