

The SEDITION Case

***The Story of America's Greatest Legal Battle —
the Infamous War Time Mass Sedition Trial***

The SEDITION Case



===== **SONS OF LIBERTY** =====
Hollywood, California 90028

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CHAPTER ONE

AMERICA'S TWO SEDITION CASES

THERE HAVE BEEN just two mass sedition trials in the history of the United States—one in the latter part of the eighteenth century, promoted by the Federalist party, the other during the last war, promoted by the New Deal administration. Both backfired against the promoters.

John Adams was elected president in 1797 by a majority of only three votes after a hard-fought battle with Thomas Jefferson, who became vice-president. Adams was a Federalist. Jefferson was a Republican. They disagreed violently on policies and became bitter enemies. In this turmoil Jefferson defeated Adams in 1801.

During the interim, in 1798, the Federalists enacted a sedition law on the pretext of controlling pro-French sentiment in the United States, but actually used it to harass, persecute and imprison political opponents who had helped Jefferson in the previous election. They accused their victims of supporting France. A group of writers, speakers and editors, all favorable to Jefferson, were sent to prison.

The law provided punishment for persons who engaged in "false, scandalous, and malicious writings against the government, either house of congress, or

the President . . .” In other words, they tried to make the administration in power and the United States government appear synonymous.

Juries were packed with Federalist sympathizers. Judges, controlled by prior political obligations, railroaded patriotic Americans to prison. Blinded by partisanship, they violated rules of evidence and even went so far as to forbid juries to consider the truth of defendants’ writings as a defense. Federalist appointees presided over prisons to which writers were consigned, with the result that life was made unbearable for them. Ten persons, all editors and printers, were tried and convicted. Many others were indicted but not tried.

The first victim of the Sedition Act was Matthew Lyon, a member of Congress from Vermont. He operated a newspaper and writing editorially accused Adams of manifesting “a continual grasp for power” . . . “an unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice.”

This offended leaders of the party in power, and a hand-picked jury was chosen under the guidance of Justice Paterson, who saw to it that the editor was convicted, fined and clapped into prison. Having the misfortune of falling into the hands of a sadistic marshal, he was subjected to inhuman treatment while serving sentence. Being unable to pay his fine, the term of incarceration was extended. Friends trying to raise money through a lottery, purchased an advertisement in the Vermont Gazette at Bennington and its editor was immediately arrested.

Dr. Thomas Cooper of Pennsylvania, the most

celebrated philosopher of the period, was another victim. He was tried before Judges Chase and Peters for printing remarks hostile to Adams in a paper that he edited. When Cooper requested a *subpoena duces tecum* for the purpose of bringing Adams into court with certain documents pertinent to the trial, Chase became so enraged that his final charge to the jury assured conviction, fine and imprisonment. By this time public sympathy was beginning to kindle on behalf of the luckless victims whose only misfortune was the exercise of free speech and press as provided in the First Amendment to the Constitution.

Another unfortunate was James Callender of Virginia, a publisher of pamphlets. Chase also presided at this case and on his way to Richmond was heard to say that such writers were going to be taught the difference between "liberty and licentiousness of the press." This boast reflected a biased attitude which rendered impartial justice impossible in his court.

Callender's original lawyers were so bantered, bullied and bullyragged that they withdrew from the case. When Colonel John Taylor, one of the truly great Americans of those days, began testifying in Callender's defense, Chase stopped him on an artificial technicality. A severe sentence was imposed according to pattern. It later became known that Jefferson had secretly collaborated with Callender in preparing the pamphlet on which the conviction was based. It bore the title, "The Prospect Before Us."

Jefferson, Breckenridge and Madison appealed to courts for relief from the intolerable situation which had developed. They also sponsored resolutions re-

questing state legislatures to demand repeal of the law which was having a demoralizing effect upon the entire American judicial system. Men who could think with cool heads in a period of hysteria were convinced that the processes of justice were being prostituted for selfish purposes.

Of all the Federalist leaders, only Alexander Hamilton and John Marshall dared to take a public stand against members of their party on the issue. For this they were soundly denounced by their colleagues.

Charles A. Beard says:¹ "Several editors of Republican papers soon found themselves in jail or broken by heavy fines; bystanders at political meetings who made contemptuous remarks about Adams or his policies were hurried off to court, lectured by irate Federalist judges, and convicted of sedition. In vain did John Marshall urge caution, explaining that the sedition law was useless and calculated to arouse rather than allay discontent. In vain did Hamilton warn his colleagues: 'Let us not establish a tyranny. Energy is a very different thing from violence'."

John Spencer Bassett says:² "The alien and sedition laws grew out of a momentary hysteria, not incomparable to that which produced the Salem persecutions for witchcraft."

Straight thinking Americans have looked back for more than a century upon this judicial disgrace and hung their heads in shame, due to the fact that arbitrary actions of those in positions of political power could have left such a stain upon our nation's history.

¹ The Rise of American Civilization . . . The MacMillan Co.

² The Federalist System . . . Harpers

They never dreamed that the years 1942 to 1946 would witness a series of acts equally bad and in some respects more vicious, precipitated by motives as damning as those which drove the Federalists in their crusade of intolerance and bigotry.

The New Deal administration, operating from the White House through the Department of Justice, caused twenty-eight Americans, residing in different parts of the country, to be indicted, arrested and taken from their homes to Washington for trial in a foreign jurisdiction. Entrapment schemes were used in setting the stage at the nation's capital. This was accomplished by having Dillard Stokes, a reporter on the Washington Post, address letters to the victims under the alias of Jefferson Breem and Quigley Adams, in which he ordered copies of their books, pamphlets, newspapers and magazines mailed into the District of Columbia. Those marked for destruction, therefore, found themselves in a hostile atmosphere where no one could expect to locate jurors who were not in some way, directly or indirectly, obligated to the federal government. The Chicago Tribune describes Stokes as an *agent provocateur*."

There were three indictments. The first, No. 70,153, filed July 24, 1942 . . . the second, No. 71,203, filed January 4, 1943 . . . the third, No. 73,086, filed January 3, 1944. The first two, argued before honest judges in the district court at Washington, were thrown out as fatally defective. Then, by a slick maneuver, New Deal prosecutors were able to have the third brought before Judge Edward C. Eicher, a Roosevelt appointee, whose handling of the case show-

ed him to be a worthy successor of Judge Chase. When he died in November, 1944, impeachment charges were pending against him before the House judiciary committee, brought by James Laughlin, a defense attorney in the case.

Mr. Laughlin stated that "for some unrevealed purpose the Justice is sustaining all objections made by the prosecutors, and overruling all those made by attorneys for the defense." He said privately that at the time of his appearance before the committee, the nation would be shocked to learn that Eicher had made advance commitments to members of the White House palace guard to railroad the defendants through his court to prison.

The Federalists, though intolerant and fanatical, were not disloyal to their country; whereas, those responsible for the New Deal Sedition Case were devotees to the Communist party line. Documentary evidence shows that Moscow's representatives in the United States, including the editor of the Daily Worker, knew the contents of the first indictment before it was officially released by the grand jury.

Communist leaders, newspapers, magazines, fellow travelers, cooperating newspapers and leftist radio commentators organized and conducted the most colossal smear campaign of our country's history, designed to convict the defendants in the public mind. Up-to-date methods of psychological warfare were employed.

Offending newspapers assisting in the disgraceful episode included the Washington Post, the New York Post, the St. Petersburg Daily Times, the Wich-

ita Beacon, PM, the Communist Daily Worker and a number of others. Walter Winchell and Drew Pearson did hatchet work for the prosecutors. The latter included inside details regarding the indictment and those to be indicted in his "predictions" on a Sunday evening radio broadcast several days before the grand jury's findings were publicly known. Francis Biddle, a man whose red record extends back to young manhood, was at the time attorney general.

Congressman Martin Dies, former chairman of the House Committee on Un-American Activities, has revealed to what extent Communism was favored in the White House circles of those days.*

"We discovered that 2,500 agents, stooges and minions of a foreign dictator were on the government payroll, occupying, in many instances, key positions in the State Department, the Justice Department and the Interior Department," says the well-known Texan. "I went down to the White House. I said: 'Mr. President, here is a list of people. We have raided the organization and we have their membership records. There can't be any doubt about it. If you understand the Communists as I understand them, you will know that they are in the government for one purpose alone, to steal important secrets and transmit them to Moscow.'"

"The President was furious. I was amazed at his anger.

" 'Well,' he said, 'I have never seen a man that had such ideas. There is nothing wrong with the Communists. Some of the best friends I have are Communists.'"

* Congressional Record, September 22, 1950

"The President refused to discharge the Communists. I induced Congress to withhold appropriations to pay their salaries. The executive department defied Congress and refused to fire them. They were kept on the payroll when we were working on the atom bomb. And still there are people so dumb as to believe Stalin doesn't have the secret of the bomb. You may not realize it, but in the White House itself one of the secretaries was a Communist.

"I have a member of the Secret Service who worked in the White House give me reports every week on what happened in the White House. I knew that leading Communist agents had access to the White House, were going there and using their influence to effect our domestic and foreign policy. I am telling you these incidents so that you may have some faint idea of how thoroughly Stalin was able to dupe the United States."

The indictees in the New Deal Sedition Case were, without exception, opponents of Communism. Our country was at war on the side of Russia. The prosecution showed from the beginning that it was counting heavily on this psychological advantage to gain convictions. A studied effort was put forth to make it appear un-American and seditious to fight Communism.

The Communist motivation of the case is further suggested by the fact that when the first indictment was returned, scare headlines announced that a minister of the Gospel, the Reverend Gerald B. Winrod of Wichita, Kansas, had been placed at the top of the list. The announcement read, "Gerald B. Winrod, et al." It is evident that the real prosecutors in the

background, whose hands up until then had not been exposed, must have later regarded this as a mistake. At any rate, they dropped Dr. Winrod's name from the top and placed it far down the list in the next two indictments.

He numbered his friends in the Christian circles of the United States by the tens of thousands, including pastors, editors, missionaries, evangelists and other religious leaders of practically all denominations. These people were satisfied that his arrest did not make sense. Letters and telegrams poured in upon him from all directions pledging support. Contributions were received to help him finance a battery of the best defense attorneys.

The services of one of the largest, most reputable law firms in his part of the country were engaged, Foulston, Siefkin, Bartlett and Powers, all professing Christian men. In Washington he was flanked by the late George Edward Sullivan, a Catholic layman and one of the city's best legal minds, together with the nationally known firm of Jackson and Jackson, Baptist lay leaders. This aggregation is credited with doing the legal work that resulted in the destruction of the first two indictments.

Other attorneys were destined to carry the major burden of the actual trial for the reason that the prosecutors never actually got around to presenting their charges against Dr. Winrod in open court. The Judge died as soon as they started. They must have thought at one time, however, that their case would stand up in court, otherwise his name would not have been put at the head of the list. He now professes to

know something of what he calls "perjured testimony" invented for use against him. "Like animals eating their own dung, Communists responsible for the case must have allowed themselves to believe their own lies" is his metaphor.

The New Deal Sedition Case ended in a mistrial on November 30, 1944, and no serious effort was ever made to revive it. But despite this fact, the Department of Justice kept the indictment hanging over the heads of the victims until November 22, 1946, almost two years after the Judge passed away.

Millions of Americans came to see through the tragic hoax and this served to kindle the wave of resentment which was reflected at the polls in the 1946 national elections. It will be recalled that the first real dent in the New Deal administration occurred that year. This development parallels the experience of the Federalist party which suffered ignominious defeat immediately after promoting its sedition cases. In fact, the party died as a result and never elected another candidate to a national office.

The old Sedition Act was repealed in 1801. The men who were prosecuted under it came to be regarded as martyrs. Congress passed an act in 1840 refunding the fines and remitting for other costs incurred. It is significant that similar action has been proposed for those persecuted by the New Deal administration. There appears to be a precedent for the suggestion.

CHAPTER TWO

THE CASE CONDEMNED

THE INHERENT WEAKNESS of the case is indicated by the fact that the prosecution had to include in the group, several individuals who were already serving sentences for other convictions. It was obvious to members of the legal fraternity that this was done to discredit and handicap the defense of those against whom there had been no previous charges. One only needs to visualize a cultured Christian lady like Mrs. Elizabeth Dilling, hailed into court with convicted Bundsmen brought out of jail cells, to realize the disadvantage at which she was placed.

The first indictment named twenty-seven men and Mrs. Dilling. A number of publications were also mentioned. Next to Dr. Winrod, the most influential figure was the late William Griffin, an active leader in the Roman Catholic Church and publisher of the New York Enquirer. Several of those indicted were scarcely known beyond their respective communities. A few, particularly Robert E. Edmondson and James True, had done some pamphleteering against Communism. Like the Federalists, the New Deal prosecutors seemed to have a mortal fear of pamphlets.

Those named in the first indictment were: Gerald B. Winrod, Wichita, Kansas; Herman Max Schwinn, Los Angeles, California; George Sylvester Viereck, New York City; William Griffin, New York City; Hans Diebel, Los Angeles, California; H. Victor Broenstrup, New York City and Noblesville, Indiana; William Dudley Pelley, Noblesville, Indiana; Prescott Freese Dennett, Washington, D. C.; Elizabeth Dilling, Chicago, Illinois; Charles B. Hudson, Omaha, Nebraska; Elmer J. Garner, Wichita, Kansas; James F. Garner, Wichita, Kansas; David J. Baxter, San Bernardino, California; Hudson de Priest, New York City; William Kullgren, Atascadero, California; C. Leon de Aryan, San Diego, California; Court Asher, Muncie, Indiana; Eugene Nelson Sanctuary, New York City; Robert Edmondson, New York City; Ellis O. Jones, Los Angeles; Robert Noble, Los Angeles; James C. True, Arlington, Virginia; Edward James Smythe, New York City; Oscar Brumback, Washington, D. C.; Ralph Townsend, San Francisco, California; William Robert Lyman, Jr., Detroit, Michigan; Donald McDaniel, Chicago, Illinois; Otto Brennermann, Chicago, Illinois.

The weakness of the case was further suggested when some of these names were dropped from the second and third indictments. This was equivalent to admitting that the prosecution had nothing to use against those particular victims in the first place.

Defense attorneys Maximilian J. St. George and Lawrence Dennis in their book *A Trial on Trial*,* stated: "One of the most significant features of the

* Available at office of Mr. St. George, 10 South La Salle St., Chicago

trial was the utter insignificance of the defendants in relation to the great importance which the government sought to give to the trial by all sorts of publicity seeking devices."

The hardest blow against the modern Federalists up until then, and one that seemed to jar them to their foundations, came on August 17, 1942, in the lengthy castigation by United States Senator Robert A. Taft. Several courageous editors published the complete text of his attack, including the Washington Times-Herald who gave it the following front-page headline, "Smear Drive Perils Freedom, Taft Warns."

All defendants began to take new hope. Dr. Harvey H. Springer, pastor of the largest Baptist church in the state of Colorado, says: "I was at that time chairman of a committee of preachers and laymen, operating on a nation-wide scale in Dr. Winrod's behalf. We felt sure that he was being mistreated by reds inside the government who wanted to browbeat into silence, every man of God who might dare to lift a voice against Communism. Walter Winchell had screamed into the microphone a short time earlier that I would be indicted for supporting Dr. Winrod but after Senator Taft spoke out, we heard no more such threats. Our committee continued with its work and finally circulated a total of more than two hundred thousand pieces of literature. We knew that the Communists had a long list of other religious leaders who were marked men. They were going strong in the Rocky Mountain area in those days, even to the point of starting riots in church services in some instances."

Friends of the Ohio Senator often cringe to see him throw political discretion to the winds. Even enemies credit him with exercising the courage of his convictions without regard for possible repercussions. Certainly there was nothing to be gained politically by the rugged stand he took at that time against the Sedition Case. Later developments confirmed the clearness of his vision. He was seeing what could happen if pro-Communist groups, clothed with the authority of the United States government, were able to set such a precedent. Every opponent of New Dealism would have been terrorized into silence. Because of its historical significance, the Senator's complete interview is reproduced here from the columns of the Times-Herald.

A witch hunt . . . A smear campaign . . .

Senator Robert A. Taft speaking—the man who might be called the “leader of the loyal opposition.”

He was talking with grave concern in his rooms in the Senate Office Building, and said:

“I am deeply alarmed by the growing tendency to smear loyal citizens who are critical of the National Administration and of the conduct of the war.”

Senator Taft was weighing his words carefully. He said:

“Something very close to fanaticism exists in certain circles here. I cannot understand it—cannot grasp it. But I am sure of this:

“Freedom of speech itself is at stake, unless the general methods pursued by the Department of Justice are changed.”

He cited three instances of the trend that causes his alarm. One is an indictment returned recently by a Federal grand jury in the District of Columbia, another is the Chicago Tribune case,

and the third lies in speeches of Archibald MacLeish when he was director of the Office of Facts and Figures.

He posed a question to show what he meant:

"What would you say if, out of a clear sky, someone asked you if the Sons of the American Revolution were disloyal? If the descendants of the Sons of the American Revolution were disloyal? If the descendants of the signers of the Declaration of Independence, the General Society of Mayflower Descendants, and the Ladies of the Grand Army of the Republic had permitted themselves to be used to corrupt the American Army?"

"What would you think if someone said that former Presidents Calvin Coolidge and Woodrow Wilson had been members of an unpatriotic organization?"

"What would you say? Absurd, ridiculous, impossible, of course."

Taft nodded, and said:

"Absurd, yes. Yet that is precisely the charge which the Department of Justice has brought against those societies, by indirection and inference, in an indictment on file in the District of Columbia."

He turned to the indictment. It was released for publication by Attorney General Francis Biddle on July 23, and charged 28 persons with:

Interference with and impairment of the loyalty, morale, and discipline of the military and naval forces of the United States in time of peace—before Pearl Harbor.

Causing insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces since the war began.

Senator Taft said:

"Among the 28 individuals who are named as defendants in the indictment are a number of men of known German connections, and there are also some others among those 28 who are no doubt un-American. To that extent the indictment commands the whole-hearted approval of every American."

Among those 28 defendants, he pointed out, were Herman Max Schwinn, West Coast gauleiter of the German-American Bund, and William Dudley Pelley, Silver Shirt leader, appealing from a 15-year prison term for sedition.

The Senator continued:

"But there is more in this indictment. There are things which remind me of the 'witch hunting' of the first war, except

that this witch hunt is more dangerous, more calculated and vicious than that of '17."

He explained:

"Twenty-seven organizations are mentioned in the indictment. They are not indicted. No charge is brought against them.

"The indictment says that they were 'used' by the defendants to further their conspiracy. And among these 27 organizations are many committees and societies of known loyalty."

He quoted the language of the indictment:

"And it was further a part of the aforesaid conspiracy that the said defendants, and divers other persons to the grand jurors unknown, would organize and cause to be organized, support, use, control, contribute to financially, and otherwise aid, at divers places within and without the United States of America, committees, groups and organizations, under the following names, among others."

Senator Taft, son of one-time President William Howard Taft of the United States, said:

"The indictment was adroitly drawn. It lists, among those 'controlled' and 'used' organizations such notoriously unpatriotic groups as the German-American Bund and the Silver Shirts.

"And then—linked to that company, it names such groups as the Coalition of Patriotic Societies and the America First Committee. It does not say how they were used."

The America-First Committee we know. But the Coalition of Patriotic Societies may need some amplification.

Among member societies of the coalition are the Sons of the American Revolution and the Veterans of Foreign Wars, whose men have fought throughout the world to keep America free!

Other groups holding membership in the coalition are:

The National Constitution Day Committee.

Descendants of the Signers of the Declaration of Independence.

General Society of the War of 1812.

General Society of Mayflower Descendants.

ROTC Association of the United States.

Society of the Daughters of the U.S. Army.

U.S. Naval Reserve Officers' Association. (Largely inac-

tive now, since its members are at sea with their country's fleet.)

Daughters of the Revolution.

Ladies of the Grand Army of the Republic.

Such a list, Senator Taft said, scarcely needs comment. But the membership of those societies are interested. Take the Sons of the American Revolution, for instance. Among its members, living and dead, are:

Calvin Coolidge, Woodrow Wilson, Warren Harding, Gen. John J. Pershing, Theodore Roosevelt, Charles Evans Hughes, Governor Whitman of New York, Gen. Charles G. Dawes and Rufus Dawes.

Senator Taft said:

"Anyone who knows the facts knows that those societies were neither controlled nor used to the detriment of their country."

He cited more names—leaders of the America First Committee: Gen. Robert E. Wood, member of the Advisory Board of the Chicago Ordnance District; Gen. Thomas S. Hammond, who left his post as president of the Whiting Corporation to serve with the ordnance district, where on August 14 he was confirmed as deputy chief; R. Douglas Stuart, Jr., now a lieutenant in the armed forces, and Col. Hanford MacNider, whose promotion to the rank of brigadier general was announced August 10.

MacNider is now directing shipping for General MacArthur in Australia.

Senator Taft said:

"The Army does not seem to think these men are allowing themselves to be used nor that their presence is disruptive to the loyalty of the forces."

And he continued:

"If these committees and societies did violate the law, if they were unpatriotic, even unwittingly, the Department of Justice should have indicted them directly.

"Obviously, the Department of Justice knew it could not obtain findings against them directly, and so it dragged them in this manner, in order to carry out what seems to be a policy of smear.

"Handled in this way, these committees and societies have no means of defending themselves. They cannot come into court and, in answer to a charge, clear themselves.

"Every man or organization whose name is mentioned in connection with aiding the enemy or corrupting the Military and Naval forces is condemned without a hearing by many millions of his fellow citizens, no matter how innocent he may be."

Some of these attacks, he said, might have been completely outrageous, but:

"If that principle is carried to its logical conclusion, no one could utter a word of criticism without being subject to possible indictment, on the ground that he was shaking the confidence of a soldier in his civilian government.

"They could indict nearly all the Senators on that ground.

"The department could draw an indictment against a considerable proportion of Congressmen and of the nation's editors on approximately the grounds stated in this part of the indictment."

He paused to consider the fantastic proportions of such a principle, and continued:

"I doubt if this principle were carried to its extreme, whether during an election campaign an editor could oppose an incumbent official who was seeking re-election, without laying himself open to the charge of corrupting soldiers' morale by criticizing a civilian official."

As might be expected, Senator Taft was viciously attacked through press and radio by left wing character assassins who were ready and waiting to take on all comers. Courageous voices began also to be heard in the other branch of the Congress, notably that of Representative Clare Hoffman of Michigan.

CHAPTER THREE

THE CASE CONDEMNED (Continued)

ON DECEMBER 8, 1942, Mr. Hoffman addressed the House of Representatives for approximately two hours, tracing the Sedition Case from the beginning, explaining entrapment schemes used against the defendants, showing how attempts were being made to silence patriotic members of the Congress and finally advocating a Congressional investigation of the whole ugly proceeding. Excerpts from his address are reproduced below:

Let me address these questions to each Member of Congress: After some of your colleagues were called before the grand jury sitting here in Washington during this year, did you feel as free to express the right of free speech as you did before they were called before the jury?

After you read in the Washington Post of Eugene Meyer, whose face, it was reported, was slapped by Jesse Jones, the false, vilifying charges against Congressmen, written by Dillard

Stokes, alias Jefferson Breem, alias Quigley Adams, did you feel as free to express your opinions as you did before those charges were made?

The proceedings before a grand jury are presumed to be secret and the testimony given before a grand jury should not be disclosed to the public. In charging grand jurors, it has been customary to instruct them that their proceedings were secret and so they have come to be regarded.

Notwithstanding such facts, anyone reading the Washington Post's accounts of the deliberations of the grand jury, which was in session here in Washington last spring, summer, and fall investigating purported seditious activities, will note—in fact, will be forcibly struck by—the fact that those articles were so written as to convey the impression that the writer had access to the secret deliberations of the grand jury; that he had been advised of the testimony or of the nature of the testimony which had been given by various witnesses; that he had been told of the purpose of calling certain witnesses and that, after such witnesses had been called, he had in some way learned the purport of their testimony . . .

Now, will someone familiar with the grand jury proceedings, or will Mr. Maloney come and tell this House or a committee of this House, or will the Washington Post come and tell how the reporter or the columnist could quote testimony of a witness before the grand jury?

And I know that a similar thing happened when I was called down before the grand jury, as was my secretary. We were asked certain things; and, lo and behold, that information appeared in the Detroit papers the very next morning. Now, where did it come from? Surely it did not come from our office; it came from just one place, from somebody before the grand jury or someone who had access to grand jury records. Is that what we want? For them to publish those stories as they did, those insinuations that you all remember? Now, this is not my case; I got along with them all right. In the home district the more they smear the more our people dislike them; and that is not my purpose, to destroy their effect up in the Fourth Congressional District; my purpose is to get this House to protect the Congress of the United States and future Congresses of the United States and to expose these men, not only show who they are, where they get the money, but what they are up to, what they are trying to do . . .

The Washington Post stories relating to the activities of

the grand jury and of witnesses who appeared before it and its method of associating the names of individuals who were called solely as witnesses and of others who were afterward indicted, were such as tended to improperly influence the deliberations and the actions of the grand jury.

The news stories of Dillard Stokes, alias Jefferson Breem, alias Quigley Adams, the Washington Post reporter frequently seen in conversation with William P. Maloney, attorney for the grand jury, as published in the Washington Post, created in the public mind the impression that certain named individuals were being considered for indictment. Some readers of such news reports believed they had been indicted.

Such stories violate the secrecy which should surround the deliberations of a grand jury and tended not only to influence the actions of the jury but to intimidate, to influence the testimony of, witnesses who had been, or who might be, called before the grand jury.

Maloney's lack of professional ethics is demonstrated by the opinions written by the Federal court in at least three cases. He was an assistant United States attorney in each of these cases. In one it was said a witness testified that—

"His former testimony had been given under an arrangement made with him by a Post Office Inspector and two assistant district attorneys, that, if he testified falsely in support of the Government's case, he would be given executive clemency. . . . As matters turned out, it became plain enough that the witness had told the assistant district attorney and others before he was called to the stand that he had testified falsely before and would not do so again."

The Court then sanctioned the impeachment of the witness on the ground that the prosecutor was surprised by his statement in court that the testimony he had previously given was false, saying:

"And so we think the Court was well justified in accepting the assurance of surprise and permitting the examination to run its course until the accusation of subordination of perjury was made. (*United States v. Graham* (102 Fed., 2d., 436, 441, 442).)"

Judge Manton sat at the argument, but resigned before the opinion was written.

Another case, if you are interested, is that of *United States v. Dubren* (93 Fed. 2d, 499).

Maloney's reprehensible conduct as an attorney has been referred to by other judges, and, on some other occasion, the attention of the House will be called to the statements of the courts, and the Department of Justice will also be advised of the character and of the conduct of the man, Maloney, who is acting as a prosecuting officer, but who, by his acts, shows that he is a persecutor.

Did not that smear campaign against Members of Congress, carried on by a section of the press, by Walter Winchell, and by William P. Maloney, using a grand jury, cause you to hesitate to use your constitutional right of free speech?

Were you not fearful that, if you adequately criticized some of the unsound policies of the New Dealers, you might be called before the grand jury, and, by William P. Maloney and newspaper articles written, charged by innuendo that you were unpatriotic or were hindering or had hindered the war effort?

Is it not true that Walter Winchell, the gossipmonger, Peeping Tom, the digger into garbage cans, and the purveyor of rot; William P. Maloney, pettifogging special attorney for a grand jury; and Dillard Stokes, alias Jefferson Breem, alias Quigley Adams, he of the perverted mind, acting together, sought to create, and did create, the false impression that Members of Congress were disloyal and unpatriotic and, by so doing, frightened some Members of Congress into silence; caused the constituents of some Members to remain silent when acts of their Representatives were called in question?

Did not those three and others hereinafter named conspire together and are they not guilty of a violation of section 54 of title 18 of the United States Code?

Section 54 of title 18 of the United States Code provides, among other things, that—

"If two or more persons in any State, Territory, or district conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States . . . or to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both . . ."

Other individuals, committees, and organizations, all apparently acting together and as part of a conspiracy, created and disseminated false charges of disloyalty against many of those who opposed either the New Deal, the overthrow of our Government by force or the distribution of public funds waste-

fully, extravagantly, or for the advancement of the political schemes of some affiliated with the Communistic Party and interested in the overthrow of our Government either by force or by boring from within; and made and disseminated false charges which tended to, and which did, intimidate citizens in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States.

Among those making, printing, and disseminating, or causing to be printed and circulated such false charges, and apparently acting and conspiring together for the promulgation of the same ideas, to the same end and for a common purpose, were Dillard Stokes, alias Jefferson Broom, alias Quigley Adams, reporter for the Washington Post. The Washington Post; the Daily Worker, and the New Masses, the last two Communistic publications; the New Republic; the newspaper PM, and the Chicago Sun, both wet-nursed, financially supported by Marshall Field III, who also backs financially the Chicago Sun; Friends of Democracy; Council for Democracy; Union for Democratic Action; Frank Kingdon; L. M. Birkhead, a notorious creator and disseminator of falsehood; Walter Winchell, the collector and distributor of alley, back-door, and bed-chamber gossip; the well-known Earl Browder, recently confined as a Federal prisoner under the convict number 60140-A, on a four-year sentence at the Federal penitentiary at Atlanta, Georgia, formerly confined as a Federal prisoner at Leavenworth, Kansas, under the convict number 14314-L; more recently released from Federal prison on the order of President Roosevelt, and who shortly after his release went to Illinois to campaign for the New Deal; Eugene Meyer, publisher of the Washington Post, which arrogantly and egotistically, almost daily, attempts to tell the Congress what course it should follow on practically all matters coming before it . . .

In furtherance of the scheme, to smear and purge those accused of a conspiracy and living in various States of the Union and witnesses living as far west as the Pacific coast were called to Washington, when indictments might have been returned, if an offence had been committed, in the State or States where those accused of conspiracy lived and where the overt acts were committed, if such acts were committed, and where the defendants were known to the members of the community; where they might have received a fair and impartial trial; where friends might have contributed financially toward their defense; where there would be no prejudice or bias against them.

A Federal court declared in substance that where it appears that a criminal act was committed "in consequence of a decoy to ensnare" a defendant, "if he were otherwise innocent, into the commission of a crime," the prosecution should be ended, "as it is against public policy to convict one upon proof obtained in that manner."

Dillard Stokes, alias Jefferson Breem, alias Quigley Adams, according to his own story published in the Washington Post, using an assumed name, wrote to six of the persons who were subsequently indicted, and requested copies of the literature which that person was sending through the mail.

Now, if it be admitted that the literature was seditious, that it was an offence to send it through the mail, why did Stokes write and ask that such literature be mailed to him here in Washington, if his purpose was not to induce the commission of a crime within the territorial limits of the District?

The persons to whom Stokes, alias Breem, alias Adams, wrote, asking for what he terms "seditious literature," according to Stokes' newspaper story, made no secret of its distribution; and, according to Stokes, alias Breem, alias Adams, made no effort to conceal its circulation.

The services of a Sherlock Holmes were not, if we can believe the press, required to uncover the actions of the individual or individuals to whom Stokes, alias Breem, alias Adams, wrote, requesting that copies be sent to him.

Is it not apparent that Stokes, alias Breem, alias Adams, induced at least some of the persons afterward indicted by the grand jury to do the very things which it was subsequently claimed were a violation of the law? Is it not evident that he wished those acts to be committed within the District of Columbia, so that those accused of an offense might be taken far from their homes, kept among strangers, and additional burdens imposed upon them? . . .

It is imperative that this Congress call before a committee those who originated these charges; those who gave them circulation; hold public hearings and disclose to the people, through the press, the lack of foundation for such false and malicious charges.

If this Congress is to retain its self-respect, its usefulness to the people, its place as a branch of the Government, it must meet this false propaganda and demonstrate its falsity.

Another voice in the House of Representatives heard above the noise of propaganda and the hysteria of war, was that of John T. Rankin who inserted the entire indictment in the Congressional Record and came straight to the point with these remarks:

"Mr. Speaker, I hesitate to use the word Jew in any speech in this House for whenever I do a little group of Communistic Jews howl to high heaven. They seem to think it is all right for them to abuse gentiles and to stir up race trouble but when you refer to one of them they cry 'anti-Semitism,' or accuse you of being pro-Nazi.

"Read this indictment and then read it again and ask yourself if the white gentiles of this country have no rights left that the Department of Justice is bound to respect."

CHAPTER FOUR

THE FIRST PROSECUTOR REMOVED

FEW PUBLIC LEADERS had the courage of Taft and Hoffman to speak out, knowing that the smear brigade was waiting like a pack of wolves to pounce upon them. It is a sorry picture to look back upon, seeing men crucified by scientific smearing for demanding fair play and judicial integrity.

A federal grand jury, treating the helpless victims like a cat over a mouse, indicted them again, January 4, 1943, adding six names to the list: the New York Evening Enquirer; Mrs. Leslie Fry, Los Angeles; George Deatherage, St. Albans, West Virginia; Franz K. Ferenz, Los Angeles; Frank W. Clark, Tacoma, Washington; and Lois de Lafayette Washburn, Chicago.

As in the case of the original defendants, character assassins now pounced on the new victims, taking care to mention them in the same paragraph and sentence with persons convicted of some other offense. The total number of seditionists now stood at thirty-four. The first indictment was ignored thereafter, but not actually dismissed.

In the second indictment the grand jury charged the defendants with conspiracy to undermine national morale. The prosecution indicated that it would attempt to convict the defendants for acts allegedly committed as early as 1933, under a law which was not enacted until 1940. The first count accused them of conspiring together "on or about the first day of January, 1933, and continuously thereafter up to and including the date of the filing of this indictment."

On March 5, 1943, the defendants got a fair break. Judge Jesse C. Adkins dismissed this count in the indictment because it was attempting to try American citizens for acts committed before any law existed to make the acts a crime, if indeed the prosecution, even under those circumstances, would be able to make a case. The venerable E. Hilton Jackson, small of stature with a shock of white hair, quick of mind and wit, eloquent and forceful in speech, sure of himself despite his advanced age well into the seventies, made the speech and submitted the brief that won the decision. He was Dr. Winrod's senior counsel.

Judge Adkins said: "Congress did not attempt to make prior acts criminal and we agree that Congress should not have attempted to do so."

This left William Power Maloney, who up until that time had prosecuted the case, less than half an indictment. There were now two failures to his credit. Maloney has been described as "a nervous, brazen little egotist, devoid of principle and without ethics or customary standards of decency in a court room."

Meanwhile, he was being haunted by a record destined to engulf himself in a storm from which there could be no recovery. He had some months earlier

prosecuted George Sylvester Viereck, a paid peace time writer for the German government, for failing to properly register under the Foreign Agents Registration Act. Viereck had registered under the old act but not the new. His conviction was appealed to the Supreme Court and reversed because of Maloney's behavior during the trial. The high tribunal castigated the prosecutor, decreeing that "hard blows" could be struck but not "foul ones." No greater disgrace could come to a member of the legal profession. The Department of Justice chose another prosecutor, tried Viereck again, and won another conviction.

Maloney's actions became such a stench in other ways, that the Department realized that his "usefulness" was at an end. The background and chain of events which led up to his dismissal were summarized some time later in the following Chicago Tribune editorial.

"The wild-eyed amateurs on Meyer's newspaper (Washington Post) payroll had a great deal of fun playing detective for the Justice Department. Their efforts resulted in two indictments against the alleged seditionists while Meyer poured columns of vilification on the heads of everyone who had the courage to support America's national rights.

"Working closely with Meyer's amateur sleuths was the Justice Department's Assistant Attorney General, William Power Maloney. He obtained the first of the Meyer-inspired sedition indictments in July, 1942, but the defendants are yet to be brought to trial. The reason for this is that the indictments were so shot full of holes by the courts that the Justice Department did not dare to bring them to trial.

"Senators Wheeler and Taft assailed the smear tactics in the sedition indictments and both Meyer and Maloney were brought under fire. They weathered the storm until the Roosevelt administration lost control of Congress, following the 1942 election, and Senator Wheeler was appointed to the Senate Judiciary Committee, which has power to investigate the Department of Justice.

"Attorney General Biddle, who had been willing to let Meyer's amateur sleuths take over federal prosecutions as long as the New Deal Congressional majority protected him, became alarmed. He could not afford to have Senator Wheeler, who had received a liberal dose of the Meyer smear, investigate those Meyer sedition indictments. He knew the time had come to retreat to a prepared position. He sought an interview with Senator Wheeler and asked him what he intended to do. It is said that Senator Wheeler smiled knowingly from the corner of his mouth not occupied with his cigar and let Biddle stew.

"Within 48 hours of the Wheeler interview, Biddle fired Maloney as prosecutor in the sedition cases, for appearances sake, kicking him upstairs to the position of chief of the criminal trial section. Meyer was anguished to the extent of many columns at losing his partner in the smear, and uncorked many vials of wrath on the Attorney General for his act.

"The Supreme Court took care of prosecutor Maloney a little more thoroughly, however, when it reversed a conviction of Viereck, the German agent, because Maloney's conduct in prosecuting that case 'prejudiced petitioner's right to a fair trial' . . .

"Thus the Meyer sedition indictment fell through,

the prosecutor who affiliated himself with Meyer's G-men having been discredited and removed. The indictments themselves were allowed to gather dust for a year and a half in the hope that the people of America would forget the disgrace they had brought upon the Department of Justice. To save face Attorney General Biddle retained O. John Rogge as an assistant and commissioned him to go after the sedition cases and infuse them with some order of respectability."

Before dismissing Maloney from the pages of this book, a brawl in which he participated on the streets of Washington will be reviewed, lending a touch of humor to his exit. He received a telephone call from his wife at a downtown department store one afternoon soon after Biddle had "kicked him upstairs" in the Department of Justice. Grabbing his hat, he dashed out of his office in a characteristic outburst of temper to search for a Chinaman who apparently was trying to buy a piece of jewelry which Mrs. Maloney also wished to purchase. Representative Hoffman rose on the floor of the House, read an article regarding the incident from the front-page of the Washington Star and concluded by giving the following interpretation:

"William Power Maloney, special assistant to the Attorney General, was found guilty of being disorderly and fighting in the street, and fined ten dollars today by Municipal Judge John McMahon. The case grew out of a fight originating in a local department store between Dr. Stephen Pan, director of the Institute of Chinese-American Cultural Relations, who was found not guilty.

"Briefly, it is this: Someone was down there at

Garfinkle's trying to buy something and Maloney was called down. When he got down there, there was Dr. Pan. Now do not forget. Dr. Pan is a Chinaman, a reputable gentleman, and with him were two other Chinamen who do not speak English. Dr. Pan is a citizen of a nation that is our ally. He is a citizen of China.

"Another thing, Dr. Pan, according to the press, weighed 120 pounds. Maloney weighs 145 pounds. He not only took a crack at the Chinaman in the store—I suppose he was trying to improve diplomatic relations—but he followed him out on the street and up to the corner, and with an advantage of 25 pounds, this fighting man Maloney, who is fighting the so-called seditionists and has been for two years and who finally had to be moved upstairs to get him out of the proceedings because his conduct was so disgraceful—perhaps when he followed Dr. Pan up the street he was engaged in practicing the good-neighbor policy, because when he got up to the corner he cracked Dr. Pan again and knocked him over a trash can.

"Slugger Maloney was on his own ground in his home town. Dr. Pan was thousands of miles from his native land. Perhaps the Society for Universal Peace, the organization which preaches tolerance and patience, can use Mr. Maloney as an evangelist.

"William Power Maloney in this street brawl demonstrated what so many of the witnesses who were haled by him before the grand jury ever since have known—that is, that he was an offensive, cowardly bully, ever ready to take advantage of his superior

physical power, of his official position as a representative of the Department of Justice."

Thus the Michigan Representative evened the score with a man who had done everything possible to harm him back in 1942. Maloney had forced both Mr. Hoffman and his secretary to make repeated appearances before the District of Columbia grand jury that returned the original indictment. He delegated members of his staff to sit in the galleries of the House of Representatives when Mr. Hoffman, Representative Hamilton Fish and others were scheduled to speak, thinking to thereby intimidate leaders opposed to the New Deal. Be it stated for the record, that neither Mr. Hoffman nor other members of the Congress, who were those days fighting to uphold the American system, ever gave a single inch of ground. They faced the Maloney Gestapo courageously and permitted him to devour himself with his own wickedness. As he retreated, Franklin Roosevelt wrote Maloney a letter of praise for the "fine service" he had rendered.

To bring the record up to date, let it be explained that during the middle of 1952 Maloney again figured in the headlines, this time as counsel for the notorious Henry ("Dutchman") Gruenwald who, on advice of counsel, refused to answer questions put to him by a committee of Congressmen investigating tax scandals. As usual Maloney made a scene, jumped up and down, shouted and otherwise performed like a lunatic, but only succeeded in getting his client indicted on a contempt charge.

CHAPTER FIVE

A NEW PROSECUTOR

PROPAGANDA WAS PREPARED with great care in an effort to lift the accumulated odium from the case when Oetje John Rogge became the prosecutor. A studied effort was made to make things appear decent. Scripts used by Winchell and Pearson were edited with this objective in view. The same was true as to press releases and interviews from the Department of Justice. The real masters, maneuvering things behind the scenes, were kept concealed. Rogge was no less a left-wing fanatic in sentiments than Maloney, but the public was not acquainted with this fact at the time of his appointment by Biddle. He was a protege of Felix Frankfurter, a fact which speaks volumes to those who understand the occult motivation of the New Deal.

Rogge's red record is now well known. His basic attachment was noted immediately after the case ended when he launched upon a nation-wide lecture tour under the auspices of B'nai B'rith. June 1947 found him in federal court at Washington serving as defense counsel for the sixteen executive board members of the Joint Anti-Refugee Committee charged with con-

tempt of Congress. All were found guilty of refusing to produce organization records subpoenaed by the House Committee on Un-American Activities. During the two-week trial a State Department witness testified that reports from the FBI, Army, Navy and his own department indicated that the organization was "honeycombed with communists."

Speaking before a Los Angeles mass meeting sponsored by the CIO and AFL labor unions, on November 10, 1947, Rogge blistered the system of loyalty checks on government employees. He also demanded that the Committee on Un-American Activities be abolished.

The public next caught up with him on December 27, 1947, this time again in federal court at Washington, defending Harold R. Christoffel, the well-known Communist leader of Milwaukee, Wisconsin. Christoffel was an official of the C.I.O. United Auto Workers and directed costly strikes, especially at the Allis-Chalmers plant. He came into conflict with the law on the charge of perjury for denying membership in the Communist party and was convicted.

Moscow press dispatches of March 8, 1950, referred to Rogge as Stalin's guest in the Kremlin where he delivered a speech considered helpful to the Communist program of world revolution. The United Press carried the following story under a Moscow dateline:

"Former Assistant U.S. Attorney General O. John Rogge, who is a delegate on a 'World Committee of Peace Partisans' pleaded in a speech in the Kremlin today that Russians and Americans get to-

gether and work out a common problem for the benefit of all mankind . . . Rogge explained the reason for American-Soviet differences was 'the mountains of fear we've allowed to rise between us.' Capitalism and Communism can live side by side in peace, he said, and he quoted Premier Joseph Stalin and Andrei Vishinsky to that effect."

He decorated John Reed's tomb with a wreath the next day. Reed was one of the founders of the Communist party in the United States. His remains were taken to Moscow and buried on Red Square in a niche inside the Kremlin wall. Rogge's wreath bore the inscription, "In loving memory from grateful Americans."

Rogge has more recently served as counsel for the attorneys charged with contempt in Judge Medina's New York court where a group of top level Communists stood trial. He also represented the atomic spy, David Greenglass, in court. He was a member of Henry Wallace's platform committee at Philadelphia and managed his campaign for president in New York state. And this barely scratches the surface of his crimson biography. This is the man reportedly chosen by Frankfurter, approved by the White House and appointed by Biddle to prosecute the Sedition Case.

Maloney had left things in a sorry mess but his successor proved himself to be quite resourceful. Rogge was over a year drawing up a third indictment and getting it approved by a grand jury. It was finally unveiled on January 3, 1944, the two former ones being allowed to hang over the heads of the sufferers despite the fact that defense attorneys had succeeded in pulling their fangs.

Thirty persons were mentioned in the third indictment, twelve former names were dropped and eight new faces added. The fortunate twelve were William Griffin, Mrs. L. Fry, James E. Garner, Hudson de Priest, William Kullgren, C. Leon de Aryan, Court Asher, Oscar Brumback, Ralph Townsend, Donald McDonald, Otto Brennerman and the New York Evening Enquirer.

The thirty listed in Rogge's indictment, destined to stand trial, including the eight new names, were: Joseph E. McWilliams, George E. Deatherage, William Dudley Pelley, James True, Edward James Smythe, Lawrence Dennis, H. Victor Broenstrup, Robert E. Edmondson, E. J. Parker Sage, William Robert Lyman, Jr., Garland A. Alderman, Gerald B. Winrod, Elmer J. Garner, Elizabeth Dilling, Charles B. Hudson, George Sylvester Viereck, Prescott Freese Dennett, Gerhard Wilhelm Kunze, August Klapprott, Herman Max Schwinn, Hans Diebel, Franz K. Ferenz, Ernest Frederik Elmhurst, Robert Noble, Ellis O. Jones, Eugene Nelson Sanctuary, David J. Baxter, Lois de Layfayette Washburn, Frank W. Clark and Peter Stahrenberg.

Rogge introduced a novel element into the prosecution by accusing these people of participating in a Nazi plot to replace the government of the United States with a national socialist state. This was a new idea and the fires of hate had to be vigorously fanned to inflame the public mind. Once more the engines of propaganda were started operating.

This indictment charged that the "conspiracy" in which the defendants allegedly entered had been

Nazi-inspired and was part of a big plot to undermine the morale of our armed forces. Rogge went so far during trial as to charge that Hitler had picked these defendants to head a government in the United States once Germany won the war. Hitler was named in a bill of particulars, which was nothing more than a history of the Nazi party, as a "co-conspirator" with the defendants. The bill of particulars did not state when, where or how the defendants entered this conspiracy and the Judge ruled that the Justice Department did not have to supply this information.

The case went to trial on April 17, 1944, before Judge Edward C. Eicher, a former New Deal Congressman from Iowa, who spent some time as Chairman of the Securities and Exchange Commission after being defeated for re-election and before his appointment by Roosevelt to the bench. Rogge was Eicher's legal counsel in the S.E.C., and out of this association the two became the warmest of friends.

Throughout these months and years, the Wichita Beacon, published by the Levand family, whose members were local B'nai B'rith leaders, kept up a running fire of falsehood and vilification against Dr. Winrod. They tried in every conceivable way to keep him convicted in the thinking of the community where he was born and resided. They boasted of having a pipeline from their Wichita newspaper into the Department of Justice at Washington.

Their pro-Communist sympathies and friendly attitude toward Stalin personally is indicated by the following sample of their editorial writing which appeared in the Beacon of March 24, 1946: "War propa-

gandists had been having their inning, in which they cast suspicion upon Premier Stalin and his motives. His declaration of his peaceful intentions deals troublemakers a solar plexus blow. Winston Churchill, certain diplomats, numerous radio commentators and everybody else who was inciting to war, were left nothing on which to base their alarming and harmful utterances. The Beacon always has had confidence in the leader of the Russians."

The Beacon demanded the arrest of Dr. Winrod's secretary, Mrs. M. L. Flowers, and Maloney complied. That was in 1942 and the charge was perjury. It was a flimsy case, false by nature and brought for the sole purpose of rendering Dr. Winrod's position more difficult. When Rogge took over, he ordered both Mrs. Winrod and Mrs. Flowers to Washington for grilling before his grand jury. He kept Maloney's indictment hanging over the secretary but made no effort to prosecute. The Levands gave out the impression in their smear articles that Mrs. Winrod would also be indicted but this was not done.

Mrs. Flowers, a true Bible believing Christian, was arraigned in the district court of Washington, finger printed like a common criminal, bonded and entered a plea of not guilty. Attorneys had to be engaged for her defense at large expense. The charge was held against her for three years with no effort being made by either Malony, Rogge or Biddle to bring the case to trial.

No wonder the Chicago Tribune stated as late as October 12, 1952, that: "Judges and lawyers alike will tell you the mass sedition trial of World War II

will go down in legal history as one of the blackest marks on the record of American jurisprudence. In the legal world, none can recall a case where so many Americans were brought to trial for political persecution and were so arrogantly denied the rights granted an American citizen under the Constitution."

Finally Dr. Winrod was able to publish the following article in the January 1946 edition of his magazine, *The Defender*:

"Mrs. Myrtle Flowers, of the *Defender* office at Wichita, was indicted by a federal grand jury in Washington, D. C., in 1942—at the behest of William Power Maloney, special prosecutor for the Department of Justice. The charges were denounced at the time as 'false and utterly preposterous.' The terroristic methods used by Maloney in the grand jury room have been condemned by attorneys throughout the nation who wish to see the integrity of the courts preserved. His behavior is regarded as a travesty upon the American judicial system.

"No effort was ever made to bring Mrs. Flowers to trial. The charges were permitted to hang over her head for three years and then, on November 28, 1945, finally nolle prossed. She was accused of perjury but dismissal of the case without trial shows that she was not the perjurer.

"Mr. and Mrs. Flowers and their 20-year-old daughter have suffered unjustly. They have sustained financial loss. The case will go down in American history as one of the rankest injustices ever perpetrated against honest, law-abiding patriotic citizens. But such is New Dealism!

"On March 1, 1943, William Power Maloney was castigated by the United States Supreme Court in the case of *Viereck vs. the United States*. In reversing a decision by the lower courts because of the illegal methods used by this prosecutor in obtaining a conviction, the high tribunal administered a scathing denunciation of the entire proceeding.

"Mr. Chief Justice Stone wrote the opinion and, referring directly to Maloney, said: 'A prosecutor may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones'."

CHAPTER SIX

READY FOR TRIAL

IN DRAWING UP THE THIRD INDICTMENT, dated January 3, 1944, Rogge naturally tried to make things look as bad as possible for the defendants. That was his job. The hidden masters in the background who pulled the puppet strings expected this of him. It was stated by counsel Albert W. Dilling in open court and not denied, that Rogge had earlier called at the headquarters of the Committee on Un-American Activities and admitted he had nothing on which he could hope to secure a conviction. He begged for help and was sent away with a bundle of pamphlets, none of which were of any value in establishing the guilt of the accused.

At no time during the approximately eight months that the trial continued, did he submit a single piece of incriminating evidence. Nothing was introduced to establish violation of the statute under which conviction was sought. In the absence of proof to support the charge, methods of harassment and extended delays had to be improvised, always hoping for some kind of a break.

The matter of dragging the defendants from all over the United States to Washington was contrary to normal court procedures. Usually a person charged with either a criminal or civil offense stands trial in the courts of his home district.

Besides being forced to find their own lodgings in a city virtually without vacant living quarters, they also had to make arrangements for local lawyers to defend them. Since there was every indication that with so many defendants, the trial would be long, the victims had to seek lawyers willing to give up almost all the rest of their law practice and to devote their entire time to this one case. Since this represented an almost insurmountable financial burden, practically all of the defendants had to take pauper's oaths and accept the defense of whatever local lawyers the court saw fit to appoint to represent them without fee.

The foregoing should not be taken as a reflection upon the attorneys who were appointed to serve. At first some of these men appeared to have suspicions as to the innocence of those whom they represented. But as the pre-trial hearings and later the trial got under way, they came to understand the outrage being perpetrated, and organized themselves into a body of fighting men, motivated by patriotic principles on a high level. It soon became evident to them that Rogge had no case. The nature and magnitude of the hoax enraged them.

Some of these attorneys became impoverished along with their clients. Months pyramided into years as the indictments were fought, pre-trial hearings held and the trial itself progressed. Day after day, week

after week, these men would trudge to the courtroom and fight as valiantly as if being paid large fees. When the farce ended, there was some talk about compensating them by an act of Congress but nothing so far has been done.

Some of the defendants, like Colonel E. N. Sanctuary, a deeply religious, dignified and scholarly retired army officer whose service to his country had been distinguished and flawless, fought being taken from his home in New York to Washington. This caused him to be seized, thrown into jail and treated like a confirmed criminal for about three weeks. From his description of what happened, it would seem that he must have fallen into the hands of some lineal descendant of a Federalist marshal.

In his plea of not guilty he refused to waive jurisdiction. His attorney insisted that the Colonel could not hope to get a fair trial at Washington under the circumstances, but offered to waive jurisdiction if the prosecutor would admit that the indictment was inspired by Felix Frankfurter. Needless to say, the challenge was not accepted. Colonel Sanctuary, often forced to sit in his cell under blazing and torturous lights, consoled himself by singing hymns and pressing a copy of the Scriptures close to his heart. He also wrote several inspiring religious poems during those long days and nights, some of which Dr. Winrod later published in *The Defender*.

The defendants were to be tried under a peacetime act commonly spoken of as the Sedition Act of June 28, 1940. This law, good in many respects if administered by honest men, was passed at the de-

mand of the Army and Navy whose representatives had been trying for years to get from Congress a tighter code by which to prevent Communists from inciting mutiny and insubordination in the armed forces. Hearings on the bill brought out the fact, for instance, that Communist molls were influencing men on ships to circulate red literature. It was paradoxical to see this measure used by men of evident pro-Communist sympathies to prosecute enemies of Communism. Rogge seemed to thoroughly enjoy the reversal, which caused Mrs. Dilling to remark one day with characteristic wit, "See him grin; he looks like the cat that swallowed the canary."

The law known as Section II, Title 18 of the United States Code reads in part as follows:

"It shall be unlawful for any person, with intent to interfere with, impair or influence the loyalty, morale or discipline of the military or naval forces of the United States . . .

"1. To advise, counsel, urge or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military and naval forces of the United States; or

"2. To distribute any written or printed matter which advises, counsels or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States."

The penalty is not more than ten years imprisonment or not more than a ten thousand dollar fine or both. Nothing is said about discussing racial matters in the text, which was, of course, the real reason for the arrest of the defendants. A man may be anti-

German, anti-Italian, anti-Jewish or anti-Irish and remain innocent as far as this law is concerned. As a matter of fact, some of the writings of certain members of the group could have been interpreted as being anti-German and anti-Italian because of their attacks against Nazism and Fascism. This was particularly true of Mrs. Dilling and Dr. Winrod. One plank in the latter's platform when he made the race for the United States Senate in Kansas in the year 1938 read as follows: "Opposition to all alien ideologies including Communism, Fascism and Nazism."

Rogge's indictment said: "In 1933 the National Socialist German Workers Party . . . came into power in Germany upon a program publicly announced by its leaders to destroy democracy throughout the world and to establish and aid in the establishment of National Socialist or Fascist forms of government in place of the forms of government then existing in the United States of America and other countries."

The word "democracy" becomes a misnomer when applied to our form of government because we are a republic, and there is a vast difference between the two systems. This was made clear in books and pamphlets by various defendants, notably a treatise on the subject by Colonel Sanctuary. Rogge tried to twist their insistence that republican principles be restored, into a reflection upon the patriotism of various victims. But regardless of the use or misuse of the word democracy, which means mob rule, it lacks application here. The indictment continued:

"As a means of accomplishing their objectives, the said Nazi Party and its leaders carried on a sys-

tematic campaign of propaganda designed and intended to impair and undermine the loyalty and morale of the military and naval forces of the United States of America and of other countries."

Rogge, the man who was later to be Stalin's guest in the Kremlin, must have written those words with tongue in cheek. It is a known and understood technique of Communists to accuse others of the things which they are themselves doing.

The indictment continued: "The persons hereinafter named as defendants joined in this movement and program and actively cooperated with each other and with leaders and members of the said Nazi Party to accomplish the objectives of the said Nazi Party in the United States."

The accused had been fighting Communism for years and the fact that the Nazis also fought Communism was interpreted by the prosecution to mean that the two were engaged in a conspiracy against democracy. Aside from members of the German-American Bund included in the list of indictées, who were already under prison sentence, no effort was ever made to show that any kind of an organic connection existed between the Nazi party in Germany and the defendants. For instance, the charge drummed into the ears of the American people by the Daily Worker and New Deal propagandists that these people were financed by "Hitler gold" was at no time remotely suggested in the actual case.

No objections were raised when Mrs. Dilling, Colonel Sanctuary, Dr. Winrod, Mr. Hudson and others discussed the German motivation of Nazism

or the Italian source of Fascism. But they were pounced upon for making equally factual statements regarding the Jewish motivation of Communism. As an illustration, a member of the group was damned for reprinting portions of the British White Paper, Russia, Number One, issued in 1919 by the British government which read as follows:

"I consider that the immediate suppression of Bolshevism is the greatest issue now before the world, not even excluding the war which is still raging, and unless, as above stated, Bolshevism is nipped in the bud immediately, it is bound to spread in one form or another over Europe and the whole world, as it is organized and worked by Jews who have no nationality, and whose one object is to destroy for their own ends the existing order of things. The only manner in which the danger could be averted would be collective action on the part of all Powers.

"I am also of opinion that no support whatsoever should be given to any other Socialistic party in Russia, least of all to social revolutionaries, whose policy it is at the moment to overthrow the Bolsheviks, but whose aims in reality are the same, viz., to establish proletariat rule throughout the world . . .

"I would beg that this report may be telegraphed as soon as possible in cypher in full to the British Foreign Office in view of its importance."

This document was written by the then Netherlands Minister, Oudendyke, in St. Petersburg as a warning to all governments against the danger of Bolshevism. It was read before the British Parliament by order of His Majesty the King in April, 1919.

Strangely enough, the Paper was later recalled from circulation and reissued with certain parts deleted.

Rogge obviously had a wide gap to bridge before being able to convince a jury that the printing and circulation of literature like the above would constitute a violation of the law.

The indictment then set forth a list of twenty-four statements allegedly quoted from the publications mentioned, but nowhere was it indicated from which publication a quotation was taken or who among the indicted persons authored it. The statements are quoted in full below:

a. Democracy is decadent; a national socialist or fascist form of government should be established in the United States.

b. A national socialist revolution is inevitable if we are to rid our country of its decadent democracy.

c. The Government of the United States, the Congress and public officials are controlled by Communists, International Jews, and plutocrats.

d. The Democratic and Republican parties and their candidates for public office are tools of International Jewry, and do not represent the will of the American people.

e. The acts, proclamations, and orders of the public officials of the United States and the laws of Congress are illegal, corrupt, traitorous and in direct violation of the Constitution of the United States.

f. The United States is governed, not by the duly elected representatives of the people, but by a group of alien-minded persons opposed to American prin-

ciples and ideals and seeking to overthrow the Constitution of the United States.

g. President Roosevelt is reprehensible, a war-monger, liar, unscrupulous, and a pawn of the Jews, Communists and Plutocrats.

h. President Roosevelt is a Jew and is working with International Jewry against the interests of the people of the United States.

i. The activities and territorial acquisitions and plans of the Axis Powers constitute no real danger to the national existence and security of the United States or any of its territorial possessions.

j. The Axis Powers are fighting to free the world from domination by Communism and International Jewry, and to save Christianity, hence the United States should give no aid and comfort to the enemies of the Axis.

k. The cause of the Axis Powers is the cause of justice and morality; they have committed no aggressive act against any nation and are fighting a solely defensive war against British Imperialism, American Capitalists, and the desire of American public officials to rule the world, hence any act of war against them is unjust and immoral on the part of the United States.

l. The nations opposed to the Axis, plan to use American lives, money and property to defend their decadent systems of government.

m. The participation of the United States in the war has been deliberately planned by our leaders with the ultimate aim of promoting our enslavement by British Imperialism and International Communism.

n. The public officials of the United States of America are trying deliberately to provoke war with peaceful nations, such as Germany, Italy and Japan, which are seeking only to live at peace with the rest of the world.

o. President Roosevelt and Congress, through a surreptitious and illegal war program against the Axis Powers, sold out the United States and forced the Axis Power to wage war upon us.

p. President Roosevelt by his war-mongering policies is draining dry the resources of the United States to save Communist China, Imperialist Britain and Atheistic Russia from inevitable defeat.

q. Our program of giving American arms and equipment to foreign nations results in United States military and naval forces being inadequately armed and equipped and in their being exposed to terrible slaughter.

r. The public officials of the United States are knaves who have deliberately concealed the truth that our unprepared boys, racked by disease and slaughtered like sheep, will be dumped in a million foreign graves to buy a valueless victory.

s. The whole war is the result of a Jew-sponsored, money-making scheme to bleed the United States Treasury.

t. As the result of incompetence and corruption in public office, the United States is unprepared to wage war against the Axis Powers, who have the best equipped and most powerful military establishment in the world.

u. The present war is a dishonest war waged at

the expense and measured in the blood and dollars of the people of the United States solely for the benefit of and to insure the continuance of world domination by "International Bankers," "International Capitalists," "Mongolian Jews," "Communists" and "International Jewry."

v. The Japanese attack upon Pearl Harbor was deliberately invited by the public officials of the United States, in order to involve the United States in a foreign war.

w. The war with Japan was deliberately provoked by the insane, unjust, aggressive and traitorous policies of officials of the United States.

x. An honorable and just peace could be brought about speedily were it not for the opposition of Communists, International Jewry, and war profiteers.

As previously mentioned, the indictment did not identify the source of a single one of these statements. No information was given as to the date or occasion. Being excerpts, each statement had to be lifted from its context. To make an honest appraisal of a quotation from a man's writings, one needs to know what was said both before and after. A text taken from the context may be warped into a pretext. Moreover, these statements were made in peace time, before the United States entered the war. Let it be remembered that as the case progressed, Judge Eicher admitted provisionally into the record, articles written by defendants as far back as the nineteen twenties, despite the fact that the law under which they were being tried was not enacted until 1940.

If some of the defendants said that America

should have a Nazi or Fascist form of government, then obviously they were disloyal. But the Supreme Court of the United States has gone far in applying the rights of free press and speech even under such circumstances. Moreover, the Communist party, its publications and fellow travelers had been for years advocating overthrow of the United States government by force and violence, but this seemed to have escaped Rogge's notice.

The charges embodied in the indictment were of such a nature that the courtroom was destined to become the scene of a historical debate rather than a center of justice. The pattern of the prosecution gradually emerged something like this: Our country is at war; Russia is our ally; the Russian government is Communist; these defendants fight Communism; they are therefore weakening the ties between the two countries; this is interfering with the war effort; this in turn is injuring the morale of the armed forces; the indictees should therefore be sent to prison.

CHAPTER SEVEN

THE TRIAL BEGINS

DREW PEARSON wrote in one of his columns during this period: "After three months of temporizing with native Fascist champions, Attorney General Francis Biddle is finally going to get tough on direct personal orders of the President." This prediction came to fruition on April 17, 1944, when the trial began.

The setting was something to be remembered. Every conceivable device was used by experts to dramatize the event in the public mind. There were armed guards on all sides. Practically every large newspaper in the United States had a representative present. Photographers and radio script writers were on hand. The feature services were represented. Nothing was overlooked or left undone to give the impression that a group of desperate, dangerous people were being brought to trial. The courtroom was packed, with overflow crowds filling the vestibule and stairway reaching outside and down to the street.

A big black van pulled up to the ground floor rear entrance of the courthouse, carrying the seven defendants who had been convicted a few months ear-

lier. There was a clicking sound as the handcuffs and leg irons were removed. Flanked on all sides by officers bearing arms, these bewildered little men who did not have a dollar with which to defend themselves, were whisked upstairs and ordered to take seats held for them in Eicher's courtroom. This atmosphere was deliberately created, as a whirlpool into which it was hoped that the entire group of defendants could be drawn.

Something happened at the very start on the first day that illustrated the general atmosphere which existed. Dr. Winrod, obviously suffering from inward strain, reached in his coat pocket, took out a small zipper New Testament and, holding it on his lap in an inconspicuous manner, began to read and quietly meditate upon the chosen passage. Judge Eicher, seated high above the defendants, the attorneys and the spectators, was observed to be watching the Wichita minister. He beckoned for a marshal, there was a moment of whispered conversation, and both men glanced in Dr. Winrod's direction. The marshal turned, walked over to where the defendant was sitting, and in a stern voice ordered him to "put that book out of sight." The shocked minister zipped his Testament and returned it to his pocket.

The opening day of the Rogge hippodrome ended in an anti-climax because one of the defendants failed to show up. It was therefore impossible to proceed beyond the handling of certain preliminaries, after which court was adjourned for the day. A search had to be made for defendant Edward James Smythe who was located the next day in northern New York. He

said that he had decided to go fishing in the Adirondacks. He was brought to Washington in handcuffs and clapped into a cell. The antics of this man later convulsed the courtroom on a number of occasions and brought the farcical nature of the proceedings into focus.

One afternoon, months later, when the trial had drawn itself out to impossible lengths, this same Smythe put on a display that reduced the whole thing to the level of a vaudeville. It seemed that he had developed a deep dislike for defendant Broenstrupp. Eicher was, by that time, permitting some of the victims to be out of the courtroom certain hours, to do odd jobs, and thereby avoid starving. Smythe, having been released from jail on the promise that he would not again go fishing, was one of this favored few.

On this particular afternoon, he returned a short time before adjournment for the day with, from all appearances a few too many drinks under his belt, and took a seat where he could keep an eye on Broenstrupp. Presently, everybody in the courtroom heard Smythe's voice roar, "Take him out," an obvious reference to his old enemy. The Judge banged the gavel and Smythe looked pained.

When the hearings ended that afternoon, Eicher ordered everyone to remain. After a brief lecture on courtroom decorum, Smythe was asked if he knew any reason why he should not be sentenced for contempt. Rising to his feet with some effort, gripping the back of the seat as firmly as possible but weaving a bit at best, the naughty boy said, "Yez, yer honor, I know a reezon. It's cause you and me is such good friends."

Eicher sounded his gavel again, rose from the bench and hurried out of the room as a roar of laughter resounded through the place. This occurred after the trial had become several months old, a public scandal and a butt of ridicule.

It should be said in Mr. Smythe's favor, that nothing was presented to the jury, during the long arduous months of the trial, that reflected upon his patriotism. His writings, introduced into the record, showed that he understood the Communist menace and wished, out of a sincere heart, to see America saved from it. Around the courtroom he proved to be a likable person and his presence added a touch of drama and sometimes comedy which would have been otherwise lacking.

It took from April 17th to May 23rd to dispose of preliminary motions and complete the selection of a jury. Everything possible was done to lend drama to Rogge's opening statement before the jury. It is a violation of courtroom decorum for an attorney to engage in theatrics except when making a final plea at the end of a case, but in this instance the prosecutor exercised no such restraint. He started out shouting, swinging his arms and gesticulating.

"... The evidence will show," roared Rogge, "that the defendants joined this world-wide Nazi movement and that they wanted to substitute a Nazi or Fascist form of government in the United States for our present form of government. To bring about this Nazi revolution . . . they engaged in a systematic propaganda campaign inciting people to hatred of our present form of government and to hatred of certain

groups and classes, and they tried to interfere with the loyalty of members of our armed forces to our present form of government.

"The evidence will show that the impairment of the loyalty of our armed forces was a vital and integral part of the conspiracy in which the defendants and the Nazis were engaged in order to destroy democracy throughout the world, including the United States, and establish Nazism instead . . .

"The Nazi conspirators in Germany and the Nazi conspirators and defendants in this country appealed to and hoped to unite all the malcontents, all those who bore resentment for one reason or another, everyone who nursed a grudge. They wanted to unite this discontented mass under the single concept of 'Aryanism' and to teach it to hate certain alleged enemies designated by such conveniently broad and simple terms as 'democracy,' 'Jews,' 'plutocrats' or 'Communists'— which, as far as possible, were to be identified with one another in the public mind."

Rogge discussed the rise of the German-American Bund in the United States and continued:

"We will show you that the defendants in this case willingly and knowingly cooperated with the Bund and sent their own writings and literature and publications to the Aryan Book Store, the Nazi propaganda outlet in this country, to be distributed."

Attorney Maximilian St. George in *A Trial on Trial*, offers the following comment on this paragraph from Rogge's speech:

"Prosecutor Rogge attached the greatest possible importance to the German-American Bund as the

mainstay of his case. He had put five German-Americans, all in custody, three serving sentences for counseling evasion of the Selective Service Act of 1940, into the Sedition Trial in order to give it what counsel Dilling, representing Mrs. Dilling, called 'the sauerkraut flavor.' The three Bund officials serving sentences during the trial had these sentences set aside by the United States Supreme Court, as being unwarranted by the evidence—this reversal coming six months after the end of the Sedition Trial."

Rogge tried to tie the defendants together despite the fact that most of them had never seen or even heard of the majority of the others until their names appeared together in the indictment.

"In 1939 the defendant Joseph E. McWilliams organized the Christian Mobilizers in New York. He conducted his part of the movement mainly by speeches . . . He was an orator and he held his audiences spellbound . . . He talked about the coming revolution and about destroying the Democratic and Republican parties in this country. Both were rotten according to him; both were useless. He and his confederates were going to drive them both out and run this country the way Hitler ran Germany."

This was, of course, denied and disputed by Mr. McWilliams, a native Texan, who professed eagerness to take the witness stand for answering. No such opportunity ever came.

"The defendant Broenstrupp worked closely in this country not only with the Bund but also with the defendants Pelley, Smythe, Edmondson, Eugene Sanctuary, and with other defendants.

"The defendant Jones not only used the conspirator Garner's publication, 'Publicity,' as one of his mediums for spreading Nazi propaganda, but he also had another one in Los Angeles. There he had an organization known as the 'Friends of Progress.' Associated with him were the defendants Robert Noble and Franz K. Ferenz . . .

"The defendant Baxter also operated in the Los Angeles area . . . he dealt directly with a Nazi agent named Kurt B. Prince zur Lippe and was in contact with the German consulates in Los Angeles and San Francisco . . . The defendant Baxter stated that he and zur Lippe were trying to get the people of California to see things the right way, the conspirator Hitler's way . . . With his Nazism he combined Fascism. In place of our democratic, representative form of government he wanted a Fascist state on the style of Italy."

Baxter has been described by a fellow townsman in Santa Ana, California, as "a poor, decrepit fellow, writing pedantically but patriotically." His face and one eye partially paralyzed, his hearing and speech impaired, he, even had he been pro-Fascist, probably could not have influenced twenty people. Because of his pitiful state and the charge of persecution leveled against the prosecutors for holding him, he was granted severance a few months later and was allowed to return to his home. Rogge went on:

"The propaganda theme of the defendant Winrod that President Roosevelt was a Jew was spread throughout the world by the Nazis and by the defendants in this case . . .

"The circulation of the defendant Edmondson's bulletin was great in Germany . . .

"Shortly prior to Pearl Harbor the defendant Lyman, who was one of the leaders of the National Worker's League in Detroit, along with the defendants Sage and Alderman, had a new version of the theme. He distributed a bulletin which had printed on one side the same geological chart which Winrod first used in 1936, and on the other side a cartoon depicting President Roosevelt as having pronounced the unlimited emergency in which our country found itself for the benefit of Communists and Jews . . .

"They talked about the terrible Communist revolution in Russia. They talked about the number of people who were killed, then they said that the Communist revolution was inspired by the Jews, that all Jews were Communists."

It was a damaging admission for Rogge to infer that he could not see anything "terrible" in the red program of world revolution. Fortunately for the country there were others, including most of the defendants, who possessed a better perspective.

Smythe, who was then spending his time in a cell when not actually in court as punishment for his fishing trip, succeeded in puncturing Rogge's dramatics during delivery of the opening address. Most people in the courtroom, particularly the defendants and their attorneys, were disgusted with Rogge's arm waving emphasis before the jury. This was undoubtedly true of Smythe, but he found a way for expressing himself differently from the others.

At one point when the prosecutor came to a long list of names which he read off with great solemnity in contrast with his usual grandiloquence, followed by an interval of silence, Smythe's voice was heard to roll out, "And Eleanor Roosevelt!"

The courtroom roared. The judge banged for order. Rogge whirled in the direction of the intruding voice and found himself facing a big fellow with a large, inflamed nose and red face.

About an hour later Rogge approached one of his numerous climaxes in depicting the viciousness of the accused. Describing the defendants for perhaps the fiftieth time as Nazis, Rogge raised his voice in a crescendo, "They hate, they hate, they hate." Then he lowered to a hoarse whisper. "They are haters . . ."

There was another silence, broken again by Smythe who intoned "Ah-men." Rogge, annoyed and angry, again glared at the hapless fellow and went on.

"Now the government will not contend that all of the defendants were always on good terms with one another, or that they always agreed on the precise way in which their object was to be accomplished. But the government does contend that they all agreed on what the object was which they were to accomplish, and that that was to destroy our form of government, and set up a Nazi or Fascist form of government.

"When Lend Lease was proposed, the evidence will show that the defendants got out a series of cartoons . . . The cartoons showed Uncle Sam being crucified on a cross and tried to cause the American people and the American soldiers to believe that the gov-

ernment was crucifying the people when, in reality, the defendants were crucifying democracy."

Rogge's speech consumed several hours and had to be concluded the following day. His reference to Lend Lease is significant and offers a further clue into his mental processes. Under this program, Stalin was given more than ten billion dollars' worth of American manufactured goods, adding to a tax burden that was already the largest ever known in the history of government.

Those who have read Major George Racey Jordan's epoch-making volume entitled, "Major Jordan's Diaries," will find that the attitude of the defendants was basically right and patriotic even if some of their methods were open to question. Major Jordan was chief expeditor of Lend Lease, located first at the Newark airport and later at Great Falls, Montana. His task required him to work with Soviet officials sent over from Moscow, flying huge quantities of American products into Soviet territory. Because his suspicions were aroused in the early days of the war, he decided to keep a personal diary in which astounding incidents were recorded.

Fulton Lewis, Jr., was the first to break Major Jordan's story over the air some two years ago. His book gives additional details, including the facts about two shipments of uranium evidently stolen by spies inside the New Deal structure, steady streams of brief cases bulging with secret documents filched from government files and thousands of manufactured items in no way related to the war effort. War materials furnished Russia in those days are making possible

the slaughter of American boys today on the blood-soaked battlefields of Korea.

Perhaps history will record that the defendants of the New Deal Sedition Case were not so far wrong after all!

"Another defendant who joined the Nazi movement early and who collaborated with the Bund was the defendant George E. Deatherage," continued Rogge. "The defendant Deatherage had an organization which he called the Knights of the White Camelia . . .

"The evidence will show that the defendants were not only working together knowingly in the same Nazi conspiracy but that they were planning a single organization when the time came to impose on us their Nazi form of government. The evidence will further show that the defendants, in order to carry out their planned Nazi revolution, were intending to make use of our Army, the members of which they were going to cause to be disloyal to our present form of government . . . One of the men who fitted well into their plans as a possible leader was General George Van Horn Moseley, at one time second in command of the United States Army . . . However, General Moseley does not appear to have become actively associated with any of the defendants until he retired from the Army. The defendants with whom he particularly associated were Deatherage, McWilliams, Pelley and True."

This part of Rogge's opening speech to the jury symbolized the artificial foundation upon which his entire structure was built. Certain defense attorneys nodded knowingly to each other because they saw in

the charge a confession of fatal weakness. They knew that the prosecutor was trying to build something out of nothing. Deatherage remarked outside the courtroom during the next recess that Rogge was "trying to build a house around a key hole."

It was evident to everyone that had such a plot been in existence, the General would have been indicted, seated in the courtroom, his name at the head of the list of defendants. A movement of the Nazi pattern could not have even existed without a Fuehrer at the head. Try to imagine a conspiracy to take over the armed forces, with the conspirators out shopping for someone to lead them!

The pitiful little Mr. Garner, whose weekly newspaper never exceeded five hundred circulation, died before Rogge got around to making his opening speech but this did not deter him from covering the victim's name with venom. In fact, it seemed to spur him to even a more irrational attitude than would have otherwise been the case. Instead of omitting any reference to the deceased, he, like a jackal snooping into covered graves, resorted to unprecedented vituperation.

"The defendant Smythe had a small publication of his own which he labeled 'Our Common Cause,' and he wrote for the publications of other defendants. One of the principal publications in which his articles appeared, was a paper published in Wichita, Kansas, called 'Publicity.' The conspirator Elmer J. Garner was the editor of 'Publicity'."

Maximilian St. George, writing in his book *A Trial On Trial*, castigates Rogge for calling the dead man a conspirator:

"It is worthy of remark, as a sidelight on the personality and character of prosecutor Rogge that in his three hour opening statement the only times he referred to any one of the thirty defendants in the case as a 'conspirator' were when he mentioned the then deceased Elmer J. Garner.

"Now it is neither legally permissible nor professionally ethical for a prosecutor to call a defendant a conspirator before the latter is found guilty, just as it would not be in a murder trial for the prosecutor to refer to the accused as the murderer. Well, it so happened that the one and only defendant Rogge singled out to call several times a 'conspirator' was Elmer J. Garner, an octogenarian, who had died in his sleep, with only forty cents in his possession, just a few days before Rogge made his opening statement. Possibly Rogge thought it was all right to call Garner a conspirator because Garner was dead and had no one in court to defend him. Rogge was apparently not one to be inhibited by such rules as *de mortibus nihil nisi bonum*. For Rogge, presumably, Garner's death before the selection of the jury was completed was the equivalent of conviction. This is just another piece of behavior which reveals the kind of man Rogge was."

The first member of the defense counsel on his feet when Rogge finished his opening statement was Lawrence Dennis, defending himself. In an electrifying speech, because Dennis is a great orator, he referred to Rogge as the Vishinsky of the trial. It will be recalled that Vishinsky was the red prosecutor who had directed the Moscow purge trials some time earlier. No sooner had Dennis released this blast,

than Rogge rose from his seat, exploding with rage, demanding that the remark be stricken.

Quick as a flash, Dennis reminded the court that Rogge had referred to him the day before as an "Alfred Rosenberg" (The Nazi philosopher and propagandist.) Nevertheless Eicher ordered Dennis' remark removed from the record.

Weeks later, when the trial was well under way, Dennis cross examined one of Rogge's witnesses, Peter Gissibl, as follows:

Q. Have you ever seen Lawrence Dennis before you came to this trial?

A. No.

Q. Do you know who Alfred Rosenberg, the philosopher of National Socialism, so-called by the persecution—do you know who Alfred Rosenberg is?

A. Yes, sir.

Q. Did you ever read any of his writings?

A. Yes.

Q. Did you ever read any of the writings of Lawrence Dennis?

A. No.

Q. In the German-American Nazi movement, did you ever hear Lawrence Dennis referred to as the Alfred Rosenberg of America?

A. No, I never heard of him.

When the asininity of the case had become universally evident, the Washington Post published a blistering editorial demanding that Eicher start curbing the efforts of the defense attorneys. Mr. Dennis wrote a letter to the editor, answering the article and

at the same time showing the false premise from which the prosecution was operating. This is what he said:

"The issue is not whether this trial is a farce. It is. And it can never be anything else. The reasons are: 1. The incongruous characters of the thirty defendants—some are psychopathic, some are senile, some are invalids, none are in agreement or capable of agreement with the others or of any such conspiracy as the indictment charges; 2. The fantastic character of the prosecution theory.

"Aside from the psychopathic character of many of the defendants, there is the equally apparent and verifiable fact that a trial of this nature is humanly, mechanically, and technically impossible to stage within any District of Columbia courtroom or within the framework of normal court procedure.

"Each of the thirty defendants is entitled to a separate defense. Practically, this means he has a right to as much time and opportunity for legal defense motions and arguments as if he were being tried alone. This could mean that each phase of such a trial might last thirty times as long as it normally would in a trial in which there is only one defendant and one defense.

"The point is that the farcical aspects of this trial result from its mechanical imperatives and not from the perversity of defense counsel."

CHAPTER EIGHT

KLEIN'S ADDRESS TO THE JURY

DEFENSE ATTORNEY HENRY KLEIN, who represented Colonel Sanctuary, occupied a unique place in the trial because of his nationality. He could not be accused of anti-Semitism. It soon became evident that both the court and prosecution counsel resented his presence among the defendants. This caused him to be singled out for special persecution and as the trial progressed no one was made to suffer more than he. A less courageous and determined man would have broken under the strain. Knowing that he was right and other members of his race, responsible for this judicial travesty were wrong, he stood by his client as long as humanly possible. Finally, facing a lengthy prison sentence, he had to withdraw.

On May 24th, it came his turn to make an opening statement to the jury on behalf of his client, Colonel Sanctuary. His address is reproduced here in full.

Ladies and Gentlemen:

You are serving as a jury in what will probably be the most

important trial in the history of criminal jurisprudence in the United States. On you devolves the responsibility not only of passing on the guilt or innocence of these defendants, but also of determining whether this nation will remain a republic with a constitutional form of government or become a communistic soviet country. You may not realize the importance of the task before you, but you will before this trial is finished. That is why I am reading this opening statement so that you may weigh each word carefully and understand it.

These defendants are charged in an indictment drawn by the prosecutor, Mr. Rogge, after he submitted witnesses to a grand jury which heard only one-sided testimony—the side of the prosecution. The defense side was not submitted to that grand jury whose deliberations under the law, are secret. You, ladies and gentlemen, will hear both sides. The fact that I offered in writing to submit my client, Colonel Eugene Nelson Sanctuary, as a witness before the grand jury is immaterial now. His testimony was refused as was, I suppose, the testimony of every other defendant who made a similar offer. That grand jury was dominated by Mr. Rogge who was determined that an indictment should be returned and who drew it.

The document that accuses these defendants is called an indictment, but actually it is only a presentment—it accuses no one of crime. It is probably the most fantastic and the most defective indictment ever drawn. It says that Hitler in Germany wanted to destroy the democracies of the world and it includes a reference to our form of government. It does not say that the United States is a democracy, because Mr. Rogge knows better. It simply tries to lead you by inference to believe that it is so. The truth is that there was no democracy in Europe to destroy, and the word “democracy” does not properly belong in this indictment.

It names those persons who are here being tried besides another eighty year old person who passed to the great beyond while working on his typewriter in a little hall bedroom in this city, outlining his own defense for his court-appointed attorney. This aged American patriot named E. J. Garner, was a native American, a first cousin of the former Vice-President of the United States, who is still alive. Mr. Rogge referred twice to this deceased defendant in his typewritten address to you, a few days ago, knowing that Mr. Garner was no longer among the living.

This alleged indictment charges these defendants with con-

spiring together to undermine the morale of the armed forces of the United States, because they wrote and talked along parallel lines. They criticized and condemned the government. You and I and many others wrote and talked along the same lines during the same time, and we are not charged with crime. I filed charges for Mr. Roosevelt's impeachment before I got into this case, but I am not charged with crime—the law permits me to do that. The truth is this administration has undermined the morale and confidence of most civilians in this country, including those in the armed forces, during the past twelve years.

Remember, this alleged indictment is under the peace time statute, not under the war time act, and the writings and speeches of these defendants were made when this nation was at peace, and under a constitution which guarantees free press and free speech at all times including during war time, until the Constitution is suspended and it has not yet been suspended. These people believed in the guarantees set forth in the Constitution and they criticized various acts of the administration. On September 3, 1939, when Great Britain and Germany went to war, Mr. Roosevelt in a proclamation urged neutrality and added "but I cannot expect you to be neutral in thought." Writings and speeches are only the expressions of thought.

The alleged indictment begins by stating that Hitler came to power in Germany in 1933—a purely academic statement—but a very significant statement, because this document charges that these defendants followed "The Nazi line" by their writings and speeches. What does Mr. Rogge mean by that? He means that because Hitler was anti-Semitic, so to speak, in Germany, that these defendants were anti-Semitic in the United States. Does that mean that they intended to undermine the morale of our armed forces? He does not tell you that there was anti-Semitism all over the Christian world for nearly two thousand years or that there was anti-Semitism in every country in Europe before and after Hitler came to power in 1933; nor does he tell you that there was anti-Semitism in the United States for many years before Hitler; but we will go into that later. Nor does he tell you that anti-Semitism or anti any other religion or race is not a crime under our laws.

This alleged indictment which specifies no crime, contains a full page of the names of these defendants (many of whom are native-born Americans) a full page of names of various publications and a few pages of alleged quotations supposedly from

speeches or writings by these defendants. Which defendants spoke or wrote which quotation and which defendant published or edited which publication is not indicated. The fact that most of the quotations are true, apparently does not affect the situation because the alleged indictment does not charge that any of the quotations are untrue. It simply repeats them, if they are proper quotations. The indictment does not show where they came from. My client, defendant Sanctuary, does not know for what publication he is supposed to have written or what publication he is supposed to have edited or owned. He neither owned nor edited any one of them, though he has written many books and pamphlets, not one of which is mentioned in the alleged indictment. He has crusaded during the past forty years against many evils, including the cigarette smoking habit, which, by the way, is not mentioned in the alleged indictment. He is seventy-three years old and devoutly religious. He and his wife ran the Presbyterian foreign mission office in New York City for many years, and he has written and published several hundred sacred and patriotic songs, one of which patriotic songs I will have him sing to you later or I will read the words. This song was published in June, 1942, and is entitled, "Uncle Sam We Are Standing By You."

Now what is there to this so-called indictment. Nothing but the desire of the prosecutor to punish someone. This attempt will fail because it is based on falsehood, misrepresentation and vicious propaganda such as you have heard on the air and read in pro-administration newspapers during the past three years. Should it take that long to find persons guilty of writing and uttering so-called illegal statements?

Now why have these defendants been persecuted and prosecuted for three years—since about the middle of 1941? Why was the law enacted on June 28th, 1940, any way? There was plenty of law before that date to punish so-called seditious conduct. We will tell you why this law was enacted and we will tell you why these persons are being persecuted. This prosecution has caused the impoverishment of nearly all of them—about half of them have court appointed charity attorneys without compensation. Other defendants are unable to pay anything like commensurate fee to any paid attorney—and the Department of Justice has spent many hundreds of thousands of dollars—probably several million dollars in the past three years, to punish crime that was never committed.

Enough for this introduction; now let us get to the facts. Here is what we will prove:

We will prove that this persecution and prosecution was undertaken to cover the crimes of government—remember that.

We will prove that it was undertaken by order of the President, in spite of the opposition of Attorney General Biddle.

We will prove that Mr. Rogge was selected for this job of punishing these defendants because no one else in the Department of Justice felt that he could find sufficient grounds to spell out a crime against these defendants.

We will prove that this persecution was instigated by so-called professional Jews who make a business of preying on other Jews by scaring them into the belief that their lives and their property are in danger through threatened pogroms in the United States.

We will prove that the lives and properties of these Jewish people and all other persons in the United States are in danger through the imminent triumph of Communism in the United States.

We will prove that the ground work for Communism in the United States has already been laid and that all that is needed is a word from Joseph Stalin for the final act to turn this Republic into a Communistic Soviet country.

We will prove that the Communists control not only our government, but our politics, our labor organizations, our agriculture, our mines, our industries, our war plants and our armed encampments.

We will prove the oft repeated assertion of Attorney General Biddle that the Communists have been undermining the morale of our armed forces for twenty-five years.

We will prove that the law under which these defendants are being tried was enacted at the repeated demands of the heads of our armed forces to prevent Communists from destroying the morale of our soldiers, sailors, marine and air forces. Congress refused to enact this law in 1935 when the heads of the Navy first demanded it because of Communistic agitation on our warships. The heads of our Army and Navy went to Congress again in 1939 to repeat their demand because the Communists continued their seditious agitation among the armed forces and caused a near mutiny on one of our warships.

We will prove that this prosecution and persecution was undertaken to protect Communists who were and are guilty of the very crimes charged against these defendants who are utterly innocent and have been made the victims of this law.

We will prove that Mr. Rogge deliberately ignored the findings of the Dies Committee which prove these accusations against the Communists; that he deliberately ignored the report of Attorney General Biddle in the case of the labor leader, Harry Bridges, which charges on nearly every page, that the Communists have undermined the morale of our armed forces since 1919, and of our officers reserve corps in colleges over a period of years, long before this law was enacted and long before Hitler came to power in Germany. We will show that Mr. Rogge also ignored reports of investigators for the FBI and Army and Navy intelligence units and that the investigation of Communists was ordered discontinued by President Roosevelt.

We will prove that Mr. Rogge deliberately falsified the preamble clause in this so-called indictment in order to provide a basis for this prosecution—that he made it appear that Hitler's aim was to overthrow democracy throughout the world (which is none of our business) and by inference, to overthrow our own democracy which we never had, because our Constitution says that ours is a Republican form of government.

We will show that Nazi-ism (National Socialism) is a national program; that Communism is an international program; and that national patriotism has been driven from the United States by the so-called internationalists.

We will also show that Nazi-ism was started and fostered in Germany by those who wanted to drive out Communism, the same as was done in Italy by Fascism. Eastern Europe was overrun with Communism after the first World War, and Karl Liebknecht and Rosa Luxemburg led a Communist Revolution in Germany in 1919, in which they were killed.

We will show that so-called democracy is synonymous with mobocracy, and that the term democracy has been used and fostered by government propagandists in order to confuse the people and pave the way for Communism in the United States. Plato criticized democracy and wrote a book called "The Republic."

We will prove that Felix Frankfurter, Sidney Hillman, and Harold Laski of London are the chief instruments of Communism in the United States and that this nation can be completely transformed from a Republic to a Soviet government inside of six months, if Joseph Stalin wills it.

We will prove that Joseph Stalin has obtained absolute control over Franklin D. Roosevelt and that Congress has virtually

abdicated during the past ten years—that's why these defendants wrote and condemned what they believed was inimical to our government, including Mr. Roosevelt himself.

We will prove that anti-Semitism charged in this so-called indictment, is a racket, that it is being run by racketeers for graft purposes.

We will prove that one of the heads of one of these organizations supposedly fighting anti-Semitism is an ex-convict.

We will prove that a large part of the agitation against Jews in the newspapers is manufactured, and that large money contributions have been wrung from persons threatened with reprisals if they did not give up. We will show that millions of dollars have been contributed because of such threats, and that lawbreakers are promised protection if they contribute.

We will show that the most vicious written attack on Jews and on the Roosevelt administration emanated from the office of the FBI by one of its agents, and that the purpose of this attack was to provoke others to do likewise. We will show that this agent also drilled his underlings in New York with broomsticks preparatory to "killing Jews."

The late Samuel Untermyer organized a commercial boycott against Germany in 1933 for his own vainglorious publicity, and he organized the Anti-Nazi League which he quit because it became a racket. He had a large sum of money invested in real estate in Palestine, at high interest rates, at that time.

Rabbi Wise followed Untermyer's lead for publicity with his World Jewish Congress, because he was jealous of Sam. I exposed Wise as a political rabbi back in 1921.

We will show that large sums of Hitler money helped finance Mr. Roosevelt's campaign for re-election in 1936 and that right at this moment, British, American and German capital and industry are cooperating together in South America and other parts of the world.

We will show that most of these defendants were indicted not because they violated the peace-time sedition law, but because they condemned various illegal acts by Mr. Roosevelt and others in the administration.

We will show that the KKK supported and conducted an organization campaign for Mr. Roosevelt for President in 1931 and 1932, in seventeen southern States, and that they later sued Mr. Roosevelt for part of the money spent. Mr. Rogge says that some of these defendants associated with Klansmen, but

remember this is no crime. Mr. Roosevelt appointed an intelligent and educated Klansman to the U.S. Supreme Court, and he makes an excellent jurist.

We will show that crimes committed by Mr. Roosevelt and others in this administration are the real reason for this prosecution—to cover up those crimes by “pounding” other persons.

We will show that these crimes include an attempt to overthrow the German government while this nation was at peace with Germany and the gross betrayal of the American people by Mr. Roosevelt to Winston Churchill and Joseph Stalin.

That is why these defendants are now on trial after they have been persecuted for three years in order to save Franklin D. Roosevelt from exposure, also to save a few self-important alleged high class Jewish citizens from the charge of violating the United States Neutrality laws.

We will corroborate all this by the tears and testimony of an anguished mother whose son languishes in a prison cell in England because he failed to save this nation from betrayal into war. Tyler Kent's release from prison means the release of Franklin D. Roosevelt from the death grip of Joseph Stalin and it means a shocking revelation to the people of the United States.

Young Kent was the decoding officer in the American embassy in London from October 1939 to June 1940 and decoded all the communications between Roosevelt and Churchill while Neville Chamberlain was Prime Minister. Stalin's secret police got hold of a set of these communications, and thus Stalin has had the “goods” on Roosevelt and Churchill ever since.

I want to tell you a little more about my client, Defendant Colonel Eugene Sanctuary. As I told you, he is seventy-three years old, a native born American and a veteran of the First World War. He has been fighting Communism and Bolshevism for twenty-seven years—even before the time when Attorney General Biddle said the Communists began in 1919 to undermine the morale of our armed forces. Colonel Sanctuary was in charge of shipping the Railroad Division of our Army that was sent into White Russia to fight the Bolsheviks soon after the revolution broke out in 1917. He was handed a number of men to serve as interpreters and when he learned that they were Bolsheviks he rejected them. All they wanted was to get over to Russia at the Government's expense. Some years later, Colonel Sanctuary was receiver of a manufacturing plant in Penn-

sylvania and learned that the plant was operating with Russian money, and that the Russians then had a very large account in the National City Bank, New York City.

I am Colonel Sanctuary's attorney because he has been charged with being anti-Semitic by those who have been persecuting him and other defendants. If these persecutors had taken the trouble to read one of his books that he published about eight or nine years ago they would have found on the fly leaf in the front part of the book a dedication by the author to the "Good Jews of America." If they had also read a booklet that he wrote about an alleged Jew in Brooklyn who was and is collecting large sums of money from Christians ostensibly for making Jewish converts they would have learned that Colonel Sanctuary condemns bad Jews and praises good Jews. I am his attorney also in order to awaken the Jewish people of the United States to the tremendous wrong that is being done them by a handful of self-important Jewish political madmen. All Jews are being blamed for the conduct of this handful who have contributed in a great measure to the wrecking of the United States which is now on the verge of becoming a Communistic country.

Remember most of these defendants are beyond middle age and most of them are native Americans, yet Mr. Rogge tries to make it appear that they were engaged in trying to upset this government by undermining the morale of our armed forces. A prosecutor's job is to present the truth to a jury whether it benefits his side of the case or not. In this instance Mr. Rogge is acting more as a persecutor than as a prosecutor. Remember that virtually every quotation contained in the so-called indictment is of a political nature, and if these quotations are taken from anything written or spoken by any of these defendants they show very clearly what these defendants were writing about. They were condemning and criticizing various acts of the Government which they considered damaging to the interests of America—their America, the America that they knew in their earlier lives, the America that my client, Colonel Sanctuary, knew before 1938. Since that time the economic system in America has been transformed from one based on individual effort to State Capitalism through the manipulations of Felix Frankfurter and his socialistic companion and co-worker of London, Harold Laski. They have given us in the last twelve years scores of government-owned corporations financed by government funds, doing an aggregate business of several billion dol-

lars a year and controlling the output of agriculture besides many other basic and staple industries. The next step in the socialistic trend instituted in this country by these two persons will be out and out Communism. They have already given us a program "from cradle to the grave," originating in the London School of Economics conducted by Laski and introduced into this country through the agency of Laski's and Frankfurter's socialistic groups, formerly headed by Israel Moses Sieff and now by Arthur Salter. Scores of Frankfurter and Laski followers and agents occupy key positions in most of these public semi-socialistic corporations and in various departments of the Government.


Mr. Rogge in his opening address talked of the hate campaign that he said the Nazis were conducting through these defendants in the United States. The Communistic program has always included a stirring up of racial and class hatred and antagonism. Mr. Rogge says these defendants were trying to abolish freedom of speech, press and assembly and all other civil liberties, following the Hitler line. These freedoms have already been abolished to a large extent by this administration and they will be completely blotted out if Mr. Rogge succeeds in this prosecution. Mr. Rogge says that these defendants want to impose a one-party system of politics on the United States. Mr. Roosevelt has already done that. The same financial groups that control the New Deal Party control all other political parties in this country. They finance them all. Mr. Rogge talked about two opposing worlds and tried to make you believe that Hitler said that the democratic world and his world could not exist together on this earth. I have here in my hand the report of the Department of State, entitled, "National Socialism," issued in 1943. The sub-heading reads "Basic Principles, Their Application By The Nazi Party's Foreign Organization, and The Use of Germans Abroad For Nazi Aims." After quoting the sentence about two worlds, this book at the bottom of page 4, quotes from Hitler as follows:

"If in this war everything points to the fact that gold is fighting against work, capitalism against peoples, and reaction against the progress of humanity, then work, the peoples and progress will be victorious."

Remember that after the Versailles Treaty Germany was dismembered and was surrounded by hostile countries. Germany was completely encircled and was doing everything she could to free herself with the aid of capital from England,

France and the United States. Hitler did not destroy the Weimar Republic in Germany; it died because it was ineffectual. The people in Germany were hungry and out of work and the Republic could not help them. And as if to refute Mr. Rogge's claim that the Nazi organizations were busy in the United States and other countries, the late United States Ambassador Dodd to Germany wrote in his posthumous publication, that "Hitler published an order to the German Consulates in the United States late in December (1935), that at the end of that month all Nazi organizations must be dissolved, even in our country where there are millions of Germans." (Page 318 of the London edition, page 311 of the American edition.)

Mr. Rogge makes a strong play on anti-Semitism and tries to make you believe that it was imported from Germany and used by these defendants for the Nazi purpose. This claim is of course nonsense as I have already explained. So far as the Nazi propaganda in the United States is concerned, it probably amounted to only a very small fraction of the amount of British propaganda and now of Russian propaganda. This country is now in the hands of British and Russian internationalists in spite of all efforts by these defendants and others to keep our national patriotism alive.



CHAPTER NINE

SCENES IN THE COURTROOM

KLEIN DID MUCH in his brief speech to torpedo Rogge's case by bringing to light the hidden agencies responsible for its existence. While materially strengthening the defense, he brought upon himself the wrath of certain powerful members and organizations of his race, which comprise what he calls a Gestapo. He became a marked man because he contended that the defendants were not responsible for the Semitic cast of the New Deal and the Communist scourge, and that they committed no crime by discussing the facts.

Much defense effort was in the nature of shadow boxing. Even some of the attorneys were reluctant to put their finger on the basic issue, knowing the striking power of Marxist Jewry. There were newspapers, with editorial policies geared against the case, who left their readers confused because they never touched the real factors involved. Some friendly papers insisted on referring to the victimized defendants as crackpots. But truth is mighty and finds ways for coming to light.

No accurate appraisal of the Sedition Case can

be made without postulating the fundamental fact that it was laid in the Gestapo wing of B'nai B'rith, known as the Anti-Defamation League. A man in public life has to have great courage to oppose this machine.

Joseph P. Kamp cut the taproot in a brochure published during February 1948* wherein he quoted from a letter dated July 18, 1941, written by Miles Goldberg, then director of the Chicago office of the Anti-Defamation League, to an undercover agent in Washington:

"I believe the time is ripe for us to take action on a lot of the matters that you have already reported to me. Just how this is going to be done I have not yet determined, but will talk to several important government officials in the immediate future and decide on how this can best be done.

"Of course, we must be sure of our charges before we present them to government officials, otherwise we cannot expect to get complete cooperation. By that I mean, let us try to back up a lot of our charges with documentary evidence."

Mr. Kamp commented: "Less than three months later, in October, 1941, the Washington grand jury was considering Goldberg's charges and 'documentary evidence.' The questionable nature of the 'evidence' was indicated by Goldberg's instructions, dated December 6, 1940, in which he wrote:

"If you have not as yet succeeded in securing an affidavit suggest that you make every effort to do so. Even if the statement is not based on fact, it can be used to good advantage."

* "Open Letter to Congress," Constitutional Educational League, New York.

"The Gestapo's secret agent in Washington turned over all the 'dope' to the Department of Justice after Goldberg, on September 29, 1941, wrote his spy: 'Arrangements should be made for you to have a confidential chat with Maloney and give him all the information that you possess'."

Investigators regard Arthur J. Goldsmith, who lives and makes his headquarters in the Waldorf-Astoria, New York City, as being one of the big brains and a hidden hand of the Gestapo.

Ten years ago, in 1942, when Mr. Kamp first wrote about the Sedition Case* he identified Goldsmith as an "under-cover contact man and fixer for the Anti-Defamation League," and charged that he was one of the key figures in a plot to purge pro-American members of Congress and to put all anti-Communists out of business. The first step in this subversive conspiracy was to brand all anti-Communists as partisans of Hitler, as Bundists and Fascists.

On the day the Sedition Case defendants were arrested, America's leading Communist newspaper boasted the following headline, "Daily Worker pioneered in exposing 28 Fascists," and in a feature article declared, "Arrest of the fascist conspirators must be followed by the ousting of Hitler's friends in the House and the Senate . . . These fascists campaigned for America First Senators like Burton K. Wheeler."

Only in recent months have Goldsmith's operations come into public focus. He is credited with steering top level political campaigns from behind the

* "The Conspiracy Against Congress," Constitutional Educational League, New York.

scenes, which includes grooming candidates for national office who, after being elected, are careful to obey their master's voice. Money is said to be no item with him. He uses Republican or Democratic party machinery without regard for political loyalties.

The smear campaign and filthy attacks on the personal character of Senator Wheeler which retired him from office have been traced to Goldsmith. Senator Johnson of Colorado called it a "vile, indecent and cowardly attack on Wheeler." Goldsmith also poured money into Nevada in 1950 in a vain attempt to defeat Senator Pat McCarran, who was exposing Communists and favored restricted immigration, and Senator Rivercomb of West Virginia was a casualty of his attacks, to mention only a few.

Westbrook Pegler is one of the few men in public life who has dared to challenge Goldsmith. Soon after doing so, he published the following enlightening statement in his column of February 21, 1951:

"I had more than half expected the heavens to fall in consequence of my daring to name in print one Arthur J. Goldsmith, a New York broker of mysterious mien, who runs a propaganda layout from a three-room political lair in the Waldorf Tower. This plant is disguised on the letterheads of his several committees by the demure address, '100 East 50th Street.'

"I was told to be afraid of this guy because he had mysterious influence and would hex whoever should oppose his sly political designs, but though I wait in fear beside the phone, the wire hasn't come which says that I am canned.

"I think it is a good thing to poke out characters

who have been built into dragons in the last few years. I think it is good even for the dragons."

It seems that Mr. Klein's speech to the jury caused the Goldsmiths to go berserk. At any rate, Mrs. Goldsmith wrote the attorney what is regarded as a threatening letter and addressed it to Mr. Klein in care of Judge Eicher's court. It read as follows:

"You are a renegade, the lowest scum of the earth . . . You have done the Jewish people such harm as Hitler in his wildest mental ravings could not have conceived. The writer knows you personally, having met you socially, and I assure you without making any wild threats, that you are being provided for . . .

"No matter how low a man (?) may fall, there is always a small spark of decency in him. That small spark, if in you, will some day flame up and consume you in a fire worse than hell's hottest. Remember, your conscience is always with you, even in your sleep, and you do not deserve a moment's peace, having allowed yourself to fall to such depths as to plead for the Bundists and in the same fowl breath discredit your parents and the people of your own faith."

Mr. Klein found that his troubles had just started. He was subjected to every insult and indignity by the court. When rising to speak or to make a motion on behalf of his client, Eicher would frequently scowl, or otherwise manifest impatience and shout him down. The treatment became so raw that other defendants and their attorneys felt sorry for him.

Newspapers and leftist radio commentators smeared Klein mercilessly. Eicher imposed three un-

reasonable fines and made him serve time on one occasion in a Washington jail, leaving his client without representation before the court. A steady stream of threats through the mail and by telephone poured in upon him. Once he asked the court to have the tap taken off his telephone. Former friends began to avoid him. He complained of being double-crossed in personal affairs and business deals.

One day after Klein's second fine (June 27, 1944), for allegedly delaying the trial, attorney Dilling was fined \$200 on the same pretext, but in reality he had only been cross-examining a witness twelve minutes. Attorney Laughlin was fined \$200 for the same alleged reason the next day.

It became evident to everyone that the court had decided to follow the dictates of Eugene Meyer's Washington Post who had demanded a short time earlier that the defense attorneys be blasted. Eicher began to be called "the real prosecutor of the case." Meanwhile, Rogge was allowed to monopolize the court's time hours on end, during and between presenting witnesses, reading musty and utterly irrelevant clippings sometimes twenty and twenty-five years old.

Other defense attorneys received intimidation warnings in one form or another. Attorneys St. George and Little were fired on from the dark, a bullet passing through the windshield of their car. Attorney Powers was beaten up by "five thugs," and had to spend four days in a hospital. St. George wrote in his account of the trial that he was so persecuted for defending his client McWilliams, that he lost a twelve-year law association in Chicago "and

was held up for a time from moving into a new office."

The continued threats against Klein's life must have preyed on his mind. Early in July he quit the case. He said he felt that his usefulness was at an end, that he had done everything possible to defend his client and to arouse the public as to what was happening. James Laughlin, representing two other clients, succeeded Klein in defending Colonel Sanctuary.

Klein's quitting gave the trial much adverse publicity. Rogge, sensing this, asked the court to hold him in contempt for having quit without permission. Eicher granted the petition and issued a bench warrant for Klein's arrest, demanding his removal from New York City back to Washington.

Klein was returned, in handcuffs, to receive a ninety day sentence in jail. Eicher provided, however, that if after a week in jail, Klein would come back and take up his client's case and carry on, the balance of the sentence would be remitted. In reporting this incident, St. George commented: "Imagine a lawyer making a proper defense of a client before a judge holding him under this sort of duress!"

Eicher imposed a bond of \$10,000 and Klein was consigned to jail for the night. Next day James Laughlin went before the appellate court and got the bail reduced to fifteen hundred dollars. Klein went back to New York and when his case reached the appeals court, Eicher was reversed.

A study of the record shows that Eicher repeatedly shielded Rogge from the bench, but there was one exception during the trial, when the court gave

the prosecutor a severe reprimand. He was forced into a position where it could not have been otherwise. It came on September 20, 1944, a bad day for Rogge.

Interviews had appeared almost simultaneously in two Communist publications quoting Rogge as making caustic and insulting remarks about attorneys for the defense. It was a dirty dig, at men who were having an uphill task representing their clients. This was, of course, a violation of legal ethics. No prosecutor, deserving of the respect ordinarily due members of his profession, will attack opposing counsel outside the courtroom or attempt to try a case in the press. With this explanation, the following is reproduced from the record of the above date.

The Court has before it the petition of Gerald B. Winrod entitled "For protection against statements in the press" attributed to the prosecutor.

Mr. Jackson (E. Hilton): May I make a statement, your Honor?

The Court: Just a moment, Mr. Jackson.

The relief asked in the petition is that Government counsel be reprimanded by the Court for conduct alleged in the petition and to ask him to refrain from the same or similar conduct in the future.

The Court has read the petition, and the points in authority attached in support of the petition, which includes quotations from two publications, one from the Magazine PM and another from the Magazine New Masses.

Now, quotations from counsel engaged in a case on trial that are made from statements in open court are, of course, one thing. They are public property from the time they are stated and their publication is beyond the control of the counsel making the statements.

However, from reading the quotations it appears, at least strongly inferentially, that they were obtained as a result of an interview, whether on the street or elsewhere, outside of court and during the progress of the trial, and I assume from the context of the quoted statements that Mr. Rogge does not claim otherwise.

Is that correct, Mr. Rogge?

Mr. Rogge: I will say this, if the Court please: I have not read it carefully. I do think that many of the comments that I saw in there, a specific one I remember, for instance, is the comment on the Hartzel case, I do think that much of the material from that likewise came from statements in open court. I did not have any such discussion outside of the courtroom. I was asked by a woman reporter, and I think it was this woman, various questions about my background, where I had been trained, where I had gone to school, which I answered for her, but there are a number of other statements in there which look as if they are part of the same interview, and they are not. They are statements which she did not get from me. I think, for instance, the specific one I mentioned, came from my discussion of the Hartzel case in open court, although from reading the article it looks as if I gave that in an interview, and I did not.

Mr. Jackson (E. Hilton): Your Honor—

The Court: Mr. Jackson.

Mr. Jackson: The entire tenor of this motion refers to these publications, excerpts from which are set forth as a part of the motion and they are referred to as statements attributed to the said prosecutor. They are statements which, if true, go to the question as to whether this trial is to be conducted by the newspapers or whether it is to be conducted by our court.

Now, I am not here to say that the statements in the newspapers have correctly reflected any statements given by the prosecutor to the press. We have disclaimed that, or have tried to disclaim it, throughout. But the publications are so categorical and so specific, put, in large part, in quotes, that we think, if your Honor please, the only way to get this issue before the Court is to have the prosecutor deny these statements under oath. If not, we call for a reply from the prosecutor. And, then, if there should be a denial, we have prepared a number of *subpoenas duces tecum* to bring them into this court for their testimony in order to give this court, under

oath, a basis for the reports made in the papers. We think we are entitled to an answer from the prosecutor.

And I want to make this final observation. One of the embarrassments the defense has had throughout this trial has been the failure of the prosecutor to answer certain motions and certain applications. The prosecutor would stand mute and the Court would dispose of the matter without hearing from the prosecutor. I am not saying, if your Honor please, that such decisions made by the Court were erroneous, but I do say it would be helpful to these defendants, when serious motions are made, supported by authorities and by a factual situation, that we might at least be privileged to have an answer from the prosecutor before the matter is presented to the Court. And frequently we have asked the prosecutor questions as to proposed evidence, and what not, and before the prosecutor could be given a chance to answer the question, which we have thought was entirely proper and in pursuit of the orderly processes of this Court, such questions would be denied or overruled by this Court. I use that simply as an illustration.

I think this matter is of such importance that we should have a definite answer from the prosecutor as to whether these things are true or not, in writing. I don't care whether he puts it under oath or not. And when we have prepared some *subpoenae duces tecum* to be issued by the Court to bring witnesses in here in order to reach a just conclusion as to the factual situation.

The Court: Well, Mr. Jackson, the Court is prepared to grant you the relief that you ask for in your petition.

The Court is convinced from the context of the quoted quotations from the articles that Mr. Rogge did, inadvertently or otherwise, the Court does not say, make statements outside of the courtroom which should not have been made, and the Court therefore does grant the relief prayed for in the petition, and does here and now reprimand Mr. Rogge for improper conduct in connection with these two publications, and directs him to refrain from the same or similar conduct in the future.

That will be the order of the Court.

It became common knowledge in the courtroom,

and it was reported in the press that Rogge intended to use John Roy Carlson, over whose name the glorified smear book *Under Cover* was published, as a major witness against the persecuted opponents of Communism. Winchell had plugged *Under Cover* into a best seller, while newspapers of the *Wichita Beacon* type ran it serially. Acceptance of its contents as true by a large segment of the American public, made it the most successful literary hoax ever perpetrated. More than eight hundred thousand copies are reported to have been sold. During the days of the Sedition Case this book was used to crucify patriots before the public, but it has since been proved in a number of court cases to be a compilation of falsehoods from beginning to end.

One such suit was brought in federal court at Chicago in September, 1946, by George Washington Robnett, executive secretary of the Church League of America. Both the author and publisher, the E. P. Dutton Company, were found guilty. Federal Judge John P. Barnes made the following statement in open court when the verdict was returned:

"I think this book was written by a wholly irresponsible person who would write anything for a dollar. I think the book was published by a publisher who would do anything for a dollar. I don't believe an investigation of this author was made by the publishers, to the extent they say there was, because they cared for the dollar more than they did for the almighty truth.

"I wouldn't believe this author if he was under oath, and I think he and the publishers are as guilty

as any one who ever was found guilty in this court before."

To this castigation, the well-known jurist added:

"This book charges the plaintiff was disloyal, anti-Semitic, and a Nazi agent. During the entire course of the trial, I never heard any evidence to sustain any of these charges."

Under cross examination, the author admitted that he was a liar; that he worked for the notorious L. M. Birkhead of the so-called Friends of Democracy at fifty dollars a week; that he wrote entrapment letters; that he is an alien by birth that his real name is Avedis Derounian; that he travels under a number of aliases including John Roy Carlson, Donald Brady, George Alexander, Thomas Decker, Henry Renard, John Correa, Rudolph Elbert, George Page, George Paganelli; that when writing articles for outright Communist publications, like "Soviet Russia Today," he used his real name Derounian.

In his final summation to the jury, Attorney Harry Ditchburne, representing Robnett, denounced Derounian as follows:

"Here is a man who says he is an Armenian. He says he was born in Greece, that his mother was born in Turkey and his father in Bulgaria. He tells you of his education. He had the advantage of our schools, our institutions, graduated from one of our universities—for what? To write the kind of filth I read to you in this trial.

"There are certain things Americans don't like and won't stand for. This kind of under cover work could undermine our system of government. It is

dangerous to leave a man like that loose in the country.

"By publication of this book, George Washington Robnett was held up to public ridicule and contempt. I am asking you for a verdict of a large and substantial sum, not wholly as a redress for the great wrong done Robnett, but also so that such an act will not happen again.

"It would be an insult to the public, generally, if you permitted this publisher to get away with a book like this without making him pay through the nose."

Attorneys for Carlson and the Dutton company tried to create an impression in the minds of the jurors, that the plaintiff was a Nazi because his writings were anti-Jewish. They attempted to prove this by quoting articles by Robnett in which he used both the real, and assumed names of certain Jews involved in promoting the Communist conspiracy. He had referred to Sid Green as "Greenfelt," and to David K. Niles, who lived in the White House from the early days of the Roosevelt Administration, as "Neyhus."

Judge Barnes terminated this line of attack upon Mr. Robnett with the abrupt statement: "If any man changes his name, it is natural human curiosity to know both his names, and that sort of man must carry the burden."

"If persons are Jews," continued the Jurist, "and are Communists, they will have to carry that burden, and it will not benefit them or their religion to set up a taboo against mentioning that fact. In our efforts to refrain from persecution we must not establish meaningless taboos. We must not establish the taboo

that under no condition must we mention a person is a Jew. That will not stop persecution."

Although the jury returned a verdict favorable to Mr. Robnett, designed to clear his name, the Judge expressed disappointment that a large amount of money had not been awarded for damages sustained. He said:

"I think I may properly state if this case had been tried by this court without a jury, the court would have assessed damages in a very substantial sum."

Thereupon the court characterized the book as "over five hundred pages of twaddle, just twaddle, with a few outrageous and unfounded charges of which any citizen might properly complain."

Members of the jury later revealed what occurred behind closed doors when the case was turned over to them for a decision. There were heated discussions. A total of six ballots were taken. Two members held out stubbornly in favor of Carlson and the Dutton firm, refusing to give an inch despite the arguments and the unanimous opinion of the other ten.

Several of the jurors expressed themselves with vehemence when the trial was over. One woman of the group stated: "I thought Robnett was entitled to at least fifty thousand dollars. The publishing company was unquestionably guilty of a gross libel." Another lady said: "I'd have voted Robnett one hundred thousand dollars if I could. I wanted this jury to return a verdict which would put an end forever to smear campaigns; to put an end to such a contagion as this book anywhere in America from now on."

The attitude of the two defiant jurors made nec-

essary a compromise, whereby the falsity of the book was recognized and Robnett was awarded the sum of one dollar damages.

Mr. Robnett and his attorneys refused to accept the verdict and moved for a new trial, which was granted. But, rather than risk a second defeat which would have been inevitable because Carlson and his publishers had no defense, the Dutton lawyers offered a substantial sum in settlement of the suit and Robnett accepted. When the payment was made, however, it was stipulated that Robnett would make no announcement of the settlement and would not disclose the amount of the substantial money involved.

This was the kind of witnesses, testimony and "evidence" upon which the Anti-Defamation League-dominated prosecution was depending to prove its false charges against the innocent patriotic victims of the Sedition Case.

In the eight months the Sedition Case was in progress more than three million words of testimony, comprising eighteen thousand pages, were taken. The cost to the taxpayers was estimated at more than a million dollars by attaches of the court. Rogge still had over three thousand exhibits to introduce in evidence, with some eleven hundred exhibits already introduced.

At one point in the trial, fifteen of the attorneys, including one who is now a judge himself, petitioned Eicher to disqualify himself for having shown "bias and prejudice against the defense and in favor of the prosecution" from the start. The lawyers charged he "grossly restricted the scope of the attorneys in

their representation of their clients, made arbitrary rulings without support in law, and in other ways violated the constitutional safeguards of each of said defendants." Judge Eicher refused to withdraw from the case.

Defendant E. J. Garner, age eighty, almost totally deaf and very frail, died during the trial. His body was shipped back to his aged widow in a pine box, naked. She died a short time later with a broken heart. Three of the defendants obtained severance from the proceedings, two because of ill health, and one because his courtroom conduct was "obstreperous." Those severed were True, Baxter and Noble.

CHAPTER TEN

SENATOR LANGER'S SPEECH

UNITED STATES SENATOR WILLIAM LANGER rose to his full stature, September 8, 1944, and castigated the Sedition Case in a fearless speech that produced repercussions throughout the nation. It was a stunning blow to Rogge and his backers. The Senator proved himself to be, as has so often happened since he went to Washington, a friend of the underdog.

Several Senators and Representatives made a stand against the case during its preliminary stages, before the trial actually got under way. After that they took the position that being in the hands of the judicial branch of the government, it would be improper for the legislative to interfere. But the Senator from North Dakota entertained no such inhibitions. He believed that a grave injustice was being perpetrated and that extraordinary measures would be required to correct it. A condensation of his message to the Senate and the nation is here reproduced from the Congressional Record because of its great historical importance.

Mr. President, I rise to discuss the so-called sedition trial which is now taking place here in the city of Washington.

In time of war every precaution should be taken to protect the armed forces, their dependents, the citizens of the United States, and the country itself, and I applaud the efforts of officials when they do this, but also in time of war extraordinary precautions should be taken that innocent people should not be deprived of their constitutional rights.

Certainly, in this war the Attorney General, Mr. Biddle, has not gone witch hunting, and just as certainly his record, when compared to that of A. Mitchell Palmer, the Attorney General in World War No. 1, is most commendable. It is that very fact, Mr. President, which makes the action of the Attorney General in the so-called sedition cases all the more inexplicable. I realize that a Senator who takes up the cudgels in behalf of these people on trial is instantly met with the report of the subcommittee of the Committee on the Judiciary, that the courts are handling this matter and that the legislative branch of the government should not interfere with the judicial branch.

Indeed the report of the subcommittee states nothing should be done until after the courts are through with this matter, but, Mr. President, with that conclusion I disagree. Certainly, it would be the duty of the Congress, as the legislative branch representing the people, to protest if the President, as the Executive head, was infringing upon the rights of the people—in fact, Congress has often done so; and likewise I believe it is the duty of the Congress, as the representative of the people, to bring to the attention of the country any flagrant cases in which the rights of the people in the courts are jeopardized.

So, Mr. President, whether I am right or whether I am wrong, as long as I believe I am right I shall never shirk what I conceive to be my duty in fighting to preserve the rights of any man or woman, regardless of race, color, or creed, whether rich or poor.

Mr. President, I have always been one of those in public life who believe that the rank and file of the people can be trusted. I do not believe in secrecy and star-chamber proceedings on the part of those elected to serve the people of this country. I do not believe, for example, that the OPA should have the right to sue a farmer or an implement dealer and have the Office of Price Administration as the prosecutor, the judge, and the jury. I believe, on the contrary, that every man should

have his day in court, and have it openly, and honestly; and if the defendant is without means, the court should give him proper paid representation. Mr. President, the people of my State believe that. They abhor railroading anyone to the penitentiary. They abhor even the appearance of it.

They want the rights of the defendant as well protected as the rights of the State which is prosecuting him. I say this from my experience as county attorney and one who for two terms held the office of attorney general. I say it as one who has been in court frequently, not only as an attorney, but as a litigant and as a defendant in civil and criminal cases.

The prosecution in its opening statement in the present trial claimed that these defendants were part of a world-wide conspiracy, that their intent was to overthrow democracy throughout the world, and that they had underground armies. We were given, to understand, with much fanfare, including press, screen, and radio publicity, that civilization was hanging by a hair until these defendants were brought from the four corners of the Nation and put on trial here in Washington.

Who are these 30 allegedly worldshaking defendants, most of whom have been indicted three times—1942, 1943 and 1944—on similar conspiracy charges and brought to trial only April 17 of this year? The public has been led to believe that they are powerful, and that some of them are very wealthy. What is the truth, the cold, stark naked truth, as to who these thirty defendants are?

One of them is Elmer J. Garner, a little old gentleman of eighty-three, almost stone deaf, with three great grandchildren. After he lost the mailing permit for his little weekly paper, he lived with his aged wife through small donations, keeping a goat and a few chickens and raising vegetables on his small home plot. Held in the District jail for several weeks for lack of bond fees, and finally impoverished by three indictments and forced trips and stays in Washington, he died alone in a Washington rooming house early in this trial with forty cents in his pocket. His body was shipped naked in a wooden box to his ailing, impoverished widow, his two suits and typewriter being held, so that clothing had to be purchased for his funeral. That is one of the dangerous men about whom we have been hearing so much.

Another frail aged defendant, James True, who has been

too ill since 1940 to write or work at anything, was severed from the trial when he became too ill to get to court.

Another defendant, David Baxter, a sign painter who wrote a little, was indicted at least twice with most of the other defendants and was kept in the District jail for lack of funds. After many weeks of the present trial, his case was severed because he was unable to hear anything that went on at the trial, since he was eighty per cent deaf. Small contributions eked out by unpaid court-appointed attorneys and other defendants barely kept him and his wife and their two small children alive in a Washington slum until he could get back to his little California sign-painting shop.

Another defendant, Prescott Freese Dennett, had served his country honorably and is still a private in the United States Army. He has not been disciplined nor discharged by the Army, but was taken from the Walter Reed Hospital, where he was undergoing treatment, when the trial started, and was deprived of Army support and forbidden to wear his Army uniform to court.

Another, Ernest F. Elmhurst, had been a waiter in New York hotels and wrote a book. He has been working nights in Washington hotels while on trial, and has been followed up and caused to lose these jobs because of being a defendant.

Another, Garland L. Alderman, a young man whose wife and child are being supported by relatives, was chairman of a Michigan America First Committee chapter. He has been working nights here while on trial, since April 17.

Another, William Robert Lyman, Jr., has a brother in service who was recently cited for bravery. He has worked at one odd job or another and peddled literature. He was working as a seaman in the United States merchant marine, transporting supplies to England in 1942. While in England he read about his first indictment and immediately returned to America and went to the Department of Justice and gave himself up. He was kept in the District jail for five weeks for lack of bond money. He now ekes out a bare living while on trial here.

Another, E. J. Parker Sage, has been a Detroit factory worker. He lost his night job in Washington when it became known that he was a defendant in this trial.

Another, Charles B. Hudson, formerly issued a small home-mimeographed bulletin. His wife kept roomers, and for several years he was unable to get his teeth fixed because of lack of

money. One of the defendants who has been dragged here, one of those who, it is said, are so powerful that they are going to overthrow democracy in this country, one of those who have underground armies in the United States, for several years was unable to have his teeth fixed because he did not have money enough to pay the dentist. His wife kept roomers. He lost his old car, and when this trial started, they had to break up their home and put their furniture in storage. They live in one room here in a rooming house, sleeping on one three-quarter size bed.

One frail, aged defendant, Robert E. Edmondson has been unable to work at anything since 1940. His money is gone. He and his wife depend upon small donations. Mr. President, they depend upon charity.

Another, Peter Stahrenberg, formerly a small printer, shares a cheap room here with another defendant and works nights at odd jobs for a living.

Another, Lawrence Dennis, is a man of moderate means and a former member of the United States Consular Service. He is defending himself as his own attorney and rooms here with his wife and two small daughters.

Another, George Deatherage, is an industrial efficiency engineer with a son fighting in the service.

Another defendant, Howard V. Broenstrupp, whose specialty is eccentric occultism, has been under treatment at a veterans' hospital for undernourishment.

One woman defendant, Lois de Lafayette Washburn, was working at housework when indicted and arrested. Two or three of the defendants had large imaginations and little paper organizations composed of themselves and very few, if any, others. Several of the defendants have sons in active service.

Another defendant, Colonel Eugene Nelson Sanctuary, is an aged gentleman who served in World War No. 1, and received high military praise. He has written many hymns and has conducted Bible classes. As a result of the three indictments and the shock of his being kidnapped during his wife's absence from their apartment, and held in jail for weeks until he could make bond, his wife has had two strokes, and they are impoverished, spending their last few dollars saved for their old age.

One of the defendants, Robert Noble, recently severed from the trial—although he was convicted in California and is now

serving time—so if he committed any crime, he is now being punished, has a son in active service in the Navy of this country.

Eight of the defendants are in custody as political prisoners or, as some claim, at least, for being German born. One of them in March of this year lost a son fighting under the American flag in Italy, and has another son now serving in North Africa.

Another defendant is a Christian minister, Mr. Gerald B. Winrod, and he also has a son in the armed services.

The son of the other woman defendant, Mr. President, who is Mrs. Elizabeth Dilling, graduated on March 4 from officer candidate school, but a few hours before graduation his commission was withheld, allegedly, although I do not state it as a fact, because his mother is a defendant in this trial. Her writings have been recommended by the Army and Navy Register, the American Legion's National Americanization Commission, the National Sojourners, and other similar organizations.

One defendant has made eleven trips from Chicago to Washington in connection with arraignments, hearings, and trial on these indictments.

Mr. President, out of all 29 of the defendants, only two have paid attorneys. Two of the defendants managed to raise bare living expenses for their attorneys, aided by contributions. Two defendants are acting as their own lawyers. The other defendants being paupers are represented by unpaid, court-appointed lawyers.

Would it not seem that these unpaid, court-appointed attorneys have sacrificed enough through loss of practice and income in the interest of justice, by having already served for five months for nothing in these trials? Is it not also time to let the defendants go back to their homes and work, after being held under indictment for over two years, undergoing the constant hardship of raising bond, fees, and expenses to go to and stay in Washington?

How many underground armies, fleets, or battleships, Mr. President, do you or does any other fair-minded American citizen think these defendants are capable of maintaining? Take for example the old gentleman who died, partially from starvation, with forty cents in his pockets.

Therefore, Mr. President, when I have received from North Dakota letters relative to the sedition cases which are now pend-

ing in Washington, I have been impressed by the fact that the people of my State and, I believe, of the entire country do not believe that the defendants in the sedition cases are receiving a square deal . . .

As a member of the Committee on the Judiciary, day before yesterday I conceived it to be my duty actually to attend a session of the court where these men and women are being tried.

Mr. President, I invite the attention of the Senate to an article in America's oldest weekly publication, the *Pathfinder*. The article is an indication of what the American people think of the pending sedition trial. I understand that the *Pathfinder* has a circulation of nearly a million. The article to which I refer appeared in the issue of July 24, 1944. I wonder, Mr. President, what the nearly a million persons who are subscribers to the *Pathfinder* thought when they read the editorial entitled "Three Months in a Brawlroom," which, as I have said, was published in the *Pathfinder* of July 24, 1944. The article is as follows:

"Last week, while Washington's million war workers panted through the third week of a heat wave, three other people were legally kicked out of an air-conditioned court chamber to sweat with them. Their discharge, for trial at some unnamed date in the future, lowered to twenty-six the motley company of German aliens, professional rabblers, and weirdly prejudiced citizens who have argued and jeered through fourteen weeks in the cool, green chamber of Criminal Division No. 1 in the United States District Court Building.

"They have been in the same room since April 17 and, from all indications, will still be there at snowfly. One of the original company of thirty is, gratefully, dead. The others, strange cats in the garret of United States jurisprudence, continue to cuss the court, the Federal authorities, one another, and, occasionally, themselves.

"This is the unhappy spectacle of the so-called sedition trial, the largest trial for a crime of this nature in American history. Most of the twenty-nine defendants, grouped together in a large enclosure at the center of the courtroom, object strenuously to being tried with their codefendants. The crime charged against them is conspiracy to cause insubordination in the armed forces, largely by printed material. They did not all join in one publication. They did not separately do identical or even similar acts. Several of them have carried on campaigns of anti-Semitism for the past ten or twelve years. Others are

ex-leaders of the bund and similar tub-thumping, pro-Nazi organizations of the 1930's.

"Ten of the original thirty are in jail already for seditious offenses. Some are infamous, some have no past criminal record; some are mentally unbalanced."

I ask any Senator upon this floor how he would like to have his brother or his sister or his son or daughter tried with twenty-eight other defendants, some of them mentally unbalanced.

"Several defendants have voted for separate trials on the ground that a chosen few of their codefendants are insane. One defendant failed to appear when the trial was set, and explained it by charging that the New Deal interfered with his mail notice of the date.

"About half of the defendants are represented by attorneys appointed by the court, who receive no compensation. More than 3,000 pages of record had been amassed by court reports before any evidence was offered in the trial."

I wish to repeat that statement. This is what the Pathfinder says:

"More than 3,000 pages of record had been amassed by court reports before any evidence was offered in the trial. For a defendant to obtain a copy of this record would cost \$1,200."

Mr. President, to digress from the article, I wish to quote no less an authority than William Howard Taft, former President of the United States and later Chief Justice. I have in my hand the recommendation made by the Chief Justice and the conference of senior circuit judges of the United States, which was adopted on June 9, 1925. Chief Justice Taft transmitted to the circuit judges and the district judges of the United States certain resolutions adopted by the conference for their guidance.

Among other things, here is what was said by the Chief Justice, a man who had been President of this country, a man who never, so far as I know, has been accused of being a radical or being disloyal to this great America of ours, and his statement was sent to every law-enforcement officer in the Department of Justice and to the Attorney General himself. The Chief Justice said:

"Further, the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant."

Mr. President, at the same time the Attorney General of this country under Calvin Coolidge was John Sargent, and in the reports of the Attorney General on pages 5 to 8 we find him referring to conspiracies, and he quotes Chief Justice Taft:

"Further, the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant."

Mr. President, the words of the former President and late Chief Justice of the United States should serve as a beacon light. The idea of bringing together for one trial in Washington thirty people who never saw each other, who never wrote to each other, some of whom did not know that the others existed, with some of them allegedly insane, and the majority of them unable to hire a lawyer. And remember, they were brought to Washington from California and Chicago and other States a long way from Washington, placed in one room and all tried at the same time, with the twenty-nine sitting idly by while the testimony against one of them may go on for weeks and weeks and weeks, the testimony of a man or woman other defendants never saw before in their lives. That is what is taking place in Washington today.

Mr. President, if a man robs a bank he is tried at the place where the robbery occurred, or at least in the State. If a man commits a murder in the State of Tennessee, he is tried in your State of Tennessee, Mr. President. He is tried before a jury of his peers. He is tried before a jury that knows the conditions existing in the State of Tennessee. But here, Mr. President, we find men and women brought 3,000 miles, some of them, to the city of Washington, where some of them have never been before in all their lives, brought here to the city of Washington where there is a large jury panel made up in many cases of men and women a majority of whom or relatives of whom are in the pay of the United States Government. Such individuals are placed upon a jury. I do not know whether any such are on the present jury or not, but, Mr. President, I condemn the system which permits fine, loyal Americans to be brought from California or Tennessee or North Dakota or any other State to be tried in the city of Washington, hundreds, if not thousands, of miles away from their homes . . .

I have been impressed with the fact that some of the outstanding lawyers in Washington are almost unanimous in their opinion of what they term a legal farce, or a perversion of jus-

tice. I believe, Mr. President, that the Attorney General of this country should dismiss these cases promptly.

Mr. President, I believe that in the interest of good government, in the interest of seeing that the right kind of attitude is maintained by the American people toward the courts, the Attorney General should do as I have suggested, and I hope he will.

CHAPTER ELEVEN

SUPERNATURAL INTERVENTION

AS PREVIOUSLY INDICATED, Klein's withdrawal and jail sentence had a depressing effect on the prosecution because the idea took form in the public mind that defense attorneys were being subjected to terrorism from the bench. Members of the District of Columbia Bar Association became highly critical. Confidence in the judiciary was being jeopardized and straight thinking attorneys regarded this as cause for alarm.

Other defense attorneys thereafter seemed to throw caution to the wind. It became automatic for the court to overrule all objections and motions by defense counsel. All decisions were made in Rogge's favor. Attorneys on the other side continued to register complaints but they might as well have saved their breath. At times when Rogge would raise his voice in hysterical attacks, as many as eight or ten members of the defense would be on their feet pleading for fair play and justice.

Some of the most honorable members of the local

bar association were in this group, men who in a normal case would not under any circumstances shout and speak out as they were then doing. One of the most vigorous and critical attorneys on the defense side. Mr. Frank Myers, has since been awarded a judgeship in Washington. He is highly respected and is serving with distinction, but in the days of the Sedition Case was obliged to participate in what one writer has called "a courtroom brawl," being nauseated by the behavior of Eicher and Rogge. There no longer remained any question but what the defendants were to be railroaded without regard for justice, court decorum, rules of evidence or judicial integrity.

The Communist attorneys in Judge Medina's court in New York City tried later to follow the example of defense counsel in the Sedition Case. But they deliberately created uproars and ugly scenes to get the prosecution off the track. The difference was that the men who battled against odds before Eicher had truth and justice on their side and their actions were spontaneous without premeditation. The Communists who stood before Medina were allied with the forces of evil, in the complete absence of truth and judicial decency.

Rogge continued hour after hour, day after day, week after week, to interrogate witnesses and pad the record with irrelevant material. John Jackson expressed the attitude of other members of the defense counsel when he would, at intervals, protest to the court against admitting "this trash" into the record. But no matter how strenuously the defense objected, everything was admitted.

Then a bomb was dropped which some have said

had more to do with demoralizing Rogge's case than any other single operation. It came in the nature of a motion by attorney Laughlin, consisting of only a few brief sentences, but straight to the point. He simply stated that it would be unsafe for his client unless the files of the B'nai B'rith organization throughout the United States were immediately impounded.

The motion was handed to the bench. Eicher read the document, glared in Laughlin's direction, and threw it aside. The court expected to ignore it. Anticipating such a contingency, Laughlin had made mimeographed copies which he immediately distributed to every member on the defense side and representatives of the press. He even handed one to Rogge. Washington newspapers carried the story that afternoon and the prosecution began to show evidences of really being hurt. Laughlin had placed the spotlight upon the big secret of the case.

It was under these circumstances that the Washington Post completely reversed itself and started demanding that the case be brought to a quick conclusion. All who had watched the proceeding from the beginning, recalling how the Post had reviled and maligned the victims, resorting to every journalistic art to inflame hatred against them, were stunned to read these words on its editorial page of July 28, 1944:

"Justice Eicher had undoubtedly tried to make the best of a bad situation . . . but the very nature of the case has thwarted his efforts. Mass trials may possibly be successful where the issues are simple and the testimony is brief . . . or where the Russian technique of condemning the defendant first and putting

on a trial for a show is used. But where the issues are complicated and the defendants who have not been brow-beaten stand on their democratic rights, a trial involving more than two dozen defendants is almost certain to be a fizzle. We think the time has come to recognize the unlikelihood of securing any fair proclamation of justice from this unhappy experiment. ."

At first the Post editorial had a heartening effect on the defense, but it soon became evident that Rogge entertained no thought of giving up. The incident only seemed to goad him to more distasteful acts of fanaticism. He became increasingly irritable and bitter in his attitude toward the defendants and their attorneys. By this time he was being accused of sadism.

The dog days of August came and went. September dragged by, then October. Still the trial droned on. Everybody's nerves were on edge. Tempers exploded at the least provocation. Some members of the defense counsel had seen their normal legal practices vanish. The defendants were impoverished. Men and women were groaning, "How long O Lord, how long!"

Then suddenly the prosecution seemed to take on new life. Winchell shouted into the radio that they were going to get Winrod, assuring the listening audience that the man from Kansas had been chosen "the first of a group of fundamentalist preachers" who would soon be sent to prison. In those days, it was the conservative or fundamentalist wing of the clergy that was leading the fight against Communism, as far as the religious circles of the nation were concerned. Rogge simply was not going to give up without send-

ing at least one individual to jail, and that individual was Gerald B. Winrod. They seemed to consider him their arch enemy, perhaps because he had such a large following of Christians and had shown his leadership by running a close race for the United States Senate in 1938. He sensed the danger and saw that the hounds had concentrated on him for the kill. A call was sent out and godly people began to organize prayer meetings throughout the nation. Dr. Winrod says: "My little mother led the hosts of heaven in their bombardment of the throne of grace."

It was at this time, a few days before the trial ended by an act of supernatural intervention, that something happened on the witness stand which destroyed the case as far as Dr. Winrod's part was concerned. The incident showed that the prosecution was relying upon perjured testimony.

Henry D. Allen of California, a distinguished looking gentleman of exceptional intelligence, had been called to the stand for the purpose of tying the witnesses together in a conspiracy. Rogge was trying to use him to show that several of the indictes had known one another, to the point at least of exchanging letters, before they were herded to Washington. Testimony to this effect had been pulled out of Mr. Allen months earlier in a grand jury room under the strain and pressure of an intensive interrogation. But in open court he proved a damaging witness to the prosecution.

In 1940, Max Levand of the Wichita Beacon with his pipeline into the Department of Justice, had published a smear article to the effect that Dr. Winrod

met the well known German, Dr. Otto Volbear, in California before going to Europe in 1934. Dr. Volbear is the dealer in old manuscripts who had earlier sold the Gutenberg Bible to Congress. The story of this alleged meeting was rehashed by left-wing publications and over the radio. Something sinister was supposed to have occurred. There were first hints and later outright charges that the German had supplied the preacher with money to make the trip. Then it was reported that Rogge claimed to have positive proof. Dr. Winrod remained silent, confident that such an outlandish threat demonstrated the inherent weakness of the case against him. He and his attorneys were content to wait, confident that it would be possible to demolish the prosecution if this charge ever reached open court.

Rogge had brought the matter up before the grand jury in 1943 when Mrs. M. L. Flowers of the Defender office was testifying. He said: "Now, Mrs. Flowers, tell us about the money Volbear gave Winrod before he went to Europe." She denounced the story as nonsense and the prosecutor replied: "Well, it may interest you to know that a witness has sat in the chair where you are sitting in the presence of this grand jury, who was present when Volbear handed him the money for the trip. He saw the actual substance change hands."

Months passed and one day Rogge's assistant, a fellow named Burns, who resorted to court room theatrics every time an opportunity presented itself, called one of Dr. Winrod's attorneys aside and said: "We have a witness ready who was right there when Volbear gave Winrod the cash to go to Europe."

Now let the dates and facts be carefully checked. Rogge had Henry D. Allen on the stand. It so happened that Mr. Allen and Dr. Winrod had met only once, and that was at the close of a sermon in the Altadena, California, Baptist church, Sunday evening June 2, 1935. Dr. Winrod had also delivered the commencement address at the Los Angeles Baptist Theological Seminary on the afternoon of the same day.

On cross examination attorney John Jackson asked Allen whether or not he and his wife heard Dr. Winrod preach the evening of June 2, 1935. "Yes." "What did he preach about?" "Christ in Gethsemane." Over Rogge's protest a copy of the Bible was introduced in evidence marked "Exhibit A for Winrod."

Thereupon, Mr. Jackson asked if Dr. Winrod happened to mention during the conversation of June 2, 1935, that he had an appointment with Dr. Volbear about marketing an old valuable Bible for the president of the local Baptist Seminary. Mr. Allen said he did recall such a statement and that Dr. Winrod was scheduled to see the dealer in old manuscripts the next day, June 3, 1935.

Mr. Allen then stated that he knew from writings in The Defender Magazine that Dr. Winrod had been in Europe during the year previous.

In other words, by careful questioning, John Jackson demonstrated out of the mouth of Rogge's own witness that the much discussed conversation with the German seller of manuscripts actually took place six months *after* Dr. Winrod had returned from

Europe. Yet Rogge informed Mrs. Flowers in the grand jury room and Burns told attorney Jackson that they had a witness who was present when Volbear handed Dr. Winrod the money *before* he made the trip. As a matter of fact, the European tour was financed through contributions supplied by a group of Christian friends, whose names, addresses and amounts Dr. Winrod had ready to spread before the jury.

"This can mean but one thing," says the preacher, "the prosecution took note of the falsehood published in the Wichita Beacon in June 1940 and built perjured testimony around it. Such a conspiracy against justice could occur only under a Communistic administration. No wonder the Chicago Tribune recently stated in an editorial: 'The infamous Attorney General Biddle made the Department of Justice, a department of oppression'."

The pressure of those days produced several dramatic events in the court room, but none equal to that which occurred shortly before Mr. Allen was excused from the witness stand. He had been grilled for days and during this time both Mrs. Allen and their eighteen-year-old twin daughters had sat through the long hours suffering vicariously with him.

Attorney St. George asked him, on cross examination, if he had ever suffered, in any special way, for his stand against Communism. The witness said yes, and began to tell a heart-rending story. Back in the 1930's he had bought his little boy a shirt in a store in Pasadena. The shirt proved too big. When he took it back for an exchange, the merchant recognized him and an argument ensued. Allen lost his

temper and there was a scene of name calling and loud talk. Thereupon, a group of Jewish employees pounced on Allen, beating him, kicking him, pushing him toward the front door; and in the altercation they pushed his son through a plate glass window. The glass broke and a sliver gouged out one of the boy's eyes.

As Allen was telling this story, he grew increasingly pained and halting, and burst into tears as the climax was reached. At that moment, screams were heard in the rear of the court room. Like a flash, utterly forgetting the surroundings, the two beautiful daughters rose from their seats, ran down the aisles, past the jury, sobbing audibly at every step and threw their arms around their father's neck. They were heard to scream, "Daddy, Daddy, they can't do this to you, they can't do this to you!"

There was hardly a dry eye in the court room. Rogge appeared to be about the only exception. He got to his feet a few minutes later, when the storm had subsided and, to the disgust of almost everyone, condemned "this show." His statement produced pained expressions on the faces of several jurors. The incident broke the long tension for most of the defendants and attorneys. It was freely stated among the attorneys at the end of the day that the trial was virtually over and the Communist cause had lost. The next witness to take the stand was one N. J. Roccaforte, now a resident of Houston, Texas. Rogge used him to spin a fantastic tale against Dr. Winrod.

November 29, 1944, began like any other day in this confused, dreary case. No one could see in ad-

vance that it would be any different from any other day, yet it was to make history in this trial.

Roccaforte, who had worked in Dr. Winrod's office years earlier and later formed an association with B'nai B'rith interests, manifested bitterness toward the defendants from the beginning, in contrast to Allen's attitude. Rogge beamed upon him with pleasure. He was violently pro-prosecution. He was especially hostile toward Dr. Winrod. He made statement after statement which the minister later characterized as untruths. But he was unable to link the defendant with any act or utterance remotely advocating or inspiring insubordination in the armed forces or relationship with any Nazi agent or program. As a matter of fact, Dr. Winrod had at that time given two sons to the armed forces. When court adjourned for the afternoon, no one could have known that the curtain was about to fall on the farcical drama. The Judge died that night in his sleep.

Next morning, November 30, 1944, the following story appeared in the Washington Times-Herald under a full page width heading, "Justice Eicher Dies in Sleep."

"Chief Justice Edward Clayton Eicher, of the United States District Court for the District of Columbia, who presided over the sedition trial, died in his sleep some time late last night or early this morning.

"Death of the sixty-five-year-old jurist, who was chairman of the Securities and Exchange Commission before being appointed to the local bench, occurred at his home in Alexandria.

"He was found dead in bed early today by a member of his family when he failed to arise.

"Aside from the severe blow to his associates, news of Justice Eicher's death caused consternