JUSTICE
:: :: and :: ::
The I.W.W.

By PAUL F. BRISSENDEN

With the exposure of Attorney General Daugherty's misstatements regarding the status of Political Prisoners by the Federal Council of Churches of Christ in America :: ::

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Justice and The I. W. W.

IN ITS prosecution of actual or alleged pacifists, conscientious objectors, pro-Germans, I. W. W.'s and "criminal syndicalists" this country moved with a thorough-going ruthlessness which would have made ante-bellum Prussians hang their heads in shame. During 1920 it appears that at least 44 convictions were reversed by appellate tribunals in the United States for flagrant misconduct of the public prosecutor or of the trial judge whereby the accused was deprived of a fair trial. In 33 of these cases the records show that the district attorney made inflammatory appeals to prejudice upon matters not properly before the jury. Listen, for example, to the words used by the prosecutor in a war-time trial in the South: "She is a Negro. Look at her skin; if she is not a Negro I don't want you to convict her." *

For "Negro" substitute "Wobbly" and we have a measurably accurate thumbnail report of the animus underlying our prosecutions of "I. W. W. conspiracy," "criminal syndicalism" and similar cases. The most famous of these cases—that of the United States vs. William D. Haywood, *et al*,—at last has reached and

* Moseley vs. State, 112 Miss. 855.

been disposed of by our highest judicial tribunal. In February, 1921, attorneys for Haywood and his fellow defendants filed application with the United States Supreme Court for a *writ of certiorari,* which, if it had been granted, would have re-opened the case for a review of the trial and appellate proceedings. In April, however, the Court announced that the *writ* was denied. This decision appears to close the chapter.

The history of the case runs back to September 5, 1917. On that day a large number of United States marshals and agents of the United States Department of Justice conducted a series of raids upon local offices of the Industrial Workers of the World and upon the private residences of certain of its members and officers. These raids occurred simultaneously in more than half a hundred cities in the United States and resulted in the seizure of an enormous mass—"several thousand pounds"—of correspondence, pamphlets, account books and other papers and documents belonging to the organization or its members and in the arrest of nearly all of the 166 I. W. W. members and sympathizers against whom indictments were returned a few weeks later.

Five Separate Conspiracies Charged

The indictment, as originally returned, contained five counts. Each count brought a charge of conspiracy. The first count charged each of the defendants with having "unlawfully and feloniously . . . conspired, combined, confederated and agreed to-

gether . . . and with divers other persons to said grand jurors unknown, by force to prevent, hinder and delay the execution of certain laws of the United States . . ." The most important laws here involved were the Selective Service Act, the Espionage Act, the act declaring a state of war with the German government, and certain war-time appropriation bills and sections of the Penal Code.

The second count charged the defendants with having conspired together "to injure, oppress, threaten and intimidate a great number of citizens of the United States [meaning employers of labor] in the free exercise" of the right to sell munitions, etc., to the government. The third count charged the defendants with conspiring to attempt to induce 10,000 draft eligibles not to register, and to persuade 5,000 drafted men to desert. The fourth count charged a conspiracy "feloniously, and wilfully" to cause and attempt to cause "insubordination, disloyalty and refusal of duty in the military and naval forces of the United States when the United States was at war . . ." The fifth count alleged a conspiracy to execute "a certain scheme and artifice to defraud the employers of labor" by depositing propaganda in the mails.

The period covered by the indictment is, in general, that from April 6, 1917, when the United States entered the war, to September 28, 1917, when the indictment was returned. Count 3 refers primarily to the Selective Service Act of May 18, 1917, and Count 4 to the Espionage Act of June 15, 1917. The particular conspiracies charged in those counts, therefore,

were not alleged to have begun until those dates. The number of offenses alleged to have been committed in this case was no less than seventeen thousand.

The trial of 113 of the 166 persons originally indicted opened in April, 1918, some six months after the arrest of the defendants, before District Judge K. M. Landis, in Chicago. At the beginning of the trial the fifth count was stricken from the indictment. Practically the whole of the evidence presented by the government in support of the remaining four counts of the indictment was derived from the papers and documents seized in raids of September 5, about 15,000 of the confiscated documents being offered in evidence.

On August 17, 1918, the case went to the jury, which, after deliberating for twenty-five minutes, returned a verdict of "guilty, as charged in the indictment." On August 30 Judge Landis imposed upon 98 defendants sentences of from one to twenty years (except for two 10-day sentences) and fines of from $5,000 to $20,000 each. The fines imposed aggregated $2,570,000 and costs.

In July, 1920, the case was taken to the Circuit Court of Appeals for the Seventh District. On December 9, 1920, this court handed down a decision which modified the judgment of the trial court "by striking therefrom the imprisonments and fines assessed under counts one and two" and, as so modified, affirmed the judgment of the trial court. * And now the legal record of the case is brought to a close

* 268 Fed. 795.

and the appellate court's opinion (tacitly) confirmed by the recent Supreme Court denial of the defendants' petition for a *writ of certiorari.*

Technically, the I. W. W. organization was not on trial in this case. Indeed, seventeen of those indicted were not members of the I. W. W. at the time of the indictment and eleven of these never had belonged to the organization. The indictment lay very specifically against the defendants personally. The appellate court laid some stress on this point in its opinion on the case: "Defendants were indicted as individuals," says the court, "not as members of the I. W. W. That organization is not on trial."

But the I. W. W. WAS on Trial

Yet, in a very real sense the I. W. W. *was* on trial. The indictment itself, on the theory, apparently, that the organization was a tool used by the defendants in furtherance of the alleged conspiracies, devotes two or three pages to a characterization of it and to a picturesque array of its propaganda catch-words. An indictment, I believe, is a legal instrument which is supposed to be drawn for the sole purpose of telling the accused in a somewhat specific way just what it is that he is being charged with.

Moreover, in the trial itself the great bulk of the testimony and the material put in evidence dealt with the I. W. W. and its activities, tactics, philosophy in a general way and not with the defendants in a specific and particular way. Most of the evidence had to do with its activities and doctrines as done and

expressed during the twelve years of the I. W. W.'s existence which had elapsed before the passage of the principal laws which the present indictment charges it with having violated.

Judge Landis ruled that evidence of these prior activities and propaganda doctrines was admissible as showing defendants' "frame of mind," *i. e.*, intent. The appellate court overruled this, but said that, though not admissible as showing intent, such prior evidence was admissible as showing prior knowledge of the means by which the conspiracies charged might be made effective. Not alone in reference to the I. W. W. organization but also so far as it dealt with the defendants personally and individually, the evidence presented dealt with their activities prior to April 6, 1917.

The quality of the indictment and the general run of the evidence brought to prove its charges seem to make the conclusion inescapable that, had the same evidence been brought forward against a hundred men who were not members of the I. W. W., they must almost certainly have been acquitted. The present writer, for one, is convinced that even the same hundred Wobblies, despite the not inconsiderable disrepute involved in their being Wobblies, had they been brought to trial on the same indictment and faced with the same evidence at a time when the interesting sentiment which some one has christened "parlor patriotism" was somewhat less rampant than in 1918, would have been acquitted. At least one might safely bet that, whatever the verdict, jurors of

a saner season would spend more than fifteen seconds in meditation on the evidence against each defendant!

There are some aspects of the case which unquestionably were open to sufficient doubt and uncertainty to have inspired the hope that the Supreme Court might order a review of the appellate court's decision. The conclusiveness of the appellate court's opinion in this case seems open to question in respect to the adequacy of the indictment, the admissibility of the evidence in view of the manner in which it was obtained, the sufficiency of the evidence to prove beyond a reasonable doubt that the defendants were guilty of the particular conspiracies charged in counts 3 and 4, and the conclusiveness of the particular overt acts brought forward by the government to prove that the defendants had done something to give effect to those conspiracies.

Where Are the 15,000 Alleged Deserters?

1. The Sixth Amendment to the Constitution of the United States provides that "in all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation." To convey such information is the chief purpose of an indictment. The present indictment seems to be defective in that it does not, as constitutionally required, with sufficient particularity inform the defendants of the nature of the accusation. **For example, it fails in any way to identify (except as "other members of said organization") the 15,000 persons alleged to have been persuaded by defendants not to register or, if enlisted, to desert.**

Moreover, in a very similar case recently tried in Seattle—a case also resting upon a charge of conspiracy to violate the Espionage Act—the conviction obtained in the trial court was reversed by the Circuit Court of Appeals of the Ninth District.* The reversal was made on the ground that the indictment was defective in not conveying to the defendant sufficiently detailed information as to the nature of the offense charged and as to those against whom it was alleged that the offense had been committed.

2. Most of the material submitted in evidence by the government was obtained in the raids of September 5, 1917. These raids were made on void and illegal warrants. So much the appellate court admits. But the court rules that the government's affidavits, sworn out in support of its own motion to impound the seized documents for use as evidence against members of the voluntary association from which the documents had been illegally seized, contained facts (obtained from the illegally seized documents) sufficient to remedy the admitted defects of the original warrants upon which the seizures were made. This would seem to give the government immunity from the disabilities inhering in the illegal searches and seizures by permitting it to use as evidence material which it was able to get only through such illegal seizures, thus allowing the government to profit from its own wrong.

Furthermore, the appellate court ruled that in this case of illegal search and seizure the rights of the

* Foster et al vs. United States, 253 Fed. 481.

defendants under the Fourth Amendment to the Constitution to be secure in their persons, houses, papers and effects were not violated because the seized papers were the property, not of the individual defendants, but of the association to which they, or most of them, belonged.

This association, as we have seen, was not technically on trial. An examination of the lists of items seized and of the places from which they were taken reveals the fact that some of the property was, indisputably, the private property of certain defendants and that some of it was seized, not at I. W. W. offices but in the homes of some of the defendants. It was introduced as evidence, however, against ALL of the defendants.

But even if all of the property had been seized from the offices of the organization and none of it had been the private property of its members, if the government may on a void warrant raid the premises of a voluntary association, of which A and B are members, and seize the association letters of A and B and then use these letters as evidence upon which to convict A and B and numerous fellow members of having entered into a conspiracy, the rights of a citizen under the Fourth and Fifth Amendments to the Constitution are tenuous and shadowy indeed. Although the Espionage Act, in terms, greatly extended the use of search warrants, it did not annul these two sections of our bill of rights. Nor did it authorize a search for evidence.

The Supreme Court has very recently expressed a

clear opinion on this question of the use in evidence of matter obtained by illegal seizure:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course, this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source, they may be proved like any others, but the knowledge gained by the government's own wrong cannot be used in the way proposed." *

The recent ruling of the Circuit Court of Appeals in the Haywood case would seem directly to contravene this opinion of the Supreme Court. The circuit court ruled that members of an unincorporated, *i. e.*, a voluntary, association could not be supported in their motion for the return of papers seized under an invalid warrant from officers of the association, and, consequently, could raise no objection to the introduction of such papers in evidence against them.**

Court's Ruling Disregards Constitution

Without being allowed any of the advantages of a corporation, the appellate court has thus treated the Industrial Workers of the World—a membership association—as if it were a corporation, and has given a broad hint that there can be no redress for the unlawful seizure of property belonging to the individual members if that property was taken from the possession of the association. This surely permits the government to benefit by illegal seizures so long as it takes pains not to seize property from the possession of its owners. It is very difficult to see how this rul-

* 251 U. S. 392 (1920).
** 268 Fed. 795.

ing can be made to harmonize with either the letter or the spirit of the Constitution. It is the writer's belief that it is at variance with both.

3. Quite apart from the character of the indictment and the methods used to get the evidence there remains the very important question: Was the evidence, however obtained, sufficient to warrant a conviction?

In counts 3 and 4 of the indictment the defendants were charged with conspiring (in the third count) to procure desertions from and prevent registration in, the army and navy of the United States and (in the fourth count) "to commit a certain offense of unlawfully, feloniously and wilfully causing and attempting to cause insubordination, disloyalty and refusal of duty in the military and naval forces of the United States, when the United States was at war,"—and this by means of solicitations, speeches, articles and pamphlets, and "the offense of unlawfully . . . by and through the means last aforesaid, obstructing the recruiting and enlistment service of the United States, when the United States was at war, to the injury of that service and of the United States."

In both counts, immediately preceding the statement of the nature of the conspiracy charged, the indictment emphasizes the affiliation (or alleged affiliation) of the defendants with the I. W. W. in the following language: "the said defendants . . . then [*i.e.*, during the period covered by the indictment] being members of the organization described in said first count, and called 'Industrial Workers of the World,' 'I. W. W.'s,'

the 'One Big Union' and 'O. B. U.'s' . . . have conspired . . .", and so forth.

