

## Shall Warren Be Railroaded? (March 28, 1908)

There have been many curious turns in the federal prosecution instituted against Fred D. Warren, editor of the *Appeal*, since the indictment was first brought against him and he was placed under arrest a trifle less than a year ago.<sup>1</sup> Since then he has been constantly under bail, has had two hearings and repeated consultations with his lawyers, but the case is as uncertain as ever as to its final outcome. The only thing known for certain is that the law provides that Warren may be fined \$5,000 and sentenced to the penitentiary at hard labor for five years. It is not pleasant to have such a sentence hanging over one's head for so long a time, and in some respects is worse, in fact, than the sentence itself, but Warren has never once complained, and although the uncertainty of his fate has somewhat hampered him in his plans for the future he has gone on with his work as undaunted as if no case against him were pending.

On his own personal account he is not concerned about the outcome, but the probable effect upon the paper, and by reflex upon the movement, in case of an adverse verdict, has been seriously considered, and as a result it has been concluded to resist the indictment as far as legal ability can successfully do so, and to this end Clarence S. Darrow has been employed to re-enforce General Boyle, Judge Doster, and L.H. Phillips, counsel for the defense.

Mr. Darrow will make the principal address to the jury, and this feature of the trial and the forensic effort he will feel inspired to make in behalf of a free press will create widespread interest.

Whatever may be our opinion of the courts under capitalism, there is a vital principle involved in this case, and the outcome may have an important bearing upon the socialist press and free speech in the United States. I have always believe this to be a case of critical importance although pivoted upon what seems a very trivial incident.

Of course, no one who has followed the case supposes for an instant that the prosecution was inspired by a sense of outraged justice in behalf of ex-Governor Taylor of Kentucky, the only person who could have been wronged in the remotest by the publication which provoked the indictment. The whole case rests upon the offer of the reward for the fugitive

Taylor and sending it through the mails, a mere repetition in a small way of what the authorities of Kentucky had been doing on a large scale. It was a trifling incident. Taylor did not complain. Why should anyone else?

The reason is obvious. Here was an opening, so long looked for, to strike the *Appeal* a deadly blow. It was not to defend Taylor — they care nothing about him — but to destroy the *Appeal* that the proceeding was instituted.

It was not to preserve the purity of the mails, for every day hundreds of similar rewards offered by sheriffs are sent through the mails and no one has ever dreamed of filing a complaint.

No, it is not to vindicate Taylor, nor to send Warren to the penitentiary, but to intimidate the *Appeal's* policy, bankrupt its treasury, and compass its ruin. That is the object and the hope of the prosecution and whether it succeeds or fails is a matter of far less consequence to Fred Warren, even if he is put in stripes, than it is to the socialist and labor press, and to the working people of the United States.

There is not the slightest doubt that Inspector Chance told the truth when he said that the order had come from the department at Washington to “reopen the case” and push it to a successful termination. Assistant District Attorney West virtually confirmed this when in the course of his heated argument at Fort Scott [Kansas] he said he had received a letter from the department at Washington saying that the offense with which Warren was charged came within purview of the law, and that he could, and should, be convicted. Further evidence is found in the following paragraph taken from a special dispatch from Washington to the *Dallas News* of March 13th in regard to the defeat of the Penrose bill:

The Penrose bill makes eight printed lines, but, like dynamite, it was potential in small quantities. It proposed to vest the postmaster general with an absolute power of censorship.

Of course, it wasn't intended that this absolute power should be used in an absolute way. *The introduction of the bill was occasioned by the lurid utterances of a socialist organ in a western state, and while it was to be a general law it was intended only for particular application.*

The staff correspondent of the *News* who sent this dispatch to his paper was on the ground and knew whereof he spoke. The Penrose bill was intended, not to have general application, but to suppress the *Appeal*, and that is precisely what was predicted by the prosecuting attorney at the time

of the Warren hearing — that is the next session of Congress a bill would be introduced that would “fix the *Appeal*.”<sup>2</sup>

The Kansas City Journal regretted that there was not already a Penrose bill on the statute books when it said editorially: “It is unfortunate that a technicality has to be invoked in order to make a case against the *Appeal*.” In the same editorial the *Journal* stated that the prosecution had been directed from Washington by no less a person than President Roosevelt himself, and that the suppression of the “viperous sheet known as the *Appeal to Reason*” would have the hearty support of the national administration.

It is therefore seen at a glance that it is not Warren, but the *Appeal*, that is on trial, and in fact the socialist press, for if the *Appeal* can be loaded down with court costs, and its editor put in stripes, so can the *Chicago Socialist*,<sup>3</sup> the *New York Worker*,<sup>4</sup> and other revolutionary papers, and the most trifling incident will be sufficient to serve as justification for the assault.

