
The Trial of William Z. Foster

by Robert Minor

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“Do you realize,” asks the County Prosecutor, “that the Declaration of Independence is not a part of the law of this land?”

“Why, er — yes, sir,” replied the prospective jurymen.

“And,” continued Mr. Prosecutor, “you realize further, do you not, that the fundamental right of the American people to revolution, referred to by Mr. Walsh, which is expressed in the Declaration of Independence, is not a part of the law?”

“Yes, sir.”

“Do you believe that the criminal syndicalist law is a good law and should be enforced?”

“Yes, sir,” replied the man in the jury box; and he was thereupon passed as a fair and impartial jurymen to try William Z. Foster on the charge of “unlawful assemblage” under the criminal syndicalist law which carries a maximum penalty of ten years of penal servitude.

Nine farmers, one railroad flagman who has failed to join the union, one grocery-store clerk and the wife of a factory superintendent have answered these questions in this way, and these constitute the jury.

“Do you believe that the government should protect accumulated surpluses of private property”; asks Mr. Gore of the grocer’s clerk in a tone of voice that conjures up visions of hordes of Bolsheviks busting in windows and running off with hams and pianos.

“Do you believe,” asks Walsh, “that the Declaration of Independence should be suppressed because it advocates the fundamental rights of revolution, if necessary, by force?”

The state objects. The state also objects to quotations from political letters of Thomas Jefferson, which the prosecutor calls “Jefferson’s love letters.” The strange hieroglyphics of Thomas Jefferson are less legible now that the writings of Tut-ankh-Amen.

Officially, in this court, the Declaration of Independence is no part of American law. Courts elsewhere have decided that it is, but they don’t know it here in St. Joseph, Michigan.

And after the jurors are sworn in, the Assistant State Attorney general, O.L. Smith tells them:

“We will show that the government (United States Government and the state governments) are described by the defendants as the ‘capitalist state.’ We will show that their object was to turn that capitalist



WM. Z. FOSTER

FRANK P. WALSH

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society into a communist state. The dictatorship of the proletariat is to be the transitional period. We will show that the workers, and only the workers are to take charge of the state — and that means the state of Michigan — and abolish it. They would hold to the dictatorship until the people all are educated up to communism, and that then the dictatorship will be abolished and there will be no more need of a state.

“We will show that the Communist Party of America teaches every worker to hate his employer. It teaches the worker to be against his employer, against the capitalist class and against the man who owns his home...”

You see here a sketch of Foster’s lean, bald head; but it’s a big and hairy lion of a man, figuratively speaking, that’s being presented to the jury. A leader of two hundred and eighty thousand steel workers in a desperate struggle for a gain in daily bread, is the Foster against whom, the jurors are asked if they are prejudiced. Foster, the spokesman for the packinghouse workers, Foster, the writer of marvelous books for workingmen, is the man presented for condemnation or acquittal.

In the same courthouse is going on another trial. It is one in which the leader of a religious sect, the “House of David,” is accused of peculiarly earthy spiritual relations with young girls in his colony of bearded followers. And this draws. The crowds lingered there in the first days, while the Foster proceedings went on in an almost deserted room. But in the past few days the gravity center is changed; the crowds push in to hear Walsh and Humphrey S. Gray, the local defense attorney, question jurors on their attitude toward the radical views of Thomas Jefferson and William Z. Foster, respectively. They have caught the flavor and portentousness of the issues involved. Excitement is there. A young woman fainted in the corridor from excitement after being excused from the Foster jury.

Ten of us who had been indicted with Foster, but who had not been arrested, came to Michigan last Friday to offer ourselves for trial.

We walked into the silent courthouse in the fresh of morning, with Springtime smiling prematurely outside the windows. We sat down and waited. Then the news spread, and the staff of William J. Burns International Detective Agency began to hold a convention at the courtroom door, to stare and glower and to

look — oh so *desperately* disappointed at our arrival. I don’t know what it was. I suppose a great many of them were making a living “looking’ for us and would have to do something else now that we insisted on being “found.”

Anyway, it was a sad looking crew of “stools” that crowded in to ask “‘What the hell?” I think at least most of the crew that supplied Daugherty with “seventeen thousand affidavits of crime by the railroad unions” for the plea for the famous injunction must have been in that unwelcoming committee.