In the first count it is further and more specifically charged (and the charge is meant to apply as well to the other counts in the indictment) that the defendants "in their said membership in the I. W. W. . . . *with the special purpose* of preventing, hindering and delaying the execution of said laws, *severally* have been actively engaged in managing and conducting the affairs of said association, propagating its principles by written, printed and verbal exhortations, and accomplishing its objects, which are now here explained, and *thereby and in so doing* during said period . . . have engaged in, and have attempted to accomplish, and in part have accomplished, the objects of the unlawful and felonious conspiracy aforesaid."

Now what does all this legal stuff mean? It seems to mean—indeed, it is absolutely meaningless unless it means that the agreement—the meeting of minds—which must be proved in order to prove conspiracy, follows, as day follows night, upon the fact of membership in the I. W. W., or at least upon the fact of being an active member during the period of the indictment. The defendants were members. Being members *"with the special purpose"* (and, inferentially, each one of the 200,000 members with whom the government very generously credited the I. W. W. must be assumed, on the theory of the prosecution, to have been animated by the same special purpose) of obstructing our war activities, the defendants

"severally have been actively . . . propagating its principles . . . and *thereby and in so doing"* have (jointly!) conspired as charged.

Joining the I. W. W. Was Not the Fatal Act

The fatal act was not the act of joining the I. W. W. All of the defendants who were Wobblies (and most of them were) had joined the organization long before April 6, 1917, that is to say at a time when it was of course impossible that they could have become Wobblies "with the special purpose" of violating certain laws which were sooner or later to be passed. The fatal thing was the condition and status of *"then being members"* of the I. W. W., managing its affairs and "propagating its principles" and, "thereby and in so doing," entering into the conspiracy charged.*

It was not mere membership that proved conspiracy. It was, so the argument of the government must logically run, the conduct of the defendants. For their conduct—and, in turn, the criminal intent of it—followed naturally (thanks to the government's assumption of the complete depravity of the I. W. W.) from the fact of their membership. A person who belonged to, say, the Pretzel Varnishers' Union might have done these things (agitated for a strike, for example) with innocent, *i.e.,* with purely industrial purposes; but, if that person also belonged to the I. W. W., that fact, *ipso facto,* proves beyond a reasonable doubt the criminal character of his intent

* The italics in this and the preceding paragraphs are the writer's.

—the very special nature of his purpose. This was the vicious circle in which the prosecution moved.

It was stopped from using I. W. W. membership, in any direct way, as evidence of guilt, but immediately faced about and used the fact, or alleged fact, of membership to prove criminal intent, in effect saying: "Defendants must have had such intent; they are I. W. W.s and therefore could have no other intent." Consistently with the foregoing argument, the government would seem to be forced to presume that each defendant-member "severally" beat his way about the country propagating the principles of the I. W. W. "with the special purpose" of procuring deserters, preventing enlistments, obstructing the service, etc., and that in so doing each defendant implicitly agreed with every other defendant as to the "special purpose," or intent, which all were supposed to have in mind, thus establishing the agreement necessary to a conspiracy. It was done, evidently, by the defendants "severally" making up their minds to come to a joint agreement.

Prosecution Did Not Show Conscious Intent

Of course the government did not pretend to undertake to show that the special purpose or intent was consciously entertained by each of the defendants. Fortunately for the prosecution, that was not necessary. Its position was that the work of propagating the principles and managing the affairs of the association had the necessary result of bringing about desertions and obstructing enlistment, and that, al-

though the defendants may not have consciously intended their work to bring about such results, they must have known that such results (apart from whatever lawful results there might be) could naturally follow from their acts. And that, consequently, since men are presumed to intend the consequences of their own acts, the defendants must be held guilty. This, of course, overlooks the fact that there are also just as reasonably to be inferred other logically deducible consequences of the same propaganda activities. The same thing would be true of more direct and overt acts, in so far as such acts had been shown to have been performed.

The government was undoubtedly obliged to frame the indictment in this fashion (and so was committed to the weird theory of conspiracy outlined above) because of the nature of the evidence it was able to produce. Thus, it is rather significant that the only thing the government could prove in regard to most of the defendants was that they were members of the I. W. W. The prosecution piled up item after item of I. W. W. newspaper and pamphlet propaganda calculated to show what a destructive and violent society it was.

As to whether or not the organization advocated force and violence or the unlawful destruction of property, governmental authorities themselves cannot agree. Some of the State courts have held that it advocates all of these things. * Both the Department of Justice and the Department of Labor, however,

* State vs. Moilen, 140 Minn. 122 (1918); State vs. Lowery, 104 Wash. 520 (1918).

have taken the position that the I. W. W. is not a revolutionary organization in the sense of advocating unlawful destruction of property, and that its members, therefore, are not deportable merely because they are members.

The weight of authority, then, would seem to justify the conclusion that the I. W. W. does not as an organization advocate the unlawful destruction of property, and that in this respect at least it and its members would stack up not unfavorably with "the Founding Fathers" who, as is well known, urged the unlawful destruction of property by the destruction of tea and by the burning of stamped paper. That example, however, does not excuse the I. W. W.

But even though the organization did advocate unlawful destruction of property—even though it went further and officially and unequivocally indorsed every kind and degree of force and violence against persons and property, civil and military, it does not necessarily follow that it would in time of war also advocate or attempt obstruction of the nation's military activities. (Even such an organization would be very likely to refrain—if on no other grounds than those of expediency.)

Still less does it follow (even from the premises of the innate-and-complete-depravity theorists in our State courts and legislatures) that certain members of that organization must necessarily, because they were members, have conspired to do the particular anti-military things charged in the indictment. (They,

too, would be very likely to refrain—if on no other grounds than those of expediency.) **And be it remembered that 18 of the 19 defendants who were subject to service under the draft act did actually register.**

The "thousands of pounds" of evidence submitted to the Supreme Court with the petition for *certiorari* consisted almost wholly of correspondence, propaganda pamphlets and papers, and account books. All of it that was considered significant was no doubt fully utilized by the prosecution, and, if the contents of that section of the government's brief before the appellate court which deals with the evidence in the case are fairly representative of what was submitted in evidence against the defendants, it is fair to say that **the utmost that is shown is that the defendants were members of the I. W. W.—and, more or less faithfully, that the I. W. W. is the sort of an organization that it is!** The evidence and the opinion of the appellate court make it clear that the defendants, if they opposed the war and the nation's military activities, did so only by words—spoken or written.

Judge Landis charged the jury to bear in mind "that even by the processes charged in the indictment the defendants might have had a lawful purpose in mind." And it is only reasonable to suppose that they might have had *only* a lawful purpose in mind—possibly the same lawful purpose (that of improving labor conditions for the unskilled worker) which animated it during its 12 years of existence prior to the period covered by the indictment. Judge

Landis further explained that, even if some of their methods and activities were actually vicious, the defendants were not guilty if by these vicious processes they purposed solely to improve conditions of labor.

It would seem that if any other (and more sinister) intent were in their minds—if they really had agreed together as charged in the indictment—they would on some occasions surely have done overt acts in circumstances where there was no local or general controversy or grievance as to labor conditions, denial of constitutional rights of free speech, unlawful deportation, etc. The evidence shows up no such acts. It would seem that any group which had come to the agreement charged in the indictment would be found to have, on at least a few occasions, committed acts under circumstances so free from ambiguity that the *only possible result* of the act would be to give effect to the conspiracy. The evidence contains no proof of any such acts.

Law Makes Reasonable Doubt a Factor

Even though such a volume of testimony and such an array of propaganda material, by its very iteration of unpopular beliefs and more or less ambiguous statements, might predispose a juror to think that *probably* the defendants were guilty, that would of course be quite insufficient. The evidence must indicate *beyond a reasonable doubt* that the defendants agreed together to carry out the special purpose set forth in the indictment.

If the juror can honestly say: "I think that it is quite possible that, in view of the evidence presented, these defendants might have been animated by another purpose," he is under obligation to return a verdict of "not guilty." The record of the activities of the I. W. W. since 1905 shows that their acts, that is to say, *e.g.* strikes, as distinguished from talk and leaflets, have invariably been pulled off under circumstances where there was some special and concrete condition of social or economic injustice or wrong to be protested against.

It can hardly be shown that defendants did what they did and said what they said except in reference to some such specific wrong or injustice, and that their intent was, or is reasonably to be inferred to have been, to bring about a correction of this wrong—be it raising of too-low wages, the reduction of too-long hours, the abolition of insanitary work places, or the prevention of the railroading of a Mooney to the penitentiary. The evidence presented fails to prove beyond reasonable doubt that either the defendants' acts or words were done or uttered with intent to accomplish the objects charged in the indictment.

4. The indictment in this case sets forth certain "overt acts" which it alleges were done by the defendants to give effect to the conspiracy. Twenty such acts are enumerated. Nine of the twenty acts are publications of propaganda. The others comprised a resolution by a Kansas local to "resist conscription," distribution by a Minnesota organizer of a circular urging a strike for the release of those

imprisoned for not registering, a similar circularization by an organizer on the Pacific Coast, the suggestion in a letter by Haywood that literature be distributed in Minnesota and directions by him to organizers in that State, the sending of telegrams by Haywood conveying good wishes and encouragement to strikers in Arizona and protesting to President Wilson against the Bisbee deportations, the sending of a telegram by Haywood to the President stating that strikes impended in Michigan and Minnesota if the Bisbee deportees were not returned to their homes, telegraphic instructions by Haywood to organizers to go to Bessemer, Michigan, appeals to Haywood by local organizers to send funds for men arrested in Michigan and for the Bisbee deportees, and the sending of a telegram by a Portland, Oregon, organizer to Haywood stating that on account of the lynching of Frank Little in Butte, Montana, and on account of the Bisbee deportations "a nationwide general strike is the only weapon left in labor's hands..."

The proof of overt acts is in a sense subsidiary to the proof of conspiracy. **There can be no proof of an overt act until and unless there has been proof of the existence of a conspiracy to which the overt act gives effect.** As already remarked, nearly half of the overt acts were publications of propaganda. Those publications included the I. W. W. *Preamble*; *Sabotage,* a translation of a book by the French syndicalist, Emil Pouget; and several editorials and other articles from an official I. W. W. newspaper called

Solidarity. The I. W. W. *Preamble* and Pouget's book were circulated throughout the country for years prior to 1917. *Sabotage* was also circulated by the anarchists and, I believe, by the Socialist Party. The charge in the present case is, of course, that they were circulated by the defendants during the period covered by the indictment.

There appears to be no doubt that they were so circulated—and that the *Solidarity* articles were so circulated. But if there was no conspiracy the listing of a thousand "overt acts" would be meaningless. If there was a conspiracy, it must be said that it is exceedingly difficult to see precisely how the acts set forth would tend to put it into effect.

The other overt acts consisted, as we have seen, of letters and telegrams sent or received by the defendants during the period of the indictment: A local union in Kansas passes a resolution to resist conscription and wires Haywood it has done so; an organizer on the Pacific Coast urges a general strike unless men arrested for not registering are released by a given time. This organizer also writes that he is sure that the "German people" in Seattle were "in sympathy with our cause." Several telegrams are sent back and forth in regard to the Bisbee deportations and $3,000 is evidently sent to Salt Lake City for use in Arizona.

Such acts as these are, of course, susceptible of different interpretations. On the basis of one interpretation the act would further a conspiracy such as charged if such a conspiracy were proven. On the

basis of another interpretation it would not. Thus, anyone knowing the situation in the lumber industry in the Seattle district and the history of I. W. W. activity in that district might reasonably conclude that the organizer meant that the "German people" were not only not pro-Prussian but were so thoroughly pro-American that they wished to sponsor the I. W. W. campaign for better living conditions—a more American standard of living—in the lumber camps, which campaign was *the* I. W. W. cause in the Pacific Northwest if it ever had a cause anywhere.

The $3,000 said to have been sent for use in Arizona was sent, as the writer recalls it, for the purpose of feeding the families of the Bisbee deportees and possibly a part of it to finance a protest strike against the deportation. The action of a stray local here and there, of course, means nothing—except that there were a few locals which did not agree with the national organization's policy of strict neutrality in political and military matters.

It is true that the evidence submitted by the defense does show that the organization in a few instances so far departed from this policy of neutrality that Haywood and at least one other organizer, in reply to letters from members, advised them to register. In general, however, the organization took the position that each member must solve the problem for himself. And here again there is some significance in the fact that, of the 19 defendants who were of draft age, 18 registered! With respect to those 18

at least, it is not easy to credit the charge that they conspired to induce their fellow workers to refuse to register.

Strikes Not Illegal Even in War Time

Strikes are not illegal even in war time. The purpose underlying the strike, moreover, is nearly always to obtain better wages, shorter hours and better living conditions generally. If this is its purpose, the fact that the interests of the government in carrying on war are incidentally injured does not make the strike a violation of law. Even though the I. W. W. was thus within its rights in striking (as it has been striking, intermittently, for 16 years), that organization appears to have been much more successful in curtailing its war-time strike activities than have some other labor organizations. The United States Bureau of Labor Statistics reports that the total number of strikes in the whole country was 4324 in 1917 and 3232 in 1918, a reduction of 25 per cent. The number of I. W. W. strikes was 285 in 1917 and 69 in 1918, a reduction of 75 per cent.

There is a Federal judge in the city of Butte, Montana, who has set what seems to the writer a very wise example to judges (and to jurors!) who are called upon to decide these perplexing cases wherein emotion and prejudice are likely to play such havoc with law and justice. In the case of *Ex parte Jackson* * (Jackson being at the time the

* 263 Fed. 110 (1920).

Assistant Secretary of the Butte local of the I. W. W.), Judge Bourquin said:

> "From the record it appears that from August, 1918, to February, 1919, the Butte union of the Industrial Workers of the World was dissatisfied with working places, conditions and wages in the mining industry, and to remedy them was discussing ways and means, including strike if necessary. In consequence its hall and orderly meetings were several times raided and mobbed by employers' agents and soldiers duly officered, acting by federal authority and without warrant or process. The union members, men and women, many of them citizens, limited themselves to oral protests, though in the circumstances the inalienable right and law of self-defense justified resistance to the last dread extremity."

— THE END —

Falsehoods in Daugherty Screed on Politicals Bared

Council of Churches of Christ Investigates Statements of Attorney General. — Spikes Assertion I. W. W. Were Convicted of Property Destruction.

Evidence that false assertions concerning political prisoners have been issued over the signature of Attorney General Harry M. Daugherty is presented in an official statement given out by the research department of the Federal Council of the Churches of Christ in America. It is revealed that grave charges made by Mr. Daugherty against the politicals, and especially against the Industrial Workers of the World, were without any foundation in fact.

His assertions, made in an attempt to justify the failure of the Harding administration to release all wartime prisoners in line with the policy of every other government, are directly at variance with the action of two United States Appeals Courts in relation to the large majority of the defendants in question.

The Federal Church Council's statement follows a painstaking investigation, impelled by a letter written by Mr. Daugherty to the Chicago Church Federation's committee on international friendship. That committee, considering a resolution on amnesty, had asked the Attorney General to define the legal status of the 114 wartime prisoners. Mr. Daugherty in his letter wrote in part:

"Most of the prisoners still undergoing sentence have not applied for clemency and until they do the department is not, of course, informed, as to what extenuating circumstances or further light they might be able to throw on the subject of their conviction.

"It may be stated generally that practically all the prisoners now undergoing confinement for violation of war-time statutes belong to the Industrial Workers of the World, generally termed the I. W. W., or to the Working Class Union of Oklahoma.

"There were three special trials of the I. W. W. held in Chicago, Kansas City, Kan., and Sacramento. There were 97 convicted at Chicago, approximately 40 at Sacramento and

approximately 30 at Kansas City. All of these so-called political prisoners were indicted by a Grand Jury and convicted before a jury of twelve men after hearing all the evidence submitted at their trial. The cases in most instances were appealed to a Circuit Court of Appeals and in some instances to the United States Supreme Court.

"The evidence before the department shows that some of the prisoners in question, or their co-conspirators, destroyed $50,000,000 worth of property.

"In Oklahoma an armed organization was armed for the purpose of resisting the draft and seizing the reins of government and by concerted action murdered officials of the government.

"I cannot go further in details concerning the class of prisoners to which you refer. As an illustration of the attitude of mind of the prisoners from Oklahoma, which is, I think, an accurate reflection of the minds of many other I. W. W. prisoners, the following is a portion of the oath taken by the prisoners to which I refer:

"'YOU WILL SWEAR BEFORE GOD AND THESE WITNESSES THAT YOU WILL HOLD IN SUPREME CONTEMPT ALL THE INSTITUTIONS OF CAPITALISM, ECCLESIASTICAL AND SECULAR, INCLUDING ITS LAWS, ITS COURTS, ITS RELIGIONS, AND ITS FLAGS.'

"I trust that the foregoing will be sufficient for your purposes, and if you have any information regarding any particular prisoner, the department will be glad to receive it and will give it consideration."

The nature of Mr. Daugherty's reply led the Chicago Federation to withhold decision on the resolution until further information could be obtained, and the letter was turned over to the Federal Church Council for investigation. A representative of the council's research department took up the matter in detail with the Attorney General's office. Digests of the cases and information on specific charges against the individual prisoner were asked for, the council's report states, but were refused.

Continuing, the Federal Church Council says:

"As to the statement that $50,000,000 worth of property was destroyed in California during 1917 and 1918, it was learned that this is the amount claimed to have been the aggregate property destruction in that state during those years, and is not apportioned among the prisoners in question.

"No evidence was presented in support of the claim that

this amount of property had been destroyed. It was explained that this aggregate was attributed to these prisoners and their co-conspirators—"co-conspirators" because they were members of the I. W. W., an organization which the department asserted encouraged and incited sabotage, and members of which are therefore responsible for whatever destruction there may be.

"The Chicago and Wichita cases (of the I. W. W.) were carried to Courts of Appeals. In both instances the Appeals Courts ruled that no cases had been made against the defendants on industrial counts, but sustained the convictions on the war counts. These prisoners, therefore, are now serving sentences for violation of the Espionage Act, which is no longer operative.

"Regarding the oath quoted in the Attorney General's letter 'as an illustration of the attitude of mind of the prisoners from Oklahoma, which is, I think, an accurate reflection of the minds of many other I. W. W. prisoners,' it was learned at the Department of Justice that this is not the oath of the I. W. W. organization as the sentence seems to indicate. It was said to have been an oath taken by members of the Working Class Union of Oklahoma.

"This organization was created prior to our entrance into the war by a small group of tenant farmers in Oklahoma for the purpose of improving their economic status. The department stated that the organization is now out of existence, so that there is no way of checking up this statement concerning the oath. However, it is of slight importance here, since the large majority of the prisoners had no relation to the Working Class Union.

"On Christmas Day the President commuted the sentences of 24 of the political prisoners. This action has not disposed of the matter, as the correspondence here cited concerning the 114 remaining political prisoners clearly shows."

Persons who have analyzed the Daugherty letter have pointed out the curious phraseology with which the Attorney General comments on the alleged oath. When he expresses the belief that the purported oath is "an accurate reflection of the minds of many other I. W. W. prisoners," he has gotten a long ways from the facts, inasmuch as none of the Oklahoma defendants were members of the I. W. W.

—Reprinted from "New York Call"

The One Way Out

We can hope for nothing more from the courts in our efforts to free the 98 Industrial Workers of the World still in the federal penitentiary at Leavenworth. The last detail of procedure provided for by the national judicial machinery has been completed, and under the ruling of the appeals courts in the two major cases, the defendants must remain behind the bars, even though the Espionage Act under which they were convicted has been repealed.

But both courts of appeals reversed the verdict of the trial courts on the industrial counts, which charged property destruction; and this means that our fellow workers are now serving time solely for expression of opinion concerning the origin and purposes of the war.

Our only recourse is to develop latent public sentiment which will impress upon the federal officialdom the logic and justice of granting general amnesty. We can do that by spreading the facts; by letting the public know, and having the public remind President Harding, that all other nations have released their war-time prisoners; that the Espionage Act has been suspended; that all persons convicted in the United States as actual German spies, persons who plotted secretly against the government, have long since been freed.

To disseminate these facts, we need money for printing, mimeographing, letter-writing, postage. And money is needed, too, for prison relief and for aid to dependent families of the industrialists inside. SEND YOUR CONTRIBUTION TODAY.

General Defense Committee

1001 W. Madison St., Chicago, Ill.