
Free Press Fight in America On As *Masses* Trial Opens: Eastman, Rogers, Young, Dell, and Miss Bell Appear as Defendants in Case Being Tried Before Judge Hand; Eight Jurors Chosen.

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What may be the most important test case in America of free press in wartime began yesterday [April 16, 1918] and was resumed this morning in the federal district court at the post office before Judge Augustus Hand.

The defendants are among the best-known radicals and Socialists in the United States, namely, Max Eastman, Floyd Dell, Art Young, Merrill Rogers, Josephine Bell, the editors and makers of that lately defunct magazine, *The Masses*. Their attorneys are two of the best-known men in that world of free thought and progressive action that functions within the shell of the present system, namely, Morris Hillquit and Dudley Field Malone.

The government is represented by one of its ablest prosecutors, Earl Barnes, and the offense charged is a clear-cut one, based not on any actual physical offense, but on the frank and open published opinions of men seeking a way out of the universal calamity of world war.

In all respects, therefore, the decks are cleared and the lines sharply drawn for one of the most significant battles to sustain the historic right of the private

man in America freely to write his opinions on the affairs of the nation.

What Jefferson Said.

“It is time enough for the rightful purpose of civil government for its officers to interfere when principles break out into overt acts against peace and good order,” said Thomas Jefferson, in discussing some case in the early history of America similar to the one now being contested in the federal court here. In other words, the great pioneer of American democracy says clearly that no citizen ought to be punished for holding opinions that happened to be those of a minority, but that only actual fractures of the existing laws could and ought to be made the basis of prosecution.

Jefferson succeeded in converting his generation, but today the principle for which he fought is being contested in the courts of the nation.

The case of *The Masses* is the most vivid and recent example of this ancient battle of the minority against the majority, and for this reason it is being

watched carefully by every friend of democracy in America. It will be commented on by every newspaper in the land, and its results will be flashed to free Russia, where under the old regime thinkers were also



fiercely punished for the mere entertainment of views that did not entirely conform with the absolute outlines prescribed by the tsar's despotism.

Fought on Broad Basis.

Early in the case yesterday Hillquit announce that the issue would be fought on the purest and broadest basis of principle. There is to be no technical evasion or petty subterfuge such as the law is designed to encourage, but the 5 defendants are to place themselves squarely on the inalienable right of free press and free speech guaranteed by the Constitution.

They are to retract nothing they said in August of last year, though most of them have since been swept from that position by the course of events, and have completely changed their viewpoint on many things. They will stand or fall on their former utterances, however, not because of their importance or truth, but because they wish to maintain for themselves, as free and open-minded Americans, the right to change their views whenever impelled by the logic of events to do so.

It is a fight to keep the hand of authority off the mind of every liberal and Socialist who tries to express his opinion in these dangerous times.

While nothing more momentous than the weeding out of a jury occurred yesterday, the day was eventful in that it laid down this larger issue on which the case is to be defended. Selecting a jury is usually a process so dry that even the driest, most mummified legalist yawns through it. But Hillquit managed to drive the significance of the case through the top layers of the jurors, and when the day closed with 8 men sitting tentatively in the box, they were men who at least knew and said after a Socratic leading by Hillquit, that a pacifist could at the same time be an ardent patriot and one whose views were inspired by a loyalty as great as that of the most ardent militarist.

Hillquit Had Hard Job.

It was a difficult, almost tragic, task to bring out this fundamental attitude in the minds of the jurors. Hillquit pursued it against the most heartbreaking obstacles. The very class nature of the prospective jurors set up a wall against which his keen tools of logic

and persuasiveness were blunted and foiled.

A jury is picked from a panel of several hundred citizens chosen from the voting lists. Nearly always the younger and active men, mainly of the working class, manage to present an acceptable excuse that permits them to withdraw from this duty. And the men who are left are generally retired and elderly businessmen of one sort or another. They are far removed from the nascent internationalism of the workers, and their rough, realistic intuition of industrial freedom.

When the courtroom opened for the day the place was packed with men of this class waiting their turn in the box.

The clerk called 12 men from the panel to sit in the jury box and be examined. They were uniformly emotionless and gray they were unresponsive to the generosity of spring or to the possible generosity of the motives of the 4 men and a woman being tried before them.

It was inevitable that every one of them should answer an immediate "yes," to Hillquit's first question, which was always, "Are you prejudiced against pacifism and the pacifists?" Every one of them, and the next 5 that were called to fill in, and probably the rest of the panel that is to be called, were also as unanimous in affirming their prejudices against Socialism.

Didn't Know Socialism, But—

Some of them confessed that they did not even know what Socialism was; others had heard of it but had never studied it; but all were majestically sure they were prejudiced against it, and that it was unworkable, unreasonable, and probably somehow un-American.

Their feelings about pacifism were as absolute and uninformed. They evidently thought it meant non-resistance. They thought all pacifists were traitors, and one belligerent juror said he thought all pacifists ought to be interned as an answer to their insidious teachings.

The other jurors were not so vehement, and in answer to Hillquit's questioning they admitted they would be able to brush aside their prejudices after hard wrestlings of the spirit, and would seek to give the defendants a fair trial on the evidence presented.

Hillquit evidently gave up any attempt to get an

open-minded and unprejudiced jury from material such as this, but he managed to leave three main thoughts with the 8 men he and Malone finally decided to leave unchallenged.

One of the questions he insisted on what whether or not the jurors would be as fair to the defendants as if they were criminals charged with arson, larceny, or "horse stealing." This was a severe test of their impartiality, but the jurors came through nobly and said they would be equally fair in either case.

Pacifists and Patriots.

Another point Hillquit made, and which he undoubtedly left with the jurors as a new vision into human psychology, was that pacifists were also patriots devoted to their country who only happened to differ in the tactics to be used in bringing about an end to war. The jurors, after subtle questioning, admitted that a man of honest motive might still be a pacifist, although his wisdom was seriously to be questioned. Hillquit left them with that; evidently it was better than the one juror who blurted out that all pacifists were traitors.

A third point Hillquit tried to impress on them was that the evidence in the case would be merely to show that *The Masses'* editors had committed no overt act, but had only exercised their right to dissent and utter their individual opinions. Most of the jurors finally agreed that free speech or free press was not a crime; that is, free press within the limits of the law.

This, too, was satisfactory to Hillquit.

Malone Takes Up Struggle.

It was a hard day for the stocky little man who has made such an impression on the Socialist movement of America. Hillquit is a redoubtable lawyer, quick-witted, ingratiating, consummate, piercing with the sharpness of steel to the heart of each varying situation. He was on his feet from 10 in the morning until about 4 o'clock, when Dudley Malone relieved him of the grinding work of drawing forth a true statement of feeling from the jurors. Eight jurors were seated in the box when the session closed.

The defendants endured the ordeal of all these preliminaries to their inquisition patiently. They make an impressive group against the drab mediocrity of the courtroom — Max Eastman, with his big, fine, gray head, taking notes and following the procedure with calm understanding; Art Young, solid and respectable in aspect as a thriving cotton broker, but bursting through with a thousand little human gleams of intelligence and humor; Floyd Dell, poetical-looking and a bit amused, watching the proceedings with the detachment of an artistic revolutionist of the Latin quarter of Paris; Merrill Rogers and Josephine Bell, typical, quiet Americans of the intellectual class, valiant to the last, but making no great to-do about that is a plain duty.



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Edited by Tim Davenport.

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