Principle Features of the Fred D. Warren Trial (May 22, 1909)

Liberty of the press is the issue involved in the case of Fred D. Warren, editor of the *Appeal to Reason,* which has been pending in the United States court since the indictment found at Fort Scott, Kansas, May 7, 1907, over two years ago.

This is of course denied by the prosecution, the contention being that an individual offense has been committed and that the punishment of an individual is all that is contemplated. It will be remembered that precisely the same contention was made in the cases of Moyer, Haywood, and Pettibone when it was insisted by the prosecuting officials and the mine owners who were backing them that these were but plain murder cases and that no other issue was involved. It developed during the trials and is now clearly understood that the real issue was capital vs. labor and the right of the Western Federation of Miners to maintain its existence and defend the interests of its members against the aggressions of the Mine Owners' Association.

Similarly in the present case the issue involves far more than the punishment of an individual for the alleged violation of a federal law. If this were all, the case would have been settled long ago and would have excited but little interest.

But readers of the *Appeal* are too well informed and have been following the trend of events too closely to be misled by any such specious plea on the part of those who are far more interested in suppressing the *Appeal* than they are in punishing its editor for an alleged individual offense.

Let us briefly review the main features of this now celebrated case which has extended over so long a period and has had so many curious turns and windings that there is no other like it in all the history of American jurisprudence.

First.— The indictment charges Warren with having sent, or caused to be sent, to one Pierson in California an envelope bearing [advertisement for] a reward for the return of ex-Governor Taylor to the state of Kentucky, from whence he was a fugitive and where he was under indictment for murder. This envelope fell into the hands of a post office inspector and the indictment followed. Pierson himself, to whom the envelope was directed,

made no complaint. For some reason as yet unexplained he did not even receive it. How it came to be directed to him no one knows. His name is not on the *Appeal's* lists. Neither Warren nor the *Appeal* had ever heard of him, nor has he even been heard from since the trial began. Who Pierson is, or if there is such a person, no one knows. For all that the evidence shows he is simply a dummy who has been made to serve in what seems to have been a plot to indict the *Appeal,* a thing which had been long before and repeatedly threatened.

Second.— Warren was arrested, placed under bail the day following his indictment, and asked for immediate trial. This was denied and the case went over until the November term of court. Since then there have been four distinct postponements, all on motion of the government, every effort of the defendant to have the trial proceed proving unavailing until the case was finally called at the May term of court, 1909, two years after the indictment.

Third.— The specific charge in the indictment was that Warren had violated the federal statute prohibiting the mailing of "scurrilous, defamatory, and threatening matter." By no stretch of the imagination can the matter complained of be construed as having any such meaning. Ex-Governor Taylor did not complain. In truth he had nothing to complain about. The state of Kentucky had offered a $100,000 reward for his return to that state and spread it broadcast. The *Appeal* had offered but $1,000. Taylor himself, so far as anyone knows, did not feel aggrieved. If anyone was injured it was he and if he was not injured no one could have been, for he was the only one mentioned. No one denies that Taylor was under indictment, that he was a fugitive, and that a reward had been offered for his return by the legislature of Kentucky. All these facts are well known and Warren simply took advantage of them to ascertain if a capitalist politician as well as a workingman could be legally kidnapped. He found out. He at least compelled the federal government to show its hand. When Moyer, Haywood, and Pettibone were kidnapped, the Supreme Court decided that it could take no cognizance of that fact in the consideration of their appeal, in effect legalizing the kidnapping of workingmen. Associate Justice McKenna dissented from the court in a ringing opinion in which he declared that the state officials of Colorado and Idaho were the real criminals and should be dealt with accordingly. Warren's offer of the reward for Taylor, although it has subjected him and the *Appeal* to thousands of dollars of expense and it may yet result in his imprisonment, has demonstrated

at least one fact of no mean importance and that is that while under the present capitalist government workingmen can be kidnapped and forcibly deported by sanction of the Supreme Court and denounced in advance of trial by the president, a representative of the capitalist class is protected by all the powers of government and the mere suggestion that he be kidnapped, even if a fugitive with a reward upon his head, is promptly followed by indictment and prosecution of the offender.

Fourth.— At the preliminary hearing Deputy Prosecuting Attorney West stated, in an impassioned plea for the prosecution of the defendant, that orders had been received from the Department of Justice at Washington to prosecute the case against Warren, the assurance being given that the indictment was good, that the law had been violated, and that a conviction could be secured. If the case involved but an individual offense, as contended by the prosecution, is it probable that the Department of Justice at Washington would have been so vitally interested in securing a conviction? Would the president of the United States have been so eager to direct the prosecution from the White House as announced by the press dispatches and commented upon editorially by such a powerful capitalist daily as the *Kansas City Journal?* Is it customary for the president and attorney general to direct the prosecution of individual offenders in cases of minor importance? But one answer is possible and that is that the administration was interested in the case, not because of Fred Warren, the individual offender, but because of Fred Warren, the editor of the *Appeal to Reason,* the most widely circulated socialist paper and the most formidable opponent of capitalism in the United States.

Fifth.— A significant remark made by a gentleman of high official standing, whose name we cannot disclose without betraying the source of our information, throws a clear side light on the animus of the prosecution and also explains the cause of this long-drawn trial and its repeated postponement. The remark was to the effect that if the *Appeal* could be reached in no other way it could be kept in court indefinitely and loaded with fees and costs until "the damned reptile was bled to death." This view was inadvertently corroborated by Prosecuting Attorney Bone in his speech to the jury in which the said, "the name of this sheet, the *Appeal to Reason,* should be changed to the *Appeal to Treason.*" And yet Mr. Bone in his opening statement declared that it was simply a case of trying the defendant for depositing a letter in the mails with was not mailable under the law. If this was true, what had the mailing of this letter to do with the *Appeal*

to Reason and why did he deem it necessary to denounce the *Appeal* as a treasonable sheet? It was here that he gave his entire case away and revealed too clearly to admit of doubt that it was The *Appeal to Reason* as a socialist paper he was after and not Warren as an individual offender.

Sixth.— Judge Pollock in interrogating the deputy prosecuting attorney at the preliminary hearing shook his head significantly in denial of the latter's contention that the mailing of rewards for fugitives from justice was in violation of the federal statute, and then sounded the precautionary note in words too plain to be misunderstood that such a prosecution directed against an editor would be construed as an attack upon the liberty of the press and would probably have an effect opposite that intended. It was at the close of this hearing that the attorneys for the defense expressed the opinion that there was nothing in the case and that it had been postponed so that it might die out and be stricken from the docket. It was about this time that the Department of Justice at Washington was heard from, the purport of its order being that if there was "not a case against the *Appeal* to make one!" Then followed the announcement that if Warren did not plead guilty, thereby fastening the odium of having committed a crime upon himself as editor of the *Appeal to Reason,* he would be prosecuted to the limit of the law.

Seventh.— Rewards for criminals and fugitives from justice are mailed daily in all parts of the country by sheriffs, mayors, detectives, bankers, and private individuals, but no one has ever before thought of charging them with violating postal laws. The claim that in the case of Warren he offered his reward to kidnap a fugitive and therefore commit a crime will not hold, seeing that the United States Supreme Court has legalized kidnapping by refusing to take cognizance of the kidnapping of Moyer, Haywood, and Pettibone when they appealed to that august tribunal. If it is not a crime to kidnap a workingman who has not been indicted then it cannot be a crime to kidnap a capitalist politician who has been indicted. That is the point at issue. The Supreme Court of the United States is welcome to either horn of the dilemma. The case may not be clothed here in the legal terminology designed to mystify the issue and convey doubtful meanings, but in substance and effect it is clearly stated.

Eighth.— When the case was finally called for a trial a jury had to be chosen from a panel which had been prepared by the United States marshal. The panel was carefully selected and no mistake was made and as a result the jury was a packed jury. There was no Socialist or Socialist

sympathizer upon that jury. There was not a Democrat or a Populist. It consisted of rock-ribbed Republicans, who regard the *Appeal to Reason* as a treasonable sheet and its editor as a criminal. While the jury was being chosen Judge Pollock took occasion to state that the matter of politics was not to be considered in the trial. In the light of the plain facts in this case, this must be considered a joke although the judge looked too solemn to have intended it. If there was no politics in the case how did it happen that there was not a Socialist on the panel or on the jury and that Warren had to be tried by a jury consisting wholly of his political enemies.

Ninth.— Even then it required the jury 22 hours to decide upon a verdict of guilty. Three of the members, notwithstanding their political hostility, were opposed to a conviction upon such a flimsy charge and held out until they were finally overcome by the large majority against them. When the verdict was announced the judge suspended sentence, the attorneys for the defendant making a motion for a new trial. The judge stated that he would hear argument upon the motion in ten days or two weeks from the date. Following adjournment, however, the judge postponed the entire matter, including the passing of sentence, until the November term of court — and here the case rests. Why the judge hesitated to pronounce the sentence in accordance with the verdict found in his court and postponed the case for another six months is left wholly to conjecture. It is quite evident that notwithstanding the insistence of the prosecution, and the power behind the prosecution, upon a conviction, there is still some reluctance to execute the law and enforce the penalty imposed by the court.

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We have here reviewed the principal features of this remarkable case. Our readers may arrive at their own conclusion as to whether it is merely the prosecution of an individual or an attack upon the socialist press in particular and the liberty of the press in general. Without the *Appeal to Reason* this case would never have been heard of. Warren might have deposited the same envelope in the post office every day to the end of his life and no grand jury would ever have dreamed of indicting him.

The *Appeal to Reason* recognizes the issue and faces the attack without fear of the ultimate outcome. Its managing editor has violated no law, but has been indicted in the orderly discharge of his duties for no other reason than that he is the editor of a paper which is opposed to the present

capitalist regime and which has influence enough among the people to make itself felt in the struggle of the masses to abolish capitalist misrule and emancipate themselves from wage slavery.

The *Appeal to Reason* is fortunate in having the support of as loyal a body of men and women as ever consecrated themselves to any cause and with these to back it up it is ready to face any attack which may be made upon it, and if its colors are ever lowered it will only be when it is overwhelmed by superior numbers.

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