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# The 1923 Foster Trial.

## The Reports of the WPA Press Service.

Mimeographed news releases sent to the party press, probably by wire.

Copies in Comintern Archive, f. 515, op. 1, d. 210, ll. 108, 111, 115-116, 119, 127-128, 134, 141, 144-148, 151-152, 163-165, 174-175, 177, 184-185, 192, 195-196, 198. d. 211, ll. 3-6, 29-30, 38-39, 157.

### 1. Monday, March 12, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — The first day of examination of jurors called in the trial of William Z. Foster for participation in the Communist convention at Bridgman, Michigan indicated both the character of the Prosecution and the line which the Defense would take. Prosecutor Gore examined the jurors on the question whether they believed that the accumulated surpluses of private property should be defended by the government and Frank P. Walsh, for the Defense, demanded of each juror whether he or she believed in the fundamental right of revolution as set forth in the Declaration of Independence.

Prosecutor Gore took about an hour to examine the ten men and two women who were called to the jury box. One of the jurors expressed such definite prejudices that the prosecutor was obliged to ask that he be excused. His place was taken by another woman, so that there are now three women and nine men in the jury box who have been tentatively accepted by the Prosecution. The jurors are farmers, small businessmen, and housewives.

Prosecutor Gore carefully examined each juror on the questions, "Are you a member of a union?" "Do you believe in the soviet form of government?" "Do you believe in the principle of private property and do you believe that the government should protect the accumulated surpluses of private property?" "Do you favor violence and armed insurrection to change our government?"

All the jurors, of course, believed in private property, although one or two advocates of municipal own-

ership appeared. All were opposed to the soviet form of government, and none confessed to membership in a union. None of them favored violence and armed insurrection.

Frank P. Walsh electrified the courtroom by meeting the challenge of the right of revolution by his first question to the jurors. "Do you believe in the fundamental right of revolution," he asked, "as set forth in the following words, 'every human being has been endowed by the creator with certain inalienable rights, [that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people...] to alter or abolish it?'" "Do you believe that this fundamental right of revolution stated in the Declaration of Independence is the right of the people, though carrying it out might involve the use of force?"

The jurors thus far questioned by the defense all avowed their firm belief in this fundamental right to revolution. Thus contradicting what they had answered when questioned by the prosecutor.

Something of the same character happened in regard to the soviet form of government. All the jurors were opposed to it. When questioned by the counsel for the Defense, none of them seemed to know what the soviet form of government was.

Only two of the panel questioned by Mr. Walsh up to the close of court Monday had been tentatively accepted by the Defense. Three others confessed to prejudice under the skillful questioning and were ex-

cused by Judge Charles E. White.

Three of the defendants who surrendered on Saturday [March 10] gave bail today, making four out of the ten who have been released on bail. The other six are free on their own recognizance for a few days more until bail can be secured.

## 2. Tuesday, March 13, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — The right of the American people to revolution as a method of changing their government and achieving social changes is on trial in the courtroom here where William Z. Foster is set as the representative of the Communist movement in the United States.

This was clearly brought out in the clash between attorney Humphrey Gray, the colleague of Frank P. Walsh, and Assistant Attorney General O.L. Smith, representing the state of Michigan, in the examination of jurors.

“Would you be prejudiced against the defendant,” Gray asked of a prospective juror, “if it appeared in the evidence that he believed that no great social changes have been achieved in past history without a resort to force, and that it was his belief that when a majority of the workers and farmers of the United States demand a change which will abolish the private ownership of the industries of the nation by the capitalists, even though they are a majority, this change will not be achieved without a resort to force, because the capitalists will not give up their privilege without a struggle, although the defendant does not advocate any act of force or violence now.”

The juror thought that such a view might prejudice him, and attorney Gray flashed back, “Then you believe that the Declaration of Independence should be suppressed because it advocates the fundamental right of the people to revolution if necessary by force.”

Attorney Smith was on his feet at once objecting to such an interpretation of the Declaration of Independence. Gray offered to read a letter written by Thomas Jefferson on the subject in answer to which Smith shouted, “We object to getting the influence of Thomas Jefferson on the minds of this jury.” Gray proceeded with examination of the juror along a new line asking:

“You know that in Hungary the Communists gained power without any violence, the Karoly Government surrendering to the Soviets there in 1919, but later the aristocracy and the capitalists, with the help of the Romanian army, made war on the Soviets and overthrew them, and in Finland the Socialists elected a clear majority of parliament but their government was later overthrown by the capitalists by force of arms, and in this country the Socialists elected members of the New York Legislature who were excluded by their political opponents. Knowing these things, would you be prejudiced against William Z. Foster if it appeared that he and the Communists generally said that the struggle of the workers and farmers against the capitalist system could not be won without force, although they did not advocate any acts of force or violence at this time, but merely made the historical forecast that force would be necessary.”

## 3. Wednesday, March 14, 1923

by Robert Minor

St. Joseph, Mich. — As the duel develops between Frank P. Walsh and prosecutor Gore backed by big corps of Burns' men from Chicago and New York, onlookers start to realize that a national political battle of deep significance is being fought out here. That jury must express itself on issues as to whether United States is to be a land of certain political liberties, or whether those liberties are to be abolished permanently begins to dawn upon more acute, while the duller begin to scent that, at least, some strangely fundamental question touching all men's lives is being dealt with.

Already crowds have begun to desert another trial downstairs at the courthouse, where morbid sex interests appeal, to come and listen, with peculiar wondering attentiveness, to the Communists' trial.

“Do you know proletariat means people who work?” “If evidence shows Foster leader, spokesman of 280,000 steel workers during the great steel strike of 1919, would that prejudice you against him?” “If Foster shown spokesman of workers against beef packers in Chicago, would that prejudice you against him?”

Questions asked by Walsh which caused workmen, women, and small merchants and farmers to sit forward and strain their ears. “If evidences show that provocateurs deliberately provoked violation of law in

order to convict another for it, would you give credence to that man's word?" was question which electrified courtroom and effected visible change of atmosphere among array of nationally famous professional strikebreakers, who sit in long row behind prosecutor.

Thus, little by little, cloud of technical verbiage rises and shows that here is being fought out the question of whether workers' political party shall be allowed to exist in open or whether forced to exist underground.

"Do you believe criminal syndicalist law a good law and should be enforced?" Prosecutor asked categorically of each venireman. All must answer yes and try Foster, or so no and leave jury box.

Meanwhile community is being flooded with printers' ink, paid for by big business interests that know what they want. Burns propaganda saturates local newspapers, reporters are writing editorialist into news to displace what facts that are not yet distorted. "Do you believe you can give defendant fair trial?" asks Walsh.

#### 4. Wednesday March 14, 1923

by Robert Minor

St. Joseph, Mich. — First prospective juror to admit once was member of union was challenged by Prosecutor and dismissed from jury box. Today Foster will be tried for unlawful assembly under criminal syndicalist law. William Gatchell, who said he was former member of Cement Finishers Union, Chicago, now farmer was dismissed. Another man who says he was member of union and has read Marx very closely was questioned by Prosecutor under guidance of Max Berger, "anti-union expert" from Burns' Department, Chicago.

"Do you believe in the fundamental right of the American people to make revolution as expressed in the Declaration of Independence?" is question asked each venireman by Walsh today. Prosecutor counters with "No, you believe criminal syndicalist law a good law and should be enforced?" incessantly today as yesterday. Also Foster's leadership in steel striking and packinghouse workers prominent factor in asking jurors whether prejudiced. Prosecutor Gore today asked juror whether he understood steel workers had better working conditions now or whether he attributed im-

provement to Foster's activity, if so whether it would tend to prejudice him in favor of Foster.

One retired capitalist, living on investments, this morning admitted fixed prejudice, he was excused. Another businessman admitted fixed opinion, he also was excused.

Roar laughter created late yesterday by juror who said he had talked with a storekeeper, who declared his show window had fallen in and thought it was because Communists were in town. Juror said this had not prejudiced him.

The case takes more and more a social atmosphere as auditors catch thread of deep political ideas and class struggles throughout the world. Walsh frequently refers to First, Second, and Third Internationals, and international associations of businessmen — such as the Chambers of Commerce — asking whether prospective jurors realized that phases of life have become of international scope, and whether they believe workers have same right to organize international associations as capitalists have.

Process of getting jury will probably require another day.

Several of Foster's co-defendants, who voluntarily appeared in court Saturday, are still unable to secure their thousand dollars bail. They are allowed to be at liberty on their own recognizance for a few days in order to secure bail.

