THE STRUGGLE AGAINST CRIMINAL SYNDICALIST LAWS

BY ANNA DAMON

THE recent victory for free speech forced from the United States Supreme Court in the case of Dirk De Jonge, must be regarded first of all from the point of view of the line of political action which it indicates and underlines. From the purely legal point of view it would be a mistake to regard this as in any sense a final triumph. The decision was actually narrow, legally, and applied only to a specific and unusual set of circumstances. The victory, on the other hand, has the broadest political implications, and already has had considerable repercussions.

The De Jonge victory points first of all, of course, to the importance of the work of the International Labor Defense in conducting campaigns around specific, dramatic, cases of persecution for labor and political activity. This was a Communist case, but it arose out of the reactionaries' attempt to break the 1934 Pacific Coast maritime strike, and involved especially the rallying of the unemployed to support of that strike. Briefly, the story of the case is this:

Dirk De Jonge was a leader of the unemployed movement in Portland, Oregon. In the middle of the 1934 strike, the reactionary forces were counting on dividing the unemployed from the strikers, using them as strikebreakers. De Jonge organized a solidarity demonstration of the unemployed, which made the carrying out of these plans impossible. At that time, also, the police in their efforts to break the strike made raid after raid on workers' halls and homes in Portland. The Communist Party called a meeting to protest these illegal activities of the police, as well as their brutal slugging and shooting of striking longshoremen. The meeting was held on July 27, 1934. It, too, was raided by police. Edward Denny, the chairman, Dirk De Jonge, one of the speakers, and four other persons were arrested, and were charged with violation of the state criminal syndicalism law enacted in 1919 and amended in 1933. De Jonge, because of his important role in successfully organizing the unemployed against strikebreaking, was singled out for special persecution. He was convicted and sentenced to seven years' imprisonment. Denny was sentenced to two years' imprisonment. Another defendant was given a sentence of five years, which was later suspended. The other cases have never come to trial.

De Jonge's conviction was appealed to the Oregon State Supreme Court which upheld it. In this decision the court held that although there was no charge that De Jonge advocated *"crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution"* (the language of the statute), he was nevertheless guilty because, the court held, the Communist Party, under whose auspices the meeting was held, did advocate those things. The evidence brought forward by the state to prove this ridiculous charge against the Communist Party was in the nature of witnesses who testified that the Communist Party sent open postcards (not produced in court) to its committees instructing them to rob banks!

The decision of the United States Supreme Court, delivered on January 4, 1937, cannot in any sense be regarded as a legal reversal of the reactionary principles of criminal syndicalist laws. The decision was based on one point, and the Court specifically stated that it was not deciding any other issues. Previous decisions of the Court (on the New York criminal anarchy law, the California Criminal Syndicalist laws) had declared this type of law constitutional. The following quotations from the decision make this point clear, and it is from these sections of the decision that the political implications of the De Jonge victory grow:

"If the Communist Party had called a public meeting in Portland to discuss the tariff, or the foreign policy of the government, or taxation, or relief, or candidates for the offices of President, Members of Congress, Governor, or state legislators, every speaker who assisted in the conduct of the meeting would be equally guilty with the defendant in this case, upon the charge as here defined and sustained (by the Oregon State Supreme Court). The list of illustrations might be indefinitely extended to every variety of meetings under the auspices of the Communist Party although held for the discussion of political issues or to adopt protests and pass resolutions of an entirely innocent or proper character.

"While the states are entitled to protect themselves from the abuse of the privileges of our institutions through an attempted substitution of force and violence in the place of peaceful political action in order to effect revolutionary changes in government, none of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application. . . ."

Here is the re-affirmation by the Supreme Court of its position in favor of repressive legislation. In this decision, hailed as liberal, the court once more takes the same position that it took in the Gitlow, Whitney, and other cases, where long before the present anti-labor decisions the court established its reputation as the bulwark of reaction.

"We are not called upon to review the findings of the state court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceful assembly having a lawful purpose, *although called by that party.* The defendant was *none the less* entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged personal grievances. That was of the essence of his guaranteed personal liberty." (Italics mine—A.D.)

The ruling of the Supreme Court in the De Jonge case is in fact an endorsement of criminal syndicalist laws.

It is clear that the Supreme Court carefully circumscribed its concession to the fundamental principles of liberty, in this decision, to say in effect

that the State of Oregon had merely gone too fast, too far, without taking the necessary precautions to bring its actions within the rules of the game as prescribed by the court.

The decision instructs the states that any nullification or abridgement of the great principles, which the court pronounces so pontifically, will have the court's approval, if only the states take the trouble to apply repressive laws "correctly".

Now, having defined the limits of the legal implications of the *decision,* let us examine the effects and implications of the *victory* which was won by the International Labor Defense in obtaining a reversal of the De Jonge conviction.

First of all, of course, the freeing of Dirk De Jonge and of Edward Denny from prison terms, the lifting of the threat of prosecutions against four other persons in Oregon indicted on similar charges, are no small victory in themselves. But repercussions of the decision have been much broader than this. Even before the text of the United States Supreme Court decision had been received in Oregon, the tremendous popularity of the De Jonge victory for labor's rights had resulted in an open movement in the Oregon legislature, which is gradually gaining strength, for the repeal of the state criminal syndicalist statute. The support of the majority of the press of the state (in which Hearst had not a single newspaper) is behind this move. The International Labor Defense and the American League Against War and Fascism are organizing a campaign for the demand for such repeal, which should receive the full support of our Party.

A significant indirect result of the De Jonge victory is the decision of Vice-Chancellor Fielder in New Jersey, in a suit by the Communist Party of Hudson County, to enjoin officials from arbitrary interference with meetings called by the Communist Party. His decision granting such an injunction, coming down within two weeks after the De Jonge decision, was probably influenced by that victory.

Directly and indirectly, the trade union and progressive movement and campaign in California for the repeal of the criminal syndicalist law there have been deeply spurred by the De Jonge victory and by the impetus given for repeal in Oregon. With organized activity and political alertness, the same sort of movement can be developed in the State of Washington, where a repeal act has already been introduced in the legislature.* It is on the Pacific Coast that the criminal syndicalist laws have been applied most viciously. In Illinois the De Jonge victory has been used as a lever in a legislative campaign initiated by the International Labor Defense for the repeal of that state's criminal syndicalist law. Similar possibilities exist in several of the thirty-six states which have criminal syndicalist or the related "criminal anarchy", "sedition", and "insurrection" laws upon their statute books.

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* Since the writing of this article, repeal of the Washington criminal syndicalist law was voted on February 18, by 58 to 37 votes in the House of Representatives. Other developments in this struggle are the introduction in the Pennsylvania legislature of a bill to repeal the Flynn Sedition Law; passage of the criminal syndicalist law repealer by the Senate in Oregon; introduction of a repealer bill in Indiana; loss of a repealer for Idaho's criminal syndicalist law by four votes in the legislature of that state; defeat of a teachers' and school gag against teaching Communism in Arkansas.

At the Ninth Convention of our Party last July, a portion of the report of Comrade Browder was passed in the form of a resolution presented as a central point for the election campaign which followed.

"The Communist Party must use the opportunity of this election campaign to smash once and for all the superstition, which has been embodied in a maze of court decisions having the force of law, that our Party is an advocate of force and violence, that it is subject to laws (federal immigration laws, state 'criminal syndicalism' laws) directed against such advocacy. The Communist Party is not a conspirative organization; it is an open revolutionary party, continuing the traditions of 1776 and 1861; it is the only organization that is really entitled by its program and work to designate itself as 'sons and daughters of the American revolution'. Communists are not anarchists, not terrorists. The Communist Party is a legal party and defends its legality. Prohibition of advocacy of force and violence does not apply to the Communist Party; it is properly applied only to the Black Legion, the Ku Klux Klan, and other fascist groupings, and to the strikebreaking agencies and the open-shop employers who use them against the working class, who are responsible for the terrible toll of violence which shames our country."

Let us examine briefly the highlights in the history of repressive legislation.

The first political repressive measures passed in the United States were the federal "Alien and Sedition" laws of 1798 by the reactionary Federalist administration. Its opponents were arrested, jailed, and had enormous fines levied against them under these laws, for exercising the right of free speech in criticism of the administration. President Jefferson, elected on the tide of a wave of resentment against the reaction of the Federalists, immediately freed all the victims. The laws were repealed in 1801, sentences wiped out and fines remitted.

For a long period thereafter, no direct political repressive measures against labor were passed by the federal legislature. The industrial states made no attempt in this direction but relied on the old "conspiracy laws" to suppress labor organization. When these failed, the frame-up system was developed to "handle" labor matters. In the Southern states, however, so-called insurrection laws, inspired by constant fear of slave uprisings, were passed. The Georgia law, under which Angelo Herndon was convicted, is an example. It was originally passed in 1804, and amended in 1861, and 1866.

As the power of labor grew, and forced recognition of the right to organize, the rulers of America cast about for new methods of repression. The assassination of President McKinley in 1901, and the hysteria which followed it furnished one excuse for repression in the New York State criminal anarchy law. Subsequently, in 1910, and during the war and post-war years, this law, upheld by the Supreme Court of the United States as constitutional, was made the model for all present laws of this type. In the period of post-war hysteria which swept the country as a repercussion of the revolutionary wave in Europe (1919-1921) the fear of the American ruling class sought refuge behind a wall of legislation. State after state set up what they hoped would be a barrier to revolutionary ideas—criminal syndicalist laws. The provisions of these laws were so vague, so all-inclusive, as to make them perfect weapons against the entire labor movement. In 1917, a federal sedition law was passed as an emergency war measure. It was

repealed, except for one section, in 1925. The one remaining section was used for the first and only time so far to prosecute unemployed workers who demonstrated for relief in Oklahoma City in 1933. A federal sedition bill, similar to the state criminal syndicalist laws introduced in Congress by Senator Russell and Congressman Kramer in 1936, failed of passage.

If we were to examine our activities in the elections we would find that although this opportunity was used to a greater extent than ever previously, it was not made use of to the fullest extent either in the elections, or since. For example, the De Jonge case was certainly not used in this manner in the election campaign, although the events since have shown what a powerful weapon this could have been. By contrast, the issues in the Sacramento criminal syndicalism case, and the issue of the repeal of the California criminal syndicalist law, were brought forward quite prominently in that state. Undoubtedly the campaign helped considerably in overcoming the Red scare agitation of Hearst and paved the way for the splendid results in recruiting members into the Party in that state.

The struggle against criminal syndicalist laws is one of the most dramatic forms of the whole fight for freedom of speech, press and assembly, and for the legality of our Party, which we have so far developed. Even though it is only one phase of the fight, it is an extremely important one. All around us are countless opportunities to take the offensive in this struggle, to put up real political battles in defense of our Party on the basis of its legality. It is the key, in many cases, to the broadest issues of the right of labor to organize and struggle for its economic as well as its political demands. An example of this last is the Hudson County, New Jersey, injunction secured by our Party. This served not only to break open the stronghold of Boss Hague for the Communist Party, but paved the way for the whole trade union movement which is making a campaign to establish its rights in New Jersey.

Yet we see day after day go by, with many important issues directly tied up with the question of the legality of our Party dismissed as "just defense cases", and turned over to the International Labor Defense. This is particularly true of deportation cases, which are frequently looked upon as a matter for the lawyers to worry about, and not as forums and vehicles through which we can bring forward the aims and the Americanism of our Party with telling effect, especially in the trade unions.

Comrade Browder's report to the December, 1936, plenum of the Central Committee said:

> "We should mention the problem of the International Labor Defense and its growing importance. The whole question of labor defense and the struggle for labor's prisoners, internationally and nationally, is becoming more and more important. *As the masses get a keener understanding of the problem of the connection of democratic rights, they are taking up the problems of political prisoners with a keenness and on a wider scale than we have ever seen in this country.* Enormous things can be accomplished in the field of labor defense nationally and internationally if we give a little more attention to it."

This whole broad field of defense of political prisoners includes primarily the defense of workers arrested in economic struggle. A tremendous growth in the trade union labor defense move-

ment is imminent and already evident in California. But in California the greatest unifying factor in this movement is precisely the struggle against the criminal syndicalist law. The New Jersey instance, already cited, shows that the keenness of the working class is being sharpened also in its growing realization of the importance of political struggle on all fields.

It is especially necessary, since the struggle for democratic rights at this time is a struggle against reaction and fascism, for the I.L.D. to take up a sharp offensive against these laws, and the application of laws and court decisions based on them. Such a drive is inextricably woven with the offensive against the Ku Klux Klan, Black Legion, vigilante, and other vehicles of violence against the working class, national and political minorities. Broad support can be won from organized labor for this struggle.

The Angelo Herndon case, now before the United States Supreme Court where it was argued February 8, 1937, and the Sacramento case, are examples of such issues which it is necessary and possible to make into nation-wide issues. As this article is written, we learn that the State of Georgia is taking steps to strengthen its anti-labor legislation by adding to the "insurrection" law, under which Herndon was convicted, a "sedition" statute even more drastic than those in force in other states. Whether the Supreme Court rules in Herndon's favor or against him, whether it orders him to the chain-gang or sets him free, the great movement developed around this case will have to be directed also against this new repressive law.

A successful campaign against such legislation is the case of Jack Barton, convicted in Bessemer, Alabama, on a charge of possession of Communist literature (under a local ordinance). Through the fight which the I.L.D. developed around this case, in which the ordinance was declared unconstitutional by the state Court of Appeals, the Party has broken through into partial legality in Birmingham. As another direct result of the fight on the Barton case, an offensive movement against violation of labor's rights was opened up in the heart of the U. S. Steel territory by the trade unions of the state.

In the hearings before the La Follette Civil Rights Committee in Washington, on the Barton and Gelders cases, the Party's fight against all attempts to illegalize it, as well as its position on the question of violence, were given nation-wide prominence.

In developing positive forms of action, arising very often out of defense cases, the I.L.D. has shown how effective these can be. Because of his activity in the defense of Barton, Joseph Gelders, Southern secretary of the National Committee for Defense of Political Prisoners, was kidnapped and flogged by steel company thugs last September. A relentless campaign for prosecution of the kidnappers, making use of every contradiction in the Alabama political set-up, although it has not yet resulted in actual indictment of the thugs, has had some positive results. It was this campaign which brought the trade unionists of Alabama to a realization of their own stake in this struggle and of the pos-

sibilities for action. A body of liberal and progressive opinion which few ever realized existed in Alabama has been developed and is in process of organizational crystallization in the heart of the deep South. Through this campaign a good airing of the issues was secured in the Alabama press, and an exposure of a good part of the reactionary set-up made possible both locally and, in the La Follette hearings, nationally.

In Tampa, Florida, the prosecution of Lawrence Ponder, vigilante, one of those who broke up the Browder election meeting there October 25, 1936, is another example of the positive use of the courts to fight against all attempts at illegalizing our Party. Prompt action by Comrade Browder and by the local people made possible a campaign in which this issue can be brought forward on the rostrum of the courts.

Hand in hand with the struggle against repressive legislation must go the fight against deportation and revocation of citizenship of Communists. Very frequently these cases receive too scant attention from our people, who are inclined to leave the main conduct of the defense in the hands of the defense organization and of the lawyers. By the very nature of his profession, an attorney can only develop the legalistic points. Whether the attitude is that we must help and supplement the lawyer, or vice versa, it is necessary that the political content of such defense cases (and all defense cases for that matter) be guided and controlled, even in their legalistic phases, by those responsible for political action. The case of Emil Gardos, who was deprived of citizenship obtained by naturalization, on the ground that he is a Communist, is an example. The biggest fight should —and still can—be made in this case on the basis of the legality and the Americanism of our Party. The broad support which can be developed in deportation cases is illustrated by the case of Lorenzo Puentes in Tampa, Florida, who is threatened with deportation to Cuba on the ground that he is a Comunist, and in whose defense the International Union of Cigar Workers has come forward. Correct presentation of the political issues involved in other deportation cases can produce similar support.

We have presented here only a few examples of the struggle against criminal syndicalist laws, deportations, etc., with which the defense movement is now confronted, and some of the forms used in this struggle. There are other forms which are being and can be developed—the fight for freedom of the air, for the right to the ballot, against restriction of meetings, etc. There are literally hundreds of possibilities of development of this whole campaign which need only to be recognized and taken up, to give this struggle the character of a nation-wide progressive movement, based on hundreds of local cases as well as on the relatively small number which can become national issues. Such a movement can greatly broaden and enrich the whole struggle against reaction.

The struggle against criminal syndicalist and related laws, for freedom of speech and assembly and to maintain the legality of our Party, is inseparably tied up with the legislative program formulated by our Central Committee:

"Repeal all federal legislation infringing upon political rights and free-

dom of assemblage, press and radio. Outlaw the Black Legion, Ku Klux Klan, vigilante gangs, and other terrorist organizations. Repeal all sedition, criminal syndicalism, and teachers' oath legislation."

It is understood, of course, that the above quotation applies to state and local as well as federal laws.

The International Labor Defense has already initiated a campaign for the repeal of repressive legislation in several states—Oregon, California, Washington, Illinois. The De Jonge decision paves the way for extending this campaign on a nation-wide scale. To do this effectively, it is essential that these campaigns receive the fullest support of our entire Party.