

Herndon's Case Again Before Court

**No Evidence of His
Advocating Force,
Tribunal Told**

By Ben Davis, Jr.

(Special to the Daily Worker)

WASHINGTON, D. C., Feb. 8. — The fight for the freedom of Angelo Herndon, 23-year-old Communist leader sentenced in 1933 to 18-20 years on the Georgia chain-gang, occupied the center of the stage at a dramatic hearing before the United States Supreme Court here yesterday.

In a brilliant sweeping argument in which he answered every issue arising in the famous case, Whitney North Seymour, noted constitutional attorney, retained by the International Labor Defense, contended that the Georgia insurrection law was an unconstitutional restriction of free speech.

Speaking with dignity and eloquence, Seymour declared that there was "no evidence whatever that Herndon or the Communist Party, whose literature was found in his possession, had advocated force or violence."

THIRD APPEAL

The appeal, the third before the Supreme Court, arose in a writ of habeas corpus, in which Herndon's attorney cited as error the last ruling of the Georgia Supreme Court. This ruling reversed a previous decision by the Georgia Superior Court that the insurrection law was unconstitutional. The court's deci-

(Continued on Page 4)

Herndon Case Before Court Third Time

(Continued from Page 1)

sion is expected within the next four weeks.

As soon as the Herndon case was called at 12:27 p.m., a hushed silence fell over the tensely serious court room, in which every available seat was taken. This silence was broken only once—when J. Walter LeCraw, arguing for the State of Georgia, made a ludicrous blunder which rocked the entire court with laughter, an almost unprecedented occurrence in the court's proceedings.

A second attraction in the day's business was the presence of the young Negro leader, Angelo Herndon himself, who sat near the center of the audience. Spectators nudged each other to glimpse the youthful hero, who, when 18 years old, organized the 1933 demonstration in Atlanta which made labor history.

Other prominent working class and progressive leaders who witnessed the hearings were: Anna Damon, acting national secretary of the International Labor Defense; Joseph Gelders, National Committee for the Defense of Political Prisoners, slugged recently by Alabama Ku Kluxers, and Seymour's associate attorneys, Carol King, Herbert Weschler, Walter Gellhorn and W. A. Sutherland, Atlanta constitutional lawyer.

The black-robed Supreme Court justices made very few interruptions of either counsel for purposes of questioning. Justice Harlan Fiske Stone, one of the court's "liberals," however, asked LeCraw whether one of the pieces of "insurrectionary" literature which the Georgia official was brandishing was found in Herndon's possession. He expressed considerable surprise, when the reply was "yes." Eighty-year-old Justice Louis Brandeis, the tribunal's oldest member and most widely heralded liberal, remained tight-lipped throughout the hearing.

LeCraw, following the crude procedure he employed at the original trials in Atlanta in 1933, spent three-quarters of an hour exclaiming that Herndon "advocated taking the land from the white folks and giving it to the Negroes." Puffing and waving photostatic copies of the Daily Worker before the court, he said:

"Yessir, Herndon is working for this 'Communist International thing' with headquarters in Moscow. And he wants to take the land from the rich white landowners—think of it, the white landowners—and give it to Negroes."

Asked by Chief Justice Hughes whether the invalidity of the Georgia statute was before the court, LeCraw said that the question of whether the statute was "void" was to be considered. The spectators, including the nine justices, roared with laughter when Chief Justice Hughes informed LeCraw that the question of whether the statute was "void" or "invalid" was the same.

CITES DE JONGE DECISION

Seymour ended his plea with a quotation from the De Jonge decision, declaring that the court's recent ruling in that case "required a reversal of the Georgia Supreme Court's decision" and the unconditional freedom of Herndon.

The Georgia insurrection law was first passed in 1804 and changed to its present form in 1866. Used by the state only twice since the Civil War, it is now a weapon for smashing labor struggles and the fight of the Negro people for their rights. The I.L.D., which has led Herndon's five-year fight for his freedom, has collected almost two million signatures urging the immediate repeal of the law.

Herndon is free on \$8,000 bail pending the court's decision.