#### 5. Thursday, March 15, 1923

##### *Foster Jury Completed.*

by Robert Minor

St. Joseph, Mich. — The jury that is to try William Z. Foster for participating in the Communist convention held at Bridgman, Mich., last August, was completed at 2:20 o'clock this afternoon. It consists of nine farmers, one non-union railroad flagman, one woman, the wife of a factory superintendent, and a young man, a grocer's assistant. Prosecutor Charles W. Gore thereupon began his opening address to the jury.

As the tedious selection of a jury was coming to a close, the defense having exhausted all of its challenges, and the state having but one challenge left, tense silence prevailed in the courtroom, broken only by occasional whispered speculations as to which of the 12 prospective jurors in the box would be eliminated by

the last remaining challenge.

A prospective juror being questioned admits prejudice, and an audible whisper comes from the audience, "The man is a damn fool to say that." The high school professor, who said that he had once read Karl Marx and that he had formerly belonged to a labor union, was eliminated from the jury box after he gave somewhat queer answers to later questions.

Edward N. Nockels, Secretary, Chicago Federation of Labor, and Robert M. Buck, Editor, *The New Majority*, its official organ, arrived in the courtroom today. They were greeted by Foster with a smile and a hearty handshake. Nockels and Buck came to St. Joseph today in expectation of the completion of the jury and the opening speeches. They will probably remain only long enough to hear the opening statement by Attorney Frank P. Walsh, Foster's defender.

Mrs. Foster arrived in the courtroom yesterday after partial recovery from illness. She sits in the courtroom throughout the sessions.

## 6. Tuesday, March 20, 1923

by Edgar Owens

St. Joseph, Mich. — The trial of William Z. Foster, charged with the violation of the Michigan criminal syndicalism statute, entered upon its second week this morning at St. Joseph, Michigan.

Special Agent Wolf of the Department of Justice continued the identification of documents alleged to have been seized at the time of the raids. Under a grueling cross-examination by Frank P. Walsh, chief counsel for Foster, it became quite evident that the Bridgman raids were conducted by the special agents of the Department of Justice and that the Sheriff's office participated merely to give a semblance of authority to a most questionable procedure.

Wolf testified that he had never heard of Allan Meyers, general manager of the Burns detective agency, until the day following the raids at Bridgman. This, in spite of the fact that he had been a Pinkerton detective for about eight years preceding July 1919, when he became an employee of the Bureau of Investigation, Department of Justice, of which Mr. Burns is the directing head. In fact, all the Burns federal detectives denied they had ever heard of Meyers, the manager of the Burns Agency, previous to the Bridgman raids. Yet

it was quite evident from Wolf's testimony that Meyers had advance information charging the raid, as he appeared at St. Joseph from New York City the morning following the raids. After the raids, according to the testimony worked out of Wolf by Mr. Walsh, the seized material was at all times accessible to the federal agents, who had keys to the room in which the material was kept. Meyers also had access to the documents but the witness "could not remember" whether or not Meyers had examined any of them while alone in the room.

Walsh asked Wolf, "Did you not say to the Berrien County Board of Supervisors that Berrien County will not be put to any expense for what has taken place and what will happen in these cases. The money will come to pay all expenses. The source from which it will come I cannot say at this time, but it will come?" Wolf denied making such a statement and when he was asked if Max Berger had not done so he reiterated that he had made no such statement. Mr. Walsh based his question on an affidavit which he held in his hand. Incidentally an affidavit making such a charge and tying Burns himself and Representative Ketcham, Congressman from this district, was filed by a member of the Berrien County Board of Supervisors and was one of the grounds upon which the defense based its motion for a change of venue.

The second affidavit is a matter of public record. This is significant when it is realized that Michigan has a statute forbidding the use of outside funds for a public prosecution. Mr. Wolf was excused shortly after the noon recess, much to his relief.

The next witness was Francis A. Morrow. Morrow announces himself as a "federal employee." He was a delegate to the Communist convention last August and is counted as the State's star witness. He testified that he was a duly elected delegate from Philadelphia, and gave "expert" testimony regarding the structure of the Communist Party and attempted to explain its functions. He was generally ready with his answers before Prosecutor Smith had fully framed his questions, which gave the impression that he had been thoroughly rehearsed. He identified "the call for the convention," which Judge White allowed to be read into the record over the strenuous objection of Mr. Walsh. He identified a number of documents which were read into the record, Mr. Walsh objecting. He told of how Duffy [Alfred Wagenknecht] of the

Grounds Committee had dropped the roster of delegates which he had picked up and hid for this trial, a statement so bald that it called forth a smile even from those on the inside of this prosecution.

Morrow was still on the stand as court adjourned for the day.

### 7. Wednesday, March 21, 1923

by Edgar Owens

St. Joseph, Mich. — The State's star witness, federal detective Morrow, became somewhat dim this morning when he attempted to identify the questionnaire of William Z. Foster, defendant in the Communist trial at St. Joseph, Michigan. Even after admitting that Foster was fifteen feet away from him and that about twenty people were between him and Foster when the latter was alleged to have been filling out the questionnaire, and it had been deposited upon a table among seventy-four other and like questionnaires, Judge White allowed it to be received and read to the jury.

Morrow testified that Foster was industrial director of the Communist Party, stating that he knew this to be a fact because it had been announced at the convention and had been previously reported through Party channels. He produced a bundle of documents, one of which he handed to the Prosecutor, who offered it as exhibit 106. It was at this time that he again got his wires crossed. He had testified that all Party documents came through Party channels but he now stated that this particular document had come through the mails. The exhibit was a bi-weekly newsletter and the paragraph which the prosecution wanted to introduce referred to Communist activity on behalf of the striking coal miners and called for maximum support on behalf of the West Virginia miners in their so-called treason trials which followed their conflict with the coal barons.

Other documents were read to the jury in spite of objections from Mr. Walsh. These were the Communist Party program and constitution, an article from the March [1922] issue of *The Communist* entitled "Our Prisoners," and an article in the July [1922] number of *The Communist* entitled "The Vice of Purity" by J. Ballister [Robert Minor]. The Prosecutor offered the theses and statutes of the Third Congress of the

Communist International and *The ABC of Communism* by Bukharin. Judge White has ruled these to be admissible.

### 8. Wednesday, March 21, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — In a tense atmosphere Frank Morrow, the Department of Justice spy, continued his evidence against William Z. Foster, charged with assembling with the Communists in the trial here which has now reached its ninth day.

All Wednesday morning [March 21] Frank P. Walsh, attorney for the defense, and O.L. Smith, Assistant Attorney-General for the state of Michigan, struggled over the admission of certain documents, with the defense scoring victories in a majority of instances.

Early this morning, with the jury excused from the courtroom, Walsh took the floor before Judge White to bitterly denounce the admission of articles written by individuals as evidence to show the principles of the Communist Party, and to demand that they be excluded from evidence. This issue had been raised by the admission yesterday afternoon of an article appearing in *The Communist*, official organ of the Communist Party on "Our Prisoners," said to have been written by Thomas O'Flaherty and a second article in the same paper supposed to have been written by Robert Minor, called "The Blight of Purity."

"If we are to judge this organization by the individual views of certain members," Walsh thundered, "why does not the Prosecution offer in evidence this article (reading from another article in the same issue of *The Communist* expressing diametrically opposed views to those expressed by Minor). "We demand that this organization be judged by its official statements and not by the views which individuals have expressed."

Judge White ruled that the articles were admissible, since they had been found in the barrels holding the papers of the convention.

Prosecutor Smith thereupon tried to introduce a file of *The Labor Herald* with the purpose of using the cartoons appearing on the cover as evidence of Foster's "state of mind." After a legal battle lasting an hour, these were ruled out, with the exception of one copy containing a cartoon by Robert Minor on the

sabotage of the railroads, as proven by the railroad union before the Railroad Labor Board.

Another bitter struggle ensued over the admission of a typewritten document, alleged to be a transcript of a speech made by Foster at the Bridgman Convention. The Prosecution said that this typewritten document had been found in the baggage of C.E. Ruthenberg when he was arrested at Bridgman. On the strength of the admission that it was not in the barrels Judge White ruled it out. Prosecutor Smith then tried to have Morrow repeat what he knew about the speech made by Foster.

Morrow said that Foster had told the convention that the Socialist Party had failed because it had not developed a sound trade union policy. That the Communists were not making this mistake but had adopted the policy of working within the trade unions to strengthen them and develop them into militant working class organizations. Foster, he continued, had told the convention that this policy had been agreed to by the Central Executive Committee of the Communist Party. He then detailed some stories about acts of sabotage by certain trade unions, which Foster had told about in his speech, evidently as an illustration of some point he was making about the attitude of trade unionists.

Morrow got into hot water when he tried to identify another document, said to be a transcript of the report of Earl Browder to the Communist convention. Morrow said he had sat two seats from Browder and he had seen the document in Browder's hands. Walsh interrupted the direct examination to ask the witness:

"Is it not a fact that Browder made a speech without notes and that this speech was taken down in shorthand and was afterwards transcribed and mimeographed, and isn't the copy you have identified a mimeographed copy?"

Morrow appeared to find himself in a tight corner, but wiggled out of the situation by declaring his inability to say whether the copy of it was an original typewritten manuscript or a mimeograph copy.

Judge White ruled that the document was admissible. Defense attorneys claim that this ruling is a fundamental error.

Morrow will probably complete his direct testimony today and will then be taken over by Frank Walsh for cross-examination. Some of the incidental ques-

tions asked him by Mr. Walsh during his direct testimony indicate that he is in for a difficult day, as the Defense will challenge a great deal of his testimony.

## 9. Thursday, March 22, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — The morning was spent by the Defense at the trial of William Z. Foster in leading Frank Morrow, Government spy, step by step through the proceedings of the Communist convention at Bridgman, to show that nothing had been said or done by the Communists in the state of Michigan which violated the law of the state.

Under the skillful and persistent cross-examination of Fran P. Walsh, Morrow was led from fact to fact up to the time of William Z. Foster's departure from the Convention on Sunday morning [Aug. 20, 1922]. Judge White has ruled that what happened after Foster left the convention is inadmissible as evidence.

Morrow stated that upon arriving at the convention he joined what he called the "Goose Caucus," in which there were 23 or 24 of the 45 delegates whose names he gave. Under questioning of Mr. Walsh he denied that the question whether the Communist Party should remain underground or become an open party had never been discussed in this caucus and further denied that any thesis or resolution on the subject had come up.

Later, however, under direct examination of Assistant Attorney-General O.L. Smith, his memory recovered, and in answer to Smith's questioning he described the so-called "Goose Caucus" as the "underground caucus," and suddenly discovered it had two theses on the subject of open or underground party submitted to it, which he declared had been referred to the convention as a whole as a basis for discussion. In questioning Morrow, Walsh read, as a viewpoint in the convention opposed to views which the prosecution had read into the record a thesis said to have been written by C.E. Ruthenberg and Max Bedacht declaring that the circumstances which had forced the Communist Party underground no longer existed and that it must persistently fight its way out in the open again through the medium of the Workers Party.

This thesis declared that "the test of a Commu-

nist program is whether it advocates mass action, the Soviet state and the proletarian dictatorship, and affiliation with the Communist International." Morrow declared that the final action of the convention on the subject of the underground or open party was a unanimous adoption of a compromise resolution called the report of the adjustment committee.

Morrow tried hard, under redirect examination of Prosecutor Smith, to explain the fact that he had stated that he had received a sheet of paper which was uncreased through the mails, stating that it had come rolled in a tube. He also endeavored to straighten out his testimony that he had not been an officer of the Workers Defense and Relief Committee of Philadelphia in view of the checks bearing his name as treasurer, with which the Defense confronted him.

On the latter question he asked the jury to believe that he had just been asked to sign his name on the checks as treasurer and had complied. He denied ever having gone to the bank to register his signature. Walsh demanded of him, "Do you ask this jury to believe that from May to July the Colonial Bank of Philadelphia cashed checks running as high as \$300 in amount signed by you as treasurer without your signature being registered at the bank?"

"I do," answered Morrow.

Then Morrow left the witness stand at noon.

The afternoon will probably be taken up by the reading of resolutions from the thesis of the Third Congress of the Communist International [June 22-Aug. 12, 1921]. It is probable that the Prosecution will close its case by the end of the day.

### 10. Thursday, March 22, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — For an hour before adjournment of court Wednesday [March 21] Frank P. Walsh took over the government spy Frank Morrow for cross examination. Morrow twisted and turned and evaded under the steady pressure Walsh brought to bear upon him, but at the time of adjournment two facts had been brought out, which in one instance was a straight-cut admission of misstatement, and in the other made a strong impression of dishonesty.

Morrow stated under cross-examination that he had joined the Socialist Party in the first half of 1919

and had become a government agent a month later. He remained in the Socialist Party as a spy. In February or March of 1920, some six months after the Communist Party was organized, he turned his attention to the latter organization.

He said that he received \$1.00 per day and expenses from the Government until September 1921, when he received a raise to \$60.00 per month. He further stated that the Government was paying him \$5.00 a day and expenses for his time as a witness.

Questioning Morrow on his activities while a member of the Communist party, Walsh asked, "Were you a delegate to the Workers Defense and Relief organization in Philadelphia?"

"I was," answered Morrow.

"Did you head any office in that organization?" Walsh continued. Morrow answered with a flat no. Walsh thereupon produced a series of cancelled checks of the Workers Defense and Relief Committee and asked the witness whether his name was signed to these checks as treasurer. Morrow had also identified a weekly bulletin of the Communist Party introduced by the Prosecution in order to lay a foundation for its interpretation of the theses of the Third Congress of the Communist International. He said that he had received a copy of this bulletin through the mail and he was confronted with the copy which he had identified as coming through mail and was shown that it was flat and not creased in any way.

Morrow's general attitude is one of sneering evasiveness. Again and again, Walsh after five or ten minutes of questioning compelled him to make admission of facts which he tried to evade.

Early in the afternoon after a consultation of attorneys in Judge White's chambers, the Prosecution withdrew a copy of *The Labor Herald* previously admitted in evidence and a typewritten manuscript purporting to contain answers to questions made by Foster at the Bridgman convention, admitting that these have not been sufficiently identified to go in as legal evidence.

### 11. Saturday, March 24, 1923

by C.E. Ruthenberg

St. Joseph, Mich. — At the end of the first two weeks of the trial of William Z. Foster for "assembling

with” the Communist Party in the convention held at Bridgman, Michigan last August, the lines of the struggle between the Prosecution and Defense stand out clearly, and the issue in the trial has been thrown into the spotlight.

As Frank P. Walsh argued, in demanding that C.E. Ruthenberg be permitted to make a complete statement of Communist principles, “It is Communist principles which are on trial here in the person of William Z. Foster.”

From the argument of the Prosecutors and their questions put to witnesses it appears that they aim to create the impression on the jury that the meeting at Bridgman was a convention of a secret band of conspirators who continually preach the use of force and violence by the workers in their struggle against the capitalists. The attempt is being made to make the jury believe that Communists are bomb throwers and are continually at work to incite the workers to riot and violence.

Against this contention of the Prosecution, the Defense presents the Communist movement on its historical aspects. Through the testimony of C.E. Ruthenberg, the Marxian analysis of previous historic epochs, the class struggle within the capitalist system, the forces which are destroying the system, and the part that force plays in the great historical changes was brought before the jury. The Defense does not contend that the Communists say the workers can achieve power and dominate the government as the dictatorship of the proletariat without the use of force, either in achieving power or in protecting their rule after it is established. The Communist viewpoint that great historical changes have never come without a resort to force is boldly avowed, but it is declared that this use of force must evolve out of the social and economic conditions, that Communists are not bomb throwers nor do they incite the workers to isolated acts of violence.

On the question of the Communist Party being a secret underground organization, the Defense cites the facts of the 1920 raids on the Communist Party, when 6,000 of its members were arrested, many of them brutally mishandled, although not one was indicted and convicted of crime and only a few hundred out of 6,000 were deported.

The Communist Party, the Defense says, went

underground because of the persecution. Before the Bridgman convention a movement had begun to have the Communist Party again come out into the open. There was practically a tie vote on this question at Bridgman, and because the convention was interrupted the matter never came to a definite decision, a compromise being made by the two groups. Since the Bridgman convention even the group which opposed coming out in the open has become convinced of the necessity of this action and the Workers Party of America has become the open Communist Party.

The Communists, the Defense contends, therefore stand before this court openly announcing their views, seeking to hide nothing about their organization, but boldly demanding their right to publicly advocate their principles in the United States.