Ever since the Haywood trial the *Appeal* has been under the ban. But for the socialist press the conspiracy would have succeeded. The baffled conspirators swore vengeance. Since then they have made repeated attempts to have the *Appeal* excluded from the mails. The suit against Warren was one attack; the Penrose bill another. There were others made by stealth, of which no report can now be made. Enough to say that the postmaster at Girard has been superseded in office because he was reported as “too friendly to the *Appeal*.” The truth is that he treated the *Appeal* honestly and would not be a party to the machinations to oust it from the mails, and it is now predicted that previous attempts which failed on his account will now be renewed.

The trial which opens May 4th in Fort Scott<sup>5</sup> will be the trial of the radical press of the United States. It is not the *Appeal* alone that is to be silenced but the whole revolutionary press that is to be suppressed, and if the attempt is successful and a paper escapes, it will be because it is of not sufficient consequence to menace the ruling class.

Of course the charge is falsely made that the *Appeal* is a violent and anarchistic sheet, and ought to be suppressed in the interest of peace and order. That is mere subterfuge. Every journal that scourges capitalism and exposes its crimes and iniquities is a “nest of vipers to be exterminated,” in the lurid phrase of a capitalist paper recently applied to the *Appeal*.

The attack on Warren was conceived in revenge. It is an attack on labor and the reason for it is pain enough. Moyer, Haywood, and Pettibone

escaped the gallows. That was a bitter pill for the kidnapers. The *Appeal* helped to administer it and Warren was in editorial control of the *Appeal* and responsible for its policy.

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In the fight for the lives of the federation leaders Warren led repeated charges that staggered the conspirators. From the very first he plunged into the conflict; he was ever at the front, and in the thickest; he never wavered. His courage was heroic and his example and inspiration. He staked all and asked no favors. Hundreds of his readers warned, pleaded, and threatened. They were sure he was too radical and that the *Appeal* would be ruined; that it was simply another Haymarket and that radical and inflammatory speech would but intensify the public prejudice and seal the fate of the kidnapped comrades.

To all such entreaties and protests Warren was deaf. He had taken his stand and there could be no retreat. He relied wholly upon arousing the militant spirit of the working class, and upon the socialist press as the chief means to that end, and more than any other, Fred Warren contributed by his daring, his resourcefulness, and his unflinching tenacity to that magnificent national demonstration of working class solidarity which palsied the kidnapers and snatched their intended victims from their nerveless grasp and saved them from the bloody executioner.

Had the battle been lost Warren would have been condemned, ruined, and disgraced. But the battle was won. Warren was happy and modestly resumed his usual round. But he was marked. The black hand now pointed in his direction. The prey had escaped and he was chiefly to blame.

Moyer, Haywood, and Pettibone could not be hanged, but Warren could be put into chains, and the *Appeal* out of business. And so happened the discovery that Warren had circulated “scurrilous, defamatory, and threatening matter” through the mails and that the majesty of the outraged law must be vindicated.

Had Warren been the editor of a capitalist paper, or of a labor paper without circulation, and had mailed precisely the same matter, the charge would never have been dreamed of. The Democratic papers of Kentucky had spread vastly more threatening matter about Taylor and had offered all kinds of rewards for his return, but they were capitalist papers — they

were not the “vile anarchistic Kansas sheet” which had so much to do with stirring up the working class and liberating the “federation criminals.”

Now, what was the specific charge against Warren? What was his crime? Why, he is charged with putting in the mails a reward of \$1,000 for the capture of a fugitive capitalist politician under indictment for murder, a thing done by sheriffs and other persons every day, and all over the country. But it was not this of itself that served as the subterfuge for the arrest and prosecution. It was the effect it had. It was a strategic move and proved a master stroke. It drew the capitalist lightning. No single incident equaled it. It lighted up the scene and stripped the conspiracy naked. Its effect was instantaneous. The Associated Press was opened by this charge of dynamite. It vomited abuse. The enemy was hit. The St. Louis papers had a full page sensationally illustrated.

It was the dramatic element in the episode which appealed to the public. It was bold and daring, and this excited interest, tense and thrilling.

In a crisis the mass is deaf to calm reason, dead to mere logic. Warren knew this; he exploded a bomb and created a sensation. This gave him the crowd. Pointing to Moyer, Haywood, and Pettibone in the shadow of the gibbet he said: “There are three honest workingmen kidnapped by a conspiracy of two governors, and a lot of rich mine owners; the president has pronounced them guilty and the Supreme Court has legalized their kidnaping.” Then turning to Taylor he said: “There is a governor, indicted for murder, a fugitive from justice; the president pronounces him innocent, and the courts will not allow him to be arrested.”

The effect it had was to arouse resentment; to fan the militant fire into a conflagration. It was not intended to kidnap Taylor, nor to “defame” or “threaten” him; but simply to point out an object lesson and it served the purpose.

It was the socialist and labor press and an aroused working class which saved the federation leaders, and the same forces should rally to the support of Warren. It is for fighting the same battles of the working class that he has been marked, and is now to be sentenced. It is a continuation of the same determination on the part of the mine owners and other capitalists to punish labor’s champions, gag its press, crush its unions, silence its mutterings, and perpetuate its slaver.

It is Warren’s turn today — whose will it be tomorrow, and the next day?

Haywood and Pettibone were tried in the state court by a judge elected by the people. Warren will be tried in a United States court by a judge appointed for life by President Roosevelt. The jury will consist wholly of political opponents, more or less prejudiced against socialism, and the prosecutor will doubtless make an impassioned plea to crush “the viper of anarchy and assassination.”

The case has dragged on within a few days of a year. The expense already foots up \$4,000, and the trial has not yet actually begun. how many more thousands will be levied can only be conjectured. The average socialist or labor paper would already be bankrupt, but if the *Appeal* only had an average circulation it would not be in the toils.

There is method in the court’s delay. The longer the trial, the greater the costs, and socialist papers are not noted for their swollen bank accounts.

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At the preliminary hearing in November last, Judge Pollack, apparently, all but dismissed the case. Everyone was surprised. his implications were too clear and direct to be misinterpreted. At the close of the session Warren’s lawyers and friends gathered around him and tendered their congratulations. The case was as good as dismissed.

In chambers, a few weeks later and without a word of comment, [Judge Pollack] denied the motion to quash the indictment and set May 4th as the date for trial.

In a few days more the trial will begin. How long it will last or what the outcome will be no one can tell. From all appearances the case will be hotly contested and no effort will be spared to secure a conviction.

It is the duty of the socialist and labor press to stand by Warren as he stood by Moyer, Haywood, and Pettibone, and I am confident such will be its attitude. To once more arouse the working class and to have it understand what this trial means to it is now the task, and this, and this alone, will save Warren from prison as it saved our western comrades from the gallows.

This is election year, and this fact can be turned to advantage. if the workers of the nation show their determination to stand by Warren, as is their duty, he will never be convicted, and another crushing defeat will be

administered to the enemy and another splendid victory achieved for the working class.

When Warren faces trial I shall be with him, regretting only that I cannot share the penalty if he is sentenced. It is not merely on his own personal account, or on account of his wife and children that I sympathize with him and shall give him all the aid in my power, but because he has fought the good fight unflinchingly and deserves the loyal and enthusiastic support of the whole working class of the nation.

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<sup>1</sup> Fred D. Warren, editor of the *Appeal to Reason*, was indicted by a grand jury early in May 1907, accused of misuse of the US mail. Warren was specifically charged with having violated section 498 of postal regulations, forbidding the mailing of “scurrilous or defamatory matter” on the outside of an envelope by printing offers of a \$1,000 reward for anyone who would kidnap ex-governor William S. Taylor (1853-1928) of Kentucky, a Republican, and return him to that state for trial as an alleged accessory in the assassination of his Democratic rival in the contested election of 1899, William J. Goebel (1856-1900). Taylor escaped prosecution by fleeing to Indiana, which refused to extradite him. He was pardoned by the Republican governor of Kentucky in 1909.

<sup>2</sup> The Penrose bill, introduced by Republican Senator Boies Penrose (1860-1921) of Pennsylvania, proposed that “when any issue of any periodical has been declared non-mailable by the post office department the periodical may be excluded from second-class mail privileges at the discretion of the postmaster general.” Although clearly designed as a tool to eviscerate the rapidly growing *Appeal to Reason*, newspapers of all political stripes raised their voices in objection to the “tyrannical” power of censorship which would be thereby assigned to a single unelected bureaucrat and the measure was defeated. The same principle of one-man censorship based upon “unmailability” triggering the withholding of subsidized postage rates would be later used to decimate the anti-militarist radical press during the period of American participation in World War I.

<sup>3</sup> The *Chicago Socialist*, launched as the *Workers' Call* in 1899, moved to a daily frequency in June 1906, thereby becoming the first daily newspaper in the United States affiliated with the Socialist Party of America. It was terminated in 1912 for financial reasons. The paper was edited by A.M. Simons (1870-1950).

<sup>4</sup> *The New York Worker*, launched in 1899 by the anti-DeLeon faction of the Socialist Labor Party as a dissident version of *The People*, evolved into the daily *New York Call* in May 1908. Making use of local deliveries, it managed to survive World War I despite harassment of the post office department. Briefly changing its name to the *New York Leader* in 1923, the paper expired soon afterwards. It was succeeded by another publication, known as *The New Leader*.

<sup>5</sup> Fort Scott is the county seat of Bourbon County, Kansas, located directly north of Crawford County, the seat of which is Girard.