Later, we found that the hotel corridors were crowded with them. They have strange missions on country roads about the county. The stand by twos and threes in the cigar stores in order to tell each other in loud voices in the presence of citizens, “Them fellows is GUILTY — every one of them is guilty!” I went into a store to buy a paper. Two “dicks” were standing there on publicity duty. “Them fellows is guilty,” said one to the other, in a voice that shook the cigar stand, while looking to see whether he was heard. I paid no attention. He shifted himself nearer to me — apparently he thought I was a local citizen — and repeated himself in a louder voice. His companion made *exactly the same reply* that he had made in the first instance, in ridiculous proof that the two were rehearsing a part.

There is a partnership between the United States Government officials and the William J. Burns International Detective Agency.

The Burns Detective Agency’s business is getting money by any method that will work. During the world war the Burns Detective Agency organized a spy service within the United States for the German Imperial Government.

The Burns Detective Agency attempted a “frame up” against the United States Government for the benefit of the German Imperial Government. The frame-up was for the purpose of involving the United States Government in a violation of its then neutrality against Germany. Gaston B. Means was the Burns agent who directed the frame-up from an “underground” headquarters in the great eastern Hotel in New York. The Hamburg American Steamship Co. was the agency through which the German Imperial Government paid Burns.

One of the features of Burns’ business is the scar-

ing of rich businessmen to such a point of fear that they hire Burns to save them.

Warren Gamaliel Harding fell for this. When Harding contemplated appointing this notorious crook as chief of the "Department of Justice" investigating corps, he was fully informed that Burns' profession is "framing up" dishonest cases, fixing juries by dishonest means, instigating crimes and then collecting pay for detecting them. But Mr. Harding appointed Burns anyhow, for the game had worked: Mr. Harding was scared. He appointed Mr. Burns as a specialist in strike-breaking and "Bolshevik-catching."

The prosecution of Foster is a bald attempt of the Harding Administration to mould the American labor movement in its own image. Before the jury was completed the prosecution had definitely outlined its purpose to eliminate the Trade Union Educational League from the American Federation of Labor, the imprisonment of Foster being one of the intended means. Trade Union spectators at the trial are astonished to hear what is virtually the frank admission that to stamp out the movement for the amalgamation of the trade unions into industrial unions is one of the objects of the prosecution of Foster. Daugherty who pledged the "whole power of the United States Government" to impose the Open Shop upon all of American labor with the railroad injunction of last Fall, is making the second move here in the effort to nip in the bud the movement toward amalgamation.

Daugherty's little man, Max Berger, his face drawn into pasty yellow wrinkles under a flame of red hair, sits tight at the elbow of the local prosecutor, whispering earnestly at every turn of the case. This is the expert coaching the prosecutor not to allow any distinction between a direct incitement to violence and the expression of a belief that civil war will develop in the course of history.

The Congress of the United States has not left on the statute books any law under which such a prosecution could be carried on. In fact, Congress has deliberately repealed the only national law of such kind that did exist. But Attorney General Daugherty is, in effect, *applying a United States law that has been repealed*. United States government funds and a large part of the staff of Harry Daugherty's "Department of Justice" are being used to put Foster into the penitentiary. Ask Daugherty about it and he will blandly tell

you, as he told various protesting liberals, that the United States Government is taking no part in the Michigan prosecution. Then he will proceed, as now, to use the whole strength of the federal government in the case.

Two charges against Foster have been dismissed; the charge of advocating crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political reform is quashed. Also the charge of publishing, editing, issuing or circulating any book, paper, document or written matters which teaches such doctrine, is dismissed. It is done in order to better snag Foster. The mere charge of "assembling" is enough to carry the full penalty of ten years of penal servitude.