That is how the issue stands today. The open avowal of the Communist viewpoint, the frank acknowledgment that the Bridgman convention was a convention of the Communist Party and that he, Ruthenberg, was at the time of the Bridgman convention a member of the Central Executive Committee of the Communist Party swept away the atmosphere of mystery and conspiracy with which the Prosecution has attempted to surround this trial.

The issue has been drawn clearly. Are Communist principles criminal? It is that question which the nine farmers, the one railroad worker, the tradesman, and housewife on this jury are asked to decide. It is one of the ironies of history that the principles of a great historical movement such as that which is based upon Marxian principles should be on trial before a jury. A less competent one than that which is to decide such a question could not be imagined.

But the final decision will not be before this jury. It will be before the masses of the American workers and there the Communist principles will win a verdict of approval, even though they lose before this jury.

## **12. Saturday, March 24, 1923**

by Joe Carroll,  
Federated Press correspondent.

St. Joseph, Mich. — The courtroom spectators bestirred themselves and again showed a lively interest in the proceedings when, early during the afternoon session, Attorney Walsh called to the stand C.E. Ruth-



enberg as first witness for the defense. They had all heard of Ruthenberg, so often referred to by the prosecuting attorneys as “the Executive Secretary of the Communist Party of America” and wanted to know what he might have to say, and they soon found out.

Almost the first question asked Mr. Ruthenberg by Mr. Walsh was the direct interrogation, “Is there a Communist Party of America at this time?” and Mr. Ruthenberg’s answer was, “There is not.” The very specific and categorical answer seemed to be considerably of a surprise all around. More especially to the prosecuting attorney and his various assistants. Witness plainly stated, however, that at the time of the Bridgman raid he was a member of the Executive Committee of the Communist Party of America and that he attended that meeting as such. He had previously given testimony as to his long residence in Cleveland, Ohio as a citizen of that town and of his various occupations there during all the years preceding his acceptance of such a position.

Upon direction of counsel for the Defense, this witness then gave a detailed statement of his studies with regard to the social and economic conditions and to the socialist movement generally. This was followed by a very clear exposition of the Socialist and Communist theories and principles, running back to the enunciation of them by Karl Marx in 1847.

Attorneys for the Prosecution seemed to become considerably “peevish” over the deep interest which jury and spectators seemed to feel toward this history of the class struggle according to Marx. Repeated efforts were made to stop its continuation but except for slight interruptions and delays of the sort, the witness went right along until he had brought his story up to the time of the raid on the Communist convention last summer, and the replacement of that Party by the Workers Party of America. In between were the three Internationals and a host of working class organizations and parties, of many sorts, times, and places.

What seemed of most particular interest to the jury, of which nine members were farmers, were matter of fact statements of this sort by the witness: “After the workers and farmers become the government, they will use the powers of that government in their own interests just as it is used now in the interests of the capitalist classes which are in power.” And his statement of the necessity for workers in the factories and

those on the farms to organize in a workers’ party, which will function for the interest of the class composing its membership.

Attorneys for the Prosecution seemed also very much disinclined to let the witness answer Mr. Walsh’s question as to “What party overthrew the Tsar’s government — or took control after the overthrow of the Tsar in Russia?” but objection being overruled, witness answered that no party had done or could do that thing and that such an overthrow of power could come only through a movement in great masses of the people — the workers.

The fact that this answer also was objected to, and was ordered by the judge to be stricken out, did not seem to appreciably decrease its interest in the minds of the jury.

Ruthenberg boldly avowed the Communist belief that the class struggle between workers and capitalists would not end without a resort to force. Pointing to the historically parallel struggle between the slaves and their masters, and the capitalist and feudal regime, he said: “The Communist view is that force is not a weapon for a small group or a party to use. If force is resorted to it must come out of the social and political conditions in a particular country. Force is used because the oppression of the workers and farmers becomes unbearable. The work of the Communists is to become the leaders of such struggles, to organize the masses so as to effectively use their strength and to guide and direct the struggle. Force may also come in the form it came in at the time of the Civil War, through an attack upon a workers’ government by the privileged class, which has lost its power. The position of the Communists is that force is an inevitable accompaniment to great social changes.

The Communist International is not urging the workers of this country to resort to force. It applies its principles according to the situation which exists in a particular country.

An advocacy of the use of force in the United States today would be nonsense. In the United States the Communist International is urging the formation of a Labor Party by the great masses of workers and farmers to fight their political battles and the amalgamation of the craft unions into industrial unions.

The trial was adjourned until Monday [March 26] when Ruthenberg will continue his evidence.

**13. Monday, March 26, 1923**

by C.E. Ruthenberg

St. Joseph, Mich. — The Prosecution in the trial of William Z. Foster indicated this morning that they were very much afraid of the testimony given by C.E. Ruthenberg on Friday, and further testimony which he might give.

Upon opening of court the prosecutors asked for a recess of a few minutes and then came in with a motion to strike from the record the testimony given by Ruthenberg on Friday and to bar him from giving further testimony. The motion was based on a Michigan court decision that a co-defendant under the same indictment who asks for a separate trial cannot testify in the case of one of the other defendants.

The motion created a stir in the courtroom. Law books were piled a foot high on the table of the Prosecution for use in substantiating its position and it looked as if all the forces of the prosecutors' office had been marshalled to make a desperate struggle to wipe out the testimony given by Ruthenberg and to prevent him from going to the stand today.

After nearly two hours of argument and quoting of decisions of statutes, Judge White ruled that in view of the fact that Ruthenberg's testimony was not objected to at the time he took the stand the objection could not be made after he had testified for hours.

Ruthenberg resumed the stand and was questioned on the difference between syndicalism and communism, and as to the nature of the organization of the Communist International and the Red International of Labor Unions [Profintern].

Frank Walsh then began inquiring as to the industrial department of the Communist Party. It was brought out in the testimony that this was an organization separate and distinct from the Trade Union Educational League. That the Communists regarded the Trade Union Educational League in the same light as any other trade union organization, its nuclei within it to carry on work of education, although the Communists endorsed the policies of the League.

Asked the direct question, "Was William Z. Foster an official of the Communist Party at any time?" Ruthenberg answered, "He was not."

Walsh by repeated questioning hammered home the point that the Trade Union Educational League,

of which Foster was the head, was not part of the Communist Party, but an independent organization in which there were Communists, Socialists, Trade Unionists and Republicans and Democrats.

Ruthenberg was again asked about the present status of the Communist Party but Judge White refused to let him tell how the Communist Party had come out into the open through the Workers Party, which has taken its place as the Communist organization in the United States.

Judge White at the opening of today's session told the jury that the charge of tampering with the jury was in no way connected with either the Defense or the Prosecution, and that they must not permit themselves to be influenced in any way by this incident.

Ruthenberg will continue under direct examination Monday afternoon.

**14. Tuesday, March 27, 1923**

unsigned, probably by C.E. Ruthenberg

St. Joseph, Mich. — Cross-examination of C.E. Ruthenberg, witness in the trial of William Z. Foster, by Prosecutor Charles W. Gore began this afternoon.

Prosecutor Gore proceeded by asking Ruthenberg questions about various documents which were in the case as exhibits, endeavoring to have Ruthenberg commit himself to the view that they were official documents of the Communist Party.

One of these documents purported to be the minutes of a District Convention of the Communist Party and contained a resolution instructing Communists not to appear as witnesses in trial in the capitalists' courts.

"Is this a capitalist court?" Gore inquired.

"Yes, it is," flashed back Ruthenberg.

The Prosecutor then wanted to know whether the instructions to Communists in regard to appearing in capitalist courts as a witness applied to him.

"I am here," was Ruthenberg's answer, "by direct instructions from the Central Executive Committee of the Workers Party of America, frankly and fully to state the position of the Communists, and am making this statement as part of the Communists' fight for the right openly and publicly to proclaim their principles."

Prosecutor Gore next asked Ruthenberg whether he was in correspondence with the Communist International, to which the witness replied that he had sent letters and reports to that body.

Gore sprung what he evidently thought would be a surprise when, after asking Ruthenberg whether he spoke German, he asked, "Did you attend a meeting in New York City on Sunday, March 18th at which the question of an open Communist Party was discussed and did you translate from German the speech of a person named John Pepper?"

Ruthenberg said he had been at the meeting and had translated the speeches of Pepper from the German. Reading from a document in his hand, the Prosecutor then asked whether certain things had been said. Some of these Ruthenberg acknowledged as fairly accurate statements and others he denied as having been part of the speeches.

"The meeting was a meeting of members of the former Communist Party who are members of the Workers Party and endorsed the proposal of the Central Executive Committee in regard to the open Communist Party by a vote of 34 to 4."

"Is it not a fact," Gore also wanted to know from Ruthenberg, "that the Communist believes not only in the ballot but in any means, whether ballot or bomb, gun, or torch, to accomplish its purpose?"

Ruthenberg answered, "It is not true."

Considerable amusement was created when Prosecutor Gore questioned Ruthenberg at length as to what he called "syndicalism," getting an invariable denial of the meaning he gave the word and then suddenly announced that he didn't mean syndicalism but sabotage.

Ruthenberg was still under cross-examination at the end of the day.

### 15. Tuesday, March 27, 1923

by Earl R. Browder

St. Joseph, Mich. — The morning session was enlivened by Smith, Assistant Attorney-General, who disturbed the Sabbath school quiet of Ruthenberg's cross-examination by vociferously announcing that Frank Walsh was "absurd" to object to one of Gore's questions. Walsh, in usual quiet manner, remarked that "Unfortunately we cannot all be brilliant." He prom-

ised Mr. Smith that he would not call that worthy brother "absurd" even though Mr. Smith should continue his outbursts. The Court sustained Walsh's objection, Mr. Smith subsided, and everyone enjoyed a smile.

The Associated Press definitely entered the case on the side of the Prosecution when Gore introduced a document from the local AP files, signed by Ruthenberg's name.

Court opened with Ruthenberg on the stand and Gore cross-examining. Entire morning spent in going over again and again details of Ruthenberg's testimony, attempting to get him to recognize certain language quoted by Gore as that of Foster and others, and other interminable details. Ruthenberg seems to bother the Prosecution very much.

The attorneys for "The People" fuss around and ply their long list of devious and cloudy questions, while the witness quietly meets them all with undisturbed calm and self-possessed answers without hesitation. He serenely picks his way through the clumsy traps of obscure questions, clarifying each one for the jury with patience and thoroughness and throwing off the cloudy cheap mystery which the Prosecution tries to create.

"Did Mr. Foster say this?" was the beginning of scores of questions, followed by the Prosecution's version of what Foster said. But whenever Ruthenberg offered to tell what Foster did say, the Prosecution has lost its eagerness to know, and the witness is warned to answer "Yes" or "No."

The jury looks tired and sleepy. They brighten up occasionally when Ruthenberg humorously carries some particularly stupid inference read into his answers. This morning's session closed with the cross-examination still under way, to be followed probably by re-direct examination.

### 16. Wednesday, March 28, 1923

by Earl R. Browder

St. Joseph, Mich. — The Prosecution was hit by a boomerang this morning when their "exposure" of a recent meeting of Communists in New York led to the recital, by Ruthenberg, of the speech delivered at that meeting by John Pepper of the Workers Party. Smith, for the Prosecution, fought bitterly against the

introduction of the speech, which he himself had dragged into the case over Walsh's objections on Monday [March 26]. The court ruled that Ruthenberg could recite Pepper's speech, which Ruthenberg had translated at the meeting on March 14.

Ruthenberg said the speech was as follows: "The Central Executive Committee of the Party asks your approval of its policy in establishing the open Communist Party for the following reasons: Since the Bridgman convention there have been new developments in American political life which have convinced even those persons who formerly were opposed to the open party that the time is ripe to establish the open party.

"These developments are first, the reaction to the raid at Bridgman. When the raids took place in 1919, the party was isolated and stood alone. No one came to its support in its effort to secure the right to openly propagate the principles of Communism. After the Bridgman raid, the reaction was quite different. The Chicago Federation of Labor protested against the raids; the Minneapolis Trades and Labor Assembly denounced the prosecution; and the Michigan Federation of Labor asked that the prosecution be dropped and that the Criminal Syndicalism Law be repealed. In 50 cities Labor Defense Councils were organized for the defense of the Communists, which councils included trade unions and liberals. The National Council of the Labor Defense Council included men like Eugene V. Debs, a Socialist; Robert M. Buck of the Farmer-Labor Party; and Father Ryan of the Catholic University at Washington. This support of the Communists in their demand for the right to publicly advocate their principles is one factor making possible the open Communist Party."

The witness then quickly viewed the results of the November election, the Cleveland Conference,† the adoption by the Workers Party of a clear-cut Communist program containing every essential Communist principle, and declared that these had been stated with the other factors as making possible the open Communist Party.

He then said, "Mr. Pepper continued: 'We propose to organize an apparatus to protect the open Communist Party. We know that new persecution may

come. Every group that has advocated a new ideal, a better life, a higher civilization has been persecuted. The early Christians had to hide in the catacombs of Rome because of their beliefs. The Protestants were persecuted by the Inquisition. The heroic men who opposed chattel slavery in this country were bitterly persecuted and some of them murdered. Our Communist ideas must go on no matter what comes. Civilization can only be saved from the destructive power of Capitalism through Communism. We will continue our work no matter what the circumstances, until Communism triumphs and a new civilization is established. To protect our party we will organize an apparatus of confidential addresses, so that in case of new attacks we can go on with our work and achieve our great goal.'"

The rest of the morning was spent by Smith's attempting, on Ruthenberg's cross-examination, to introduce many books and documents and to delve into Communist doctrines as he understands them. His understanding is so poor that most of the time was taken up with objections by Walsh in almost all of which the Court supported the Defense. The morning session closed with Ruthenberg still on the stand, and Smith cross-examining.

### 17. Wednesday, March 28, 1923

by Earl R. Browder

St. Joseph, Mich. — "You believe this is a capitalist jury, do you not?" asked Prosecution attorney Gore of C.E. Ruthenberg. "You believe the government of the US is a capitalist government? You believe the government of the state of Michigan is a capitalist government? You believe this court is a capitalist court?"

To all of [these] Ruthenberg had answered "Yes," but the Prosecutor was surprised when Ruthenberg answered, "The Jury? That is a different matter."

Gore would not let Ruthenberg tell why the jury was "a different matter." And the jury was interested, as he finally, in spite of the continued interruptions by Smith, told them how it was possible for a jury, even in a capitalist court, to return verdicts in the interests of the workers instead of the capitalists, if the jury con-

†- Reference is to the December 11-12, 1922 meeting of the Conference for Progressive Political Action (CPPA), a group first established by the 16 railway unions as a vehicle for united electoral action by the working class and its organizations. While the Workers Party of America was barred from participation, it was taken as a sign of a forthcoming Labor Party in the United States.

tained workers or working farmers who were not dominated by capitalist ideas or capitalist authority.

Smith must have thought this a terribly dangerous idea for the jury to have presented to them, for he fought for fifteen minutes to prevent the question being answered, and then tried to have it stricken from the records, but as in so many other points in this trial, the Prosecution through its eagerness to appeal to petty prejudice had opened the way for the Defense to educate the jury. And this trial is becoming, under the skillful direction of Walsh and the capable testimony of Ruthenberg, a veritable college in economic questions and the class struggle. No longer does the jury shrink when the dread word "soviet" is mentioned. They know now that a soviet is a council of workingmen and farmers, which runs the government frankly in the interests of the workers instead of hypocritically in the interest of the capitalists. They have been shown how it is necessary for the workers and working farmers to unite if they would prevent the capitalists from running things to the workers' disadvantage.

Where the Prosecution had misread from a document that "Communism must rule with blood and iron," the document turns out to be an indictment of capitalism, which is shown must rule by "blood and iron" while Communism relies not on the force of a minority group of exploiters, but upon the force of the masses of the workers. The function of the Communists as a party is shown to be not military adventures as the Prosecution paints, but the mobilization of the power of the masses for the mass action against the exploiters and to set up a real government of the working masses. It is not alone the jury that is getting this education. Every day numbers of students, youngsters from the schools, are attending the trial to see and hear the terrible Reds.

### **18. Thursday, March 29, 1923**

by Earl R. Browder

St. Joseph, Mich. — William Z. Foster took the witness stand this morning and began his testimony. In a calm and precise manner he told at length about his much discussed speech at Bridgman, and how he came to be there. He said that he is not a member of any political party, nor is the Trade Union Educational League affiliated to any party. The League is an au-

tonomous body, comprising trade unionists of all parties and of no parties.

