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# Jury Selection in the Chicago Communist Trial

[selection ended July 9, 1920]

by Mary Field

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If you stepped into Judge Hebel’s courtroom in the Criminal Court Building in Chicago, where 21 defendants are on trial for not thinking their thoughts according to the Butteriik pattern approved by the Department of “Justice,” and found young Frank Comerford questioning the prospective jurors for the state, I am sure you would think that you were “out on the lot,” as they say in the movie world down in Los Angeles, rather than in a serious court of justice.

You would sit down on one of the benches facing “location” and watch with both pity and amusement as the “hero” with the wavy hair, the correct tailoring, the green shirt, the spats, the horn-rimmed glasses “do a reel.” Instinctively with the swinging of the door into the courtroom you turns expecting to see Valeska Surat glide in to “play opposite,” and without glancing of the camera man.

It is the obvious posing of Frank Comerford, specially appointed to the role of prosecutor, that turns the courtroom into a movie studio; for by nature Frank is an actor rather than a prosecutor. Already he has played in several roles — radical, reformer, friend of labor, friend of Soviet Russia, foe of Soviet Russia. The casual visitor to the court would see that he is really more interested in putting himself over than putting men in jail; in convincing an audience of his able portrayal of a prosecutor than in convicting the men who play with him in the drama.

Even the three old men — [Clarence] Darrow, [William H.] Forrest, and [William] Cunnea, attorneys for the defense — whom Frank addresses as a young Booth might address stage hands, even the vet-

erans of the court do not make the scene real. They joke. How can one think of pails and cruel sentences and raids and persecutions?

Perhaps if the judge were more severe, less like a human being, the visitors would be put in the courtroom mood. But he is forever hitching his robe over his shoulders, for it has a tendency to slip back and reveal the clothes of the everyday man; forever jumping up from his leather chair directly under the American flag and George Washington’s picture and running over to a swivel chair nearer the jury — and thereby getting in the picture. A “close-up” reveals a friendly little face — a man instinctively kind, lacking in austerity; somewhat weak.

Not many of the defendants attend these sessions. They will leave the selection of their “peers” to the lawyers. Their role in the drama has not yet come. And when it does, their earnestness and consecration will make one forget our “hero” for the real heroes.

An entire venire is brought in — rich men, poor men, beggar men, thieves. Frank Comerford rises and with “school-of-expression” gestures, sonorously reads the law to them — the Criminal Anarchy Law, thundered down to the workers from Mt. Sinai in Springfield, Ill. And then he explains as patiently as a boy Christ in the temple can explain to the ignorant Sadducees of Chicago that there is but one holy way to change the Constitution. And if George Washington or these defendants or John Brown or William Bross Lloyd or Paul Revere say differently, then they are guilty under the statute.

Then the informed ones file out and, one by one,

are led back “to the lot” and questioned. You get to know just the kind of man each side is looking for.

Frank Comerford is usually satisfied with a juror if he is a member of the American Legion. (He is probably thinking of his plea when, with trembling voice, he will speak of the “boys who died in France.”) Or if he is in the real estate business, or if he is foreman for some big Open Shop concern, or if he is an old retainer of Marshall Field, the Armours, or the Cuduhys; if he is a faithful Catholic; if he is a Presbyterian with a clerk’s brain; if he is groomed.

But even in so large a city as Chicago, with so many possibilities of finding these types, the wavy-haired prosecutor has a hard time securing his choice of “fair-minded” jurors. Most of them cannot conceal their prejudices, and if they succeed in so doing, the marvelous clairvoyance of Darrow penetrates their small souls and causes them uneasily to speak out their petty hatreds, to reveal their ignorance, to disqualify themselves before a bar of justice.

So, too, the defense knows the kind of man it wants: a streetcar conductor, whose run is the West Side, where the proletariat are crowded; an old man, whose eyes and dreams have faded — unsuccessful; a man who has “been in trouble”; a liberal — maybe either rich or poor — a type known in Europe but well-nigh extinct in America; a student; a man who has answered the court summons in his Sunday clothes, but whose hands and fingernails say “steel furnace,” or “machine shop,” or “chemicals,” or “tools.” A union man whose 8-hour day did not come through legislation.

Of course the prosecutor challenges them, or excuses them peremptorily, because they say they believe in “free speech” or they think a strike a pretty good way of removing oppression. Or else they’ve read an intelligent book on Socialism. They, too, cannot hide their prejudices.

In 3 weeks 400 jurors revealed their hopes, their beliefs.

A young juror steps briskly into the box.

“No,” he doesn’t think he could give these defendants a fair trial. You see he is a member of the Loyal Legion, pledged to uphold the Constitution. How young and hard and righteous and ignorant and earnest he is.

Darrow, old and wise and mellow with all the

years, shambles to his feet. Slowly he approaches the young man, for whom you suddenly feel sorry. You know Darrow will strip him of that coat of self-complaisance, will expose his naked ignorance.

“Sworn to protect the Constitution?”

“Yes, sir.”

“Have you read it — all?”

“Well,” hesitatingly, “yes.” Then, as Darrow slowly approaches closer, as if to spring: “That is, in a general way; some of it.”

“Does your Legion swear to protect the amendments to the Constitution?”

The courtroom is hushed; it is a courtroom now, a place from which men go to jail.

“Why, I guess so — yes.” The juror is less jaunty.

“What is the 1st Amendment?”

“I don’t know,” says the Loyal Legioner in a low voice.

“The 1st Amendment relates to free speech and free press and says Congress shall in no wise abridge it. Is your Legion sworn to protect that provision?” Darrow’s voice has now a note of yearning.

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An Englishman, and rich, is questioned. The prosecution are hopeful. But, alas, the man reads books. He seems to do independent thinking.

“Have you the English idea of personal freedom?” asks Darrow.

“I have.”

I do not know whether the prosecution allowed him to remain in the box, or whether this belief would be sufficient cause for the judge to excuse him.

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Another rich man. A self-satisfied “if-you-don’t-love-this-country-get-the-hell-out-of-it” type. He boasts rather than says he could, of course, give “these-here defendants” a fair trial. Admit an unfair mind? Prejudiced? Not he!

He qualifies for the prosecution.

Darrow’s eyes are cold and hard as carborundum. They cut the steel of the juror’s self-complaisance.

“Do you know the meaning of ‘credibility of evidence?’”

“No, sir.”

“Do you know the meaning of ‘presumption of innocence’?”

“No.”

“Do you know the meaning of ‘preponderance’?”

“No.”

Darrow shrugs his big shoulders. He makes a depreciating gesture with his hand.

“Know the meaning of ‘dictatorship of the proletariat’? Of ‘bourgeois’? Of ‘soviet’?”

The man squirms. He cannot get away from those relentless, cold eyes.

“No,” he blurts.

Then Darrow wheels about in disgust. “Your honor, I challenge this man on the ground of his ignorance.”

And, amidst the amused stare of the courtroom, the proud, rich juror left the room.

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And yet another of the property class. He believes in law and in its enforcement. He believes in America. He owns considerable of it. He believed in the war. The prosecution believe he is fit to give the defendants a “fair trial.”

But Darrow’s questions bring out the fateful fact that he reads books.

Up pricks one of Frank’s ears.

“Yes, Tolstoy’s *War and Peace*, *Resurrection*, all of them,” modestly.

Up pricked the other Comerford ear.

No, it would never do to have these defendants tried by a man who read Tolstoy, even if the juror were rich!

Queer how these class feelings do not always seem to cut horizontally.

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A snarly old man with a GAR disposition agrees vehemently that there is but one sacred way to change the Constitution: the ballot. †

“Suppose,” said the wily Darrow, “a number of people should meet in prayer-meeting and pray for a

change in the form of the Constitution. Would you find them guilty under statute? Would it be a conspiracy with God to overthrow the government?”

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“I am opposed,” said a Marshall Field clerk of the Arrow collar type, “to any form of ‘ism’ except Americanism!”

That word always pleases Frank. With an American flag in the courtroom, a picture of George Washington, and the words “100 percent” and “Americanism,” let the florists get ready the wreaths!

The phrase irritates Darrow as iodine does the skin.

“So you believe in no other ‘ism’ than Americanism?”

“No sir, I do not.”

“Don’t you believe in Catholicism?”

“Yes.”

“In Protestantism? In Republicanism?”

“Yes.”

“Well, there’s three more ‘isms’ already you believe in.”

The clerk twirled his straw and looked helpless. His dear little phrase, such a pretty bubble, and here it was pricked — and publicly!

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A working man. Switchman.

No, sis, he didn’t belong to no “outlaw union.”

No, sir, he wasn’t on strike. Yes, sir, he wasn’t working — just taking a vacation.

Were others taking a vacation, too?

He’d heard some others were.

Go to strike meetings?

No; sometimes he just strolled over to a hall where some of the other switchmen “on vacation” were sitting around.

Of course the switchman was challenged. But his attitude toward the strike in which he played a part baffled the prosecutor.

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†- The Grand Army of the Republic (GAR) was the national association of former Union soldiers from the Civil War. It was an ultra-patriotic organization akin to the American Legion of the veterans of the European War.

He was a young man; never been called before on a jury. His eyes roved over the unaccustomed scene.

“And what are your politics?” asked Comerford.

“I haven’t any.”

“How do you vote?”

“I never vote,” said as indifferently as he might answer, “No, I do not chew gum.”

“What! Never vote?!” Frank Comerford strikes his glossy hair with his best tragic gesture. “And why?”

“I’m not interested.”

That brought the prosecutor to his feet.

“What of American institutions? What of the free man’s sacred privilege? Of his solemn obligations?”

“I’m not interested.”

“What is your business?”

“I am an artist.”

Nor do I believe that the crashing of tablets of stone at his very feet on which the criminal anarchy law might be chiseled would have roused that young man to his “duty,” so preoccupied was he with what to him was his function in life.

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So far there is little interest in the trial. A murder trial draws a far larger crowd. Probably as evidence begins to be taken, feeling will become intense. The daily papers will more actively fulfill their function of increasing prejudice and deepening misunderstanding. There will be more limelight for Comerford. There will be more “interest stones” around William Bross Lloyd because he is, to the reporters, a millionaire first and a communist second. The courtroom will become crowded with people from the West Side. “Threatening letters” will be received by the prosecutors. And all over America thousands of people will wait the verdict.

“No,” said a talesman, “I wouldn’t be a fair juror. I don’t like this case.”

“Neither do I,” said Darrow.

And neither should any thinking man like the idea of trying men in American courts for their opinions. Nor any man, be he liberal or conservative, who believes that growth lies in freedom; national growth in freedom of speech and thought and print, and that its suppression means atrophy of mind and heart, the death of national greatness, of literature and of art.

*Edited with a footnote by Tim Davenport.*

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