The local press writers are doing their bit to bring about a conviction. Burns and the Open Shop movement have mobilized successfully. Editorial comments are brazenly written into the news. "the fame — if fame it can be called — of Bill Foster and his attorney, Frank Walsh, appears not to be as great as possibly they imagined," writes the *News-Herald*, the only paper in St. Joseph. And, three of the women have had "their lips to become rather firmly set, and their eyes to show some signs of fire" against Foster for "Walsh's talk about bloodshed and violence," says this paper in the most dastardly bit of journalistic jury-baiting that I ever saw. And Rose Stokes has a "two thousand-dollar fur coat," while Mrs. Bloor "has long been seeking to get 'Mother Jones' limelight, and has not been very successful in the attempt," writes the purveyor of news. The gutter-like editorializing is done with callous distortion of the very court proceedings; after the prosecution has dictated that Foster shall be tried first, this paper declares that "Foster's trial was evidently urged by the defense, because it is generally held that the evidence against him is the weakest."

The prosecutor's brother-in-law, Stanley Banyon, editor of the *News-Palladium* of the twin town, Benton Harbor, went so far as to have the Republican county convention pass a resolution, introduced by himself, favoring the conviction of Foster. The *Boston Transcript* sponsors here an "anti-bolshevik specialist," one F.H. Marvin, who fills columns of the *Detroit Saturday Night* (a weekly Open Shop organ circulated here) as well as the *Herald-Press* with the familiar Burns "secret" revelations, rehashed and intensified for the

specific reason that the Foster trial is now taking place.

Allen O. Meyers, manager of Burns' New York office, is the higher class propagandist, visiting here frequently ever since the arrests. A meeting was gotten up for him in October by the combined Rotary Club of Benton Harbor and St. Joseph, in which he addressed the business men, in effect, upon the necessity of convicting Foster.

But, while thus soaking the community with the poison of prejudice against Foster, the lords of printers' ink loudly bellow that the people are being unduly influenced in Foster's favor. Some unknown person's sending the *Bulletin of the Methodist Federation for Social Service* to citizens of the county, is the chief reason for complaint, as this bulletin, edited by reverend Harry F. Ward, states that in the prosecution of Foster, et al:

"There is no issue except those of free speech and freedom of assembly; no overt criminal act is charged; no evidence offered except doctrines advocated by the communists."

Another complaint is that Dean Lathrop of the Episcopal Church spoke in Benton Harbor recently in favor of freedom of speech for communists.

Needless to say, the dice are loaded against Foster. The jury, soaked in the prejudices of an age-old opposing philosophy and ignorant of the newer philosophy of the defendant, is even then presented with evidence outrageously distorted as to its meaning. As an instance of gross unfairness the prosecutor is trying to introduce in evidence a cartoon published in Foster's *Labor Herald* which pictures a large number of railroad trains plunging into a chasm. This is presented as proving that Foster advocated the wrecking of trains; criminal sabotage. The truth is that this cartoon, drawn by myself, shows the different railroad systems *plunging into the Open Shop*. The bottom of the abyss into which the trains plunge is inscribed with big letters

"Open Shop." The whole thing is intended to show the impending disaster to railroad workers if the railroads crush the labor unions and go into the non-union open shop system. The prosecutor knows this, unless he is an ignoramus; but he presents it anyhow as proof that Foster advocated wrecking trains. The jury will not know the difference between an "open shop" and an open switch.

Another example. Under the guidance of the Burns staff, the prosecutors are trying to obliterate the difference between an expression of historical opinion that there will be a future civil war, on the one hand, and, on the other hand, a direct solicitation of specified persons to commit acts of violence. Walsh makes plain that if this view should generally prevail, the United States will cease to be a republic in any sense of the word. He tells the jury that the communists believe there will ultimately be a civil war in this country and that the problems that are now tearing the fabric of civilization will not be solved unless accompanied by civil war. He shows they believe that in such warfare it will be necessary and desirable for the workers and farmers to take part on the side of human welfare against the forces of organized capital. Is this historical prediction so strange to the mind of the average American? Is it possible to get, in the exploited, harassed, and "radicalized" Northwest, a jury with minds so dark as never to have had a thought of this? If in such inevitable conflict the communists seek to organize the working class and farmers to participate in the interest of the vast, exploited majority of the population, will this cause a Michigan jury of nine farmers, a grocer's clerk, a non-union railroad worker and the wife of a factory superintendent to shut the mouths of such prophets in a dungeon?

Well, anyway, a revolution has never stopped at the word of a county prosecutor.

Transcribed by Mitch Abidor.

Photo of Foster, Walsh, and Ruthenberg from The Labor Herald, May 1923.

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