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 percent of its membership. Asked when he first learned of the Bridgman convention, he said that he first heard of it a day or two before it started from Earl R. Browder. Later, on Friday morning while the convention was meeting [Aug. 18, 1922], William F. Dunne came to his house and invited him to attend and deliver a talk. He went with Dunne and arrived in Bridgman Friday night. On Saturday he made his talk of about an hour.

He had begun by saying that he had seen the adjustment committee report regarding the trade union problem and was glad to see that the Communists realized the prime importance of this question. Previous efforts to build a party of the workers, such as the Socialist Party, had collapsed just because of failure to understand that any workers' party to live and grow must be based upon and find its strength in the trade unions.

Then 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 not get out of the unions, abandon the idea of merely talking, and instead go to work, doing the everyday tasks of the labor struggle. Only in this way can they win. Through long and earnest participation, the respect of the masses...will finally give the radicals the leadership, politically and industrially, of the working class." Then he showed how the power of the Gompers machine, the trade union bureaucracy, was merely a reflex of the weakness and lack of organization of the progressive and radical forces.

The bureaucracy is not really strong and the rank and file will desert it as soon as they are given realistic and competent leadership. The incompetency of the present leadership of the trade unions was cited in the late railroad strike, where nine unions stayed at work while seven were on strike. The stupidity and futility of such craft division tactics was only equalled by that displayed in the current story of the glaziers' union, which, so the story ran, created work for its members by breaking windows. In this connection was cited [a

story] about the Irishman who, when it was proposed to buy the business agent a bicycle instead of an automobile, asked how a man could throw bricks from a bicycle.

In the place of the futilities of the past, the League was offering the labor movement a program of industrial unionism through amalgamation to build up a powerful industrial movement, and a labor party to unite all its political forces into a powerful political movement. This program of the League had been endorsed by more than a million and a half organized workers, and this was proof that the American unions can be ready for a forward movement, that they were not naturally reactionary and the stronghold of Gompers upon the American unions can be broken.

Foster said that he had urged the Communists to join the League and become active workers in it. When questioned by Walsh as to his visit to Russia, Foster said that he had attended the First Congress of the Red International, that when that Congress adopted the same program for America which he had advocated for a long time, that he approved of that plan. When he returned to America he had met once with the CEC of the Communist Party, had urged them to adopt the policy laid down by the Red International of Labor Unions, and had stated to them that he, Foster, approved of the Red International policy and believed that it would have great success in America.

The spectators and court seem much interested in Foster's testimony, and his quiet, clean voice as he answers the questions of Attorney Walsh penetrates to all parts of the courtroom. When he answers questions addressed to him he seems to forget the entire surroundings and become entirely immersed in the subject in which he is speaking. All his listeners seem to become similarly interested.

### 19. Friday, March 30, 1923

by Earl R. Browder

St. Joseph, Mich. — "You were opposed to Mr. Grabel, the deposed head of the Maintenance and Waymen's Union, were you not?" asked Mr. Smith 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."

The question and answer came after several hours of questioning by Smith in endeavor to get Foster to accept his, Smith's, interpretation of Foster's views of the labor movement. Foster insisted that Smith was not reading from any correct record of his speech at Bridgman, and offered repeatedly to state what his actual position was. Smith did not want Foster's actual position, and was displeased when this clear-cut condemnation of Grable went into the record on cross-examination. Foster clearly and frankly stated his views of the labor movement and the aims of the Trade Union Educational League in direct examination by Walsh. When he was asked, "What political school of thought do you subscribe to?" he answered without hesitation, "I subscribe to the Marxian Communist School."

In questioning Foster about his speaking trip through the West last July [1922], Prosecutor Smith attempted to drag in the fairy tale, already carried widely by the yellow press, that a man by the name of [Joseph] Kowalski had accompanied him. "I never saw Kowalski, or even heard of him until his name was brought into this case," said Foster. Kowalski is known in New York City, where hundreds of workers know he was working during last July. The prosecution wishes to use his name in this trial because he was sentenced to Atlanta Penitentiary for one year for returning to America after having been deported to Poland. It is significant of the desperation of the prosecution that they should think it necessary to try to use the faked scare-stories of the most unreliable capitalistic press.

The town of St. Joseph seems to be following the trial with an interest rather friendly to the defense than otherwise. Scores of housewives crowd the courtroom, and a local hardware store is advertising 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 is any criterion, this hustling businessman should sell a lot of these stoves. One of these estimable women was heard to remark after the session today, "Well, they certainly are smart men, and so quiet and dignified, too." And a farmer come in for a holiday passed the remark, "They seem to be regular folks after all." Which seems to be a fair estimate of the views of the Berrien County

population upon the defendants in this case thus far. Court closed with Foster still under cross-examination.

## 20. Friday, March 30, 1923

by Earl R. Browder

St. Joseph, Mich. — “Mr. Foster, did you, in your book *The Russian Revolution* write this: ‘The Russian and American labor movements are blood brothers in method and goal; the only difference is one of understanding and development. Where we now must be content with petty achievements, they have gone the whole way?’” The question was asked by Prosecutor Smith in resuming cross-examination this morning.

“I wrote that,” was the answer.

In further answers Foster declared very definitely that what is contained in that book are his views on the subject of Russia. He declared that the working class government in Russia is in line with the necessary historical development, and that the working class of all other countries would also have to set up working class governments, would have to take the power out of the hands of the exploiting class.

The Attorney General of Michigan, Daugherty by name, entered the court this morning to bolster up the prosecution. Daugherty is a name that figures quite prominently in the news of the day, and it should be explained that this is not the same one who is mixed in the New York murder mystery, nor is it the same Daugherty who is recruiting Negro strikebreakers for the French capitalists in the Ruhr invasion. Neither is it the Daugherty, Attorney General of the United States, who secured the infamous injunction against the shopmen last September, although the latter has his representatives here, and it is rumored that he is intensely interested in the case. All the stool pigeons in the court ostentatiously shook hands with Daugherty, with the apparent desire of enhancing their social prestige, which is sadly low in this city.

“Did you not, Mr. Foster, write in your book that the counterrevolutionists, who were trying to overthrow the workers’ government, were not allowed to print their journals or assemble for that purpose?” asked Smith.

“Quite so,” answered Foster. “At that time the counterrevolutionists were carrying on civil war against

the Soviet government, and this war and the interventionists’ forces were fighting on as many as 19 fronts.”

Mr. Smith attempted to obtain sympathy for the poor dispossessed Russian landowners and capitalists by asking if the workers’ government did not suppress those who tried to get back the property which had been taken from them.

“Certainly, the workers would not allow themselves to be re-enslaved,” answered Foster, “by the same class which had exploited and degraded them for so long. The Russian workers’ government differs from the other governments of the world in that it is frankly and openly in favor of the working class, whereas the other governments, while actually dictatorships of the capitalist class, hide their true character behind a hypocritical democracy. I have written that and it is true.”

As the court adjourned for noon recess, the judge ruled that the prosecution could examine Foster on the pamphlet *Syndicalism*, which he collaborated in writing 13 years ago, but which has been out of circulation for 11 years and which Foster long ago repudiated.

## 21. Saturday, March 31, 1923

by Earl R. Browder

St. Joseph, Mich. — “‘There is no permanent harmony possible between Capital and Labor.’ Did you write that?” This question contains the keynote of the last hours of cross-examination of William Z. Foster on [Friday] March 30th.

“Did you ever try to bring about harmony between Capital and Labor?” asked Prosecutor Smith.

“I never try the impossible,” answered Foster. “There will never be harmony between Capital and Labor until the workers own the capital and the capitalists go to work and do useful labor.” “I think the only way conditions will be fully remedied in the United States is for the workers and farmers to take charge of the government and operate the industries on behalf of the broad masses of the people.”

[Smith:] “The ultimate goal you are seeking is to supplant the present government by the dictatorship of the proletariat?”

Answer: “I seek to place the power in the hands of the workers and farmers, yes.”

At this point attorneys for prosecution and de-

fense both rested, and the testimony in the case was concluded. The issue is clear-cut. The prosecution contends that it is a crime to advocate placing the powers of government in the hands of the workers and farmers. The defense boldly proclaims its object as the workers' government, and rests its defense on that basis.

The issue is clear.

Court adjourned until next Tuesday, April 2nd, when counsel for both sides will argue the case before the jury.

## 22. Monday, April 2, 1923

### *The Evidence is In! Issues Made in the Trial of the Communist Party and William Z. Foster*

by Clarissa S. Ware

"We rest," declared Frank P. Walsh, counsel for the defense in the trial of William Z. Foster.

Foster's clear-cut testimony as to his principles and as to his part in the Bridgman convention was finished.

The prosecutors sat silent — dazed.

Then followed a hurried consultation. County Prosecutor Gore, Max Berger, representative of United States Attorney-General Daugherty, O.L. Smith, Assistant Attorney-General of the state of Michigan, and the Attorney General of the state himself — also by the name of Daugherty — engaged in an excited whispered colloquy.

After an examination of many papers, thumbing of law books, and detective messengers running back and forth, the Prosecution was ready for rebuttal.

Federal Agent Shanahan was rushed to the witness chair.

"Did you take this pamphlet from Ruthenberg's bag?" (showing him a copy of the 1921 program of the Communist Party) asked Prosecutor Gore.

"Yes," mumbled Shanahan.

The great surprise was sprung — the rebuttal testimony was over.

## The State's Charge.

Now that the evidence is all in it is possible to state clearly the issues of the case.

The charge against William Z. Foster is unique in the legal history of the United States. The only act set forth by the indictment is that he "assembled with" the Communist Party of America. It is not charged that the Communist Party committed any overt act in the state of Michigan. It is not charged that the Communist Party advocated any doctrine in violation of the Criminal Syndicalism Law of the state of Michigan. The only charge is that the Communist Party assembled at Bridgman, Michigan, and that Foster "assembled with it!" This act is claimed by the prosecution to be a crime because the Communist Party somewhere in the United States adopted principles said to be in violation of the Michigan Criminal Syndicalism Law.

In all the history of prosecution and persecution in violation of the constitutional provisions guaranteeing freedom of speech, press, and assembly, with which the recent history of this country has been replete, there has been no case such as this. Neither Foster nor the Communist Party is charged with ought save meeting in the state of Michigan. The prohibited ideas, if there were such, were advocated somewhere else in the United States.

Under this new definition of crime, which must still be sustained by the higher courts, the issues in the case have become:

1. Was the Communist Party an organization which advocated the doctrine of criminal syndicalism, defined as "the advocacy of acts of crime, sabotage, violence or unlawful methods of terrorism, as the means of accomplishing political or industrial reform"?
2. Did William Z. Foster voluntarily assemble with this organization, voluntarily assembling being interpreted as meaning with the purpose of aiding and abetting this organization?

## The Case of the Prosecution.

All of the evidence offered by the Prosecution was given by detectives with the exception of the testimony of two employees of the Wolfskeel Resort. These two witnesses merely identified Foster as being present,



a fact not denied by the Defense.

Actually the only prosecution witness of any importance in the case was Frank Morrow, alias Ashworth, who had been an agent provocateur of the Department of Justice in the Communist Party. The remaining evidence offered by the Prosecution consisted of official documents of the Communist Party.

Morrow testified to being present at the convention and a member of one of the two convention caucuses. He stated that the question of the open Communist Party had neither been discussed nor voted upon in the convention. He testified that Foster arrived on Friday night, after the convention had been in session two days. He claimed that at a distance of eighteen feet he was able to identify a paper in Foster's hands. He identified a questionnaire which he claimed that Foster had filled out although he was equally far away at the time Foster is supposed to have written it.

Foster and Browder, according to Morrow, read their speeches from a manuscript. He identified typewritten documents in the hands of the Prosecution as these manuscripts. Morrow saw everything and heard everything even to seeing two different things happen at the same time.

Among the 118 documents claimed to have been found on the grounds, the Prosecution relied upon the 1921 program of the Communist Party, certain copies of *The Communist*, and the Theses of the Third Congress of the Communist International, for proof that the party was an organization advocating the doctrine of criminal syndicalism. This claimed violation of the Criminal Syndicalism Law was based upon the statements in this literature that the class struggle in its ultimate phases would develop into the use of armed force by the contending classes — the capitalists and the workers.

These statements of the Prosecution sought to interpret as meaning immediate acts of force and violence, that is, that Communists advocate the use of force and violence at any and all stages of the progress of the class struggle.

### **The Defense.**

C.E. Ruthenberg — the first witness for the Defense — presented a history of the Communist movement and the Communist principles to the jury.

During the later cross-examination of Ruthenberg there was read into the record of the case a statement of the Central Executive Committee of the Workers Party of America, which denied that the convention at Bridgman was a frame-up by Burns spies and outlined a clear-cut defense of Communist principles to be made in the case. Throughout the testimony Ruthenberg followed this policy.

Discussing the question of the use of force, he openly avowed again and again that armed force had been resorted to by the classes struggling for power in past historical epochs. He illustrated by the capitalist struggle against the feudal regime and the struggle in the United States between Southern slave-holders and Northern capitalists in the Civil War. From the lessons of the history of the past the Communists concluded that force would also be an inevitable part of the final struggle between the workers and the capitalists. Claiming the right of the Communist publicly to state this historical fact he said that the references to the use of force in the Communist program must be understood in this sense.

Ruthenberg testified that a new program had been drawn up prior to the Bridgman convention, which had been approved by the Central Executive Committee of the Communist Party, and that this program had superseded the 1921 program offered by the Prosecution. This new program was offered in evidence by the Defense but was ruled out by Judge White.

Regarding the presence of Foster at the Bridgman convention, Ruthenberg stated that although Foster was not a member of the Communist Party, he had been invited to present a survey of the situation in the ranks of organized labor and the work of his organization, the Trade Union Educational League, to the convention. This invitation had been voted by the Central Executive Committee of the Communist Party at a meeting at Bridgman held the day before the convention opened. William F. Dunne was sent to Chicago to extend the invitation and bring Foster to the convention.

Continuing his testimony Ruthenberg denied that either Foster or Browder had read speeches, asserting that they had spoken merely extemporaneously, without notes of any sort. The Trade Union Educational League, he said, was in no way connected with

the Communist Party, but that the party had instructed all its members to be active in the Trade Union Educational League as in all other trade union organizations.

Following Ruthenberg, Foster took the stand. He confirmed the previous testimony for the Defense regarding his attendance at Bridgman. He also stated that the Trade Union Educational League was an organization independent of the Communist Party and that its membership was made up of trade unionists of all kinds of political beliefs and that the Communists represented only a small fraction of the membership of the League. He denied having filled out any questionnaire at the Bridgman convention.

As to his political principles, Foster said that he was a Marxian Communist, and that he endorsed the statement of principles of Communism as made by Ruthenberg. He declared that the workers and farmers must establish a workers' government in the United States in order to free themselves from exploitation and oppression.

Both Ruthenberg and Foster were cross-examined at length by the prosecutors, Ruthenberg being on the stand for three days and Foster for nearly two. In spite of all the tricks known to the legal profession the testimony of these witnesses remained unshaken. Again and again the prosecutor tried to frame questions so as to commit the witnesses to the advocacy of immediate acts of violence. These efforts failed completely — the witnesses maintaining the Communist position in regard to the use of force as had been stated above.

### **The Issues Before the Jury.**

The argument before the jury is set for Tuesday [April 3]. Each side has been given three hours in which to present its case.

The question whether the mere assembling of an organization in the state of Michigan, which adopted its principles elsewhere, is violation of the Criminal Syndicalism Law, will not be decided by the jury. This is a question of law which can only be finally decided by the Supreme Court of the United States.

The questions which the jury will be called upon to decide are:

1. Do Communist principles violate the Crimi-

nal Syndicalism Law?

and

2. Did William Z. Foster voluntarily assemble with the Communist Party in the state of Michigan?

In this trial two opposing social systems have come to clash. All the issues between the Communists and supporters of the capitalist system have been threshed out in this courtroom. The Prosecution is fighting for capitalism. All the prosecution officers of the capitalist government, from United States Attorney-General Daugherty to the county prosecutor were mobilized to defend capitalism against the Communist attack in behalf of the workers. The decision of this jury — of nine farmers, one railroad worker, a small merchant, and a housewife — if against the defendant, will not be a verdict of guilty of crime. It can only represent the lack of a clear consciousness of the facts of capitalist civilization and lack of understanding of Communist principles.

The verdict which will be rendered in Berrien County, Michigan will not be the final verdict. That can only come out of the struggle between the workers and the capitalists in which Communism must inevitably win.

### **23. Thursday, April 5, 1923**

#### ***Jury Still Out, Rumors as Gathered by Newspaper Men Allege Both 6 to 6 and 7 to 5 Acquittal Stand with Woman Juror Leading Fight for Foster***

by John Hearley

St. Joseph, Mich. — After thirteen hours of heated, and often noisy, deliberations, the Foster jury retired to hotel beds in care of deputy sheriffs and bailiffs. At 11 o'clock last night there was every indication of deadlock with the single woman juror, Mrs. Minerva Olson, allegedly leading faction bent on Foster's acquittal. Courtroom rumors allege several ballotings, final ballot before night's recess being placed both at 6 to 6, and 7 to 5 for conviction. Newspaper men reporting woman throwing monkey-wrench into Department of Justice and Michigan's machine. Judge, who hour before had been summoned and asked by foreman farmer Baichman for his instructions to jury,

hours before midnight instructed jurors to return in morning and continue their deliberations.

Woman who is rumored to be making such firm stand for civil liberties is wife of local factory superintendent and comes from old American revolutionary stock. Alleged situation intensely dramatic.

State's attorney Smith left St. Joseph for Lansing 5 o'clock and only Max Berger, Department of Justice man, and Morrow sat on prosecution side through long afternoon and evening vigil for verdict.

Mrs. Foster sat with calm, unperturbed husband beside Walsh and associate council Gray through slowly ebbing hours. Prosecution undoubtedly expected conviction, and disagreement would be nominal defense victory. Earlier newspapers have exceptionally fair charge of Judge White's note, especially paragraph instructing jury that Foster had right to advocate Soviet form of government for United States, etc. Department of Justice men remain about courtroom or ante chambers and absence of not only Smith but county prosecutor Gore and Bookwalter were conspicuous.

#### 24. Friday, April 6, 1923

##### *The Verdict in the Foster Case*

by C.E. Ruthenberg

Compared with the outcome of similar prosecutions in the past the jury disagreement in the trial of William Z. Foster and the Communist Party is a great victory for Communism in the United States.

The evidence brought before the jury in the form of the official documents of the Communist Party frankly stated in Communist viewpoint that the class struggle inevitably develops into an open struggle between contending classes and that the ultimate phase of the struggle between workers and capitalists would involve a resort to force. This viewpoint was also stated openly from the witness stand.

The charge of Judge Charles E. White admitted that this statement of Communist principles was not a violation of the Michigan Criminal Syndicalism Law. He said that the Prosecution must prove:

"Not alone that this party taught the theory that the social forces now in operation would of their own

momentum bring about an encounter of forces between opposed social classes, but also that the party taught and advocated crime, sabotage, violence, and terrorism as the method or one of the methods of accomplishing the changes in the organization of society desired by the Communists."

And he stated further:

"The word 'sabotage' as used in this statute means malicious injury to property; the word 'violence' means criminal acts of violence; the phrase 'other unlawful means of terrorism' means acts of a terroristic character constituting crime under the laws of this state."

Under these instructions it is surprising that there should have been any struggle in the jury room and that a disagreement was the final result, for these instructions fully uphold the Communist right to do everything which they have done in the state of Michigan or elsewhere in the United States.

The Communist Party has never advocated acts of violence or acts of terroristic character constituting crime under the laws of the state of Michigan or any other state. What the Communists have done, and what they insist is their right, is to express their view, based upon historical precedents, that no privileged class has ever given up its power without a resort to force and that the class struggle between worker and capitalists will follow this historic precedent.

This is something entirely different from advocating acts of crime, sabotage, or acts of terrorism which are crime under criminal law.

This was also the view taken by those members of the jury who stood out for an acquittal of Foster:

"The Prosecution didn't prove that the Communist Party advocated violence," Russel Durm, one of the jurors who voted for acquittal, said. "That was the only thing we split on. We all agreed that Foster attended the Bridgman convention, knowing what was going on there and sympathizing with the movement."

The Michigan jury in part at least seems to have understood the distinction which Judge White made. The fact that a distinction was made in the Michigan case is a decided victory for Communism. The Com-

munists, now organized in the Workers Party, will continue their struggle in Michigan and elsewhere to establish their right freely and publicly to state their viewpoint, even including their viewpoint in regard to the part that force has played and will play in the class struggle.

They will maintain in the trials to follow the Foster trial as they have during the trial, the principles of Communism and the right of Communists publicly to proclaim those principles in speech and press.

## 25. Tuesday, April 10, 1923

### *Why Mrs. Olson Voted for Foster*

by Jay Lovestone

In telling why she voted for the acquittal of William Z. Foster in the Michigan Communist Trial, Mrs. Minerva Olson did not get lost in a sea of words. Mrs. Olson, the only woman juror, is a dyed-in-the-wood American boasting of forefathers in the days of the Revolutionary War. Her statement in the New York Times of April 6 is very instructive to the workers. It is typical of the fast disappearing rarity — genuine American liberalism, Jeffersonian democracy at its purest.

### **Against Railroading Foster.**

“The stage setting of the Prosecution seemed over-employed with such a display of detectives and undercover men that it appeared more like trying to railroad Foster than like prosecuting him,” said Mrs. Olson. In her opinion that was the reason why half the jury voted for acquittal. This is an example of the old-time American fair play. During the war and in the early post-war days when the mass of workers were completely helpless under the iron heel of the dictatorship of the big capitalists, this American spirit of fair play was dead. Its reappearance in Michigan merely reflects the letting-up in the capitalist rule of blood and iron brought about by the recent political and industrial pressure of the American workers and working farmers. We had the same Americans trying Communists in 1920 and sending them to jail. The Communists are just as revolutionary today as they were then, but the conditions have greatly changed. In 1920

showing fair play to the Communists was a crime as detestable as the horrible crimes only Communists could commit.

### **Mrs. Olson’s Clear Understanding.**

Mrs. Olson showed her clear understanding of the significance of the Foster trial when she said: “I could look away from the courtroom when the trial was on and see conflicting forces contending for the mastery of human rights. The trial was far bigger to me than merely determining whether Mr. Foster was guilty or not.” “Other members of the jury saw the same things. It was really a big battle for human rights....”

This statement is especially significant to the working man. The jury in the Foster case was a typical farmers’ jury, and the above sentiments and subsequent actions truly reflected the role of the farmers in the class struggle today. The center of gravity in the class war today is in the struggle between the capitalist class and working class. In this great struggle the farming masses are as yet undecided with whom to pitch in their lot. This spirit of indecision characterizing the attitude of our farming masses is clearly reflected in the “hung” jury — in the farmers’ jury that refused to hang Foster, the militant leader of the workers.

### **The Right to Revolution Vindicated.**

And Mrs. Olson, whom obviously no one could accuse of being an “ignorant foreigner” went even further. “Agitation may not be altogether pleasant, but we must remember that it is the agitators who have brought progress into the world. Do not think that I took the side I did because I am un-American or because of any foreign influences. My forefathers were here in the revolutionary days of 1776. My great-grandfather was an officer in the Revolutionary War. Perhaps for that reason I have some of the revolutionary spirit. I am for progress, not stagnation.”

This view of the situation proves that Mrs. Olson is worthy of the place of a national figure achieved by her through the trial. It is a courageous and honest statement. Our fraudulent, syncophantic, professorial and editorial press agents of the employing class have been talking themselves blue in the face as to the in-

herent “peaceable” characteristics of the American masses. American history gives the lie to the prating of these lickspittles. The great American masses have never refused to fight and fight to the bitter end when their rights were at stake. America was born out of revolution — an armed revolt against the British ruling class. For a time during and after the Revolutionary War the working masses who were bled in the battles were a real political power. They were only later cheated of their political influence by such reactionary “Fathers” as Madison and Hamilton.

What is more, there has not been a single constitutional amendment involving a fundamental change in property relationships that was put over without recourse to force. The Fourteenth, Fifteenth, and Sixteenth Amendments are the only amendments involving a fundamental change in property relationships; and the Civil War was fought to compel the Southern ruling, slave-holding, class to obey the new law and order as laid down for them by these amendments.

#### **Let the Workers Greet Mrs. Olson.**

The working men and working women of America owe a debt of gratitude to Mrs. Minerva Olson. Even today, with the capitalist reaction somewhat checked by working class resistance, it requires great courage and honesty of purpose to express this truth with such fearlessness and lucidity as Mrs. Olson has expressed. Let every reader of *The Worker*, let every friend of every reader of *The Worker* in every labor organization write to Mrs. Olson in appreciation of her integrity and in honor of the well deserved national fame she has now won.

*Edited with footnotes by Tim Davenport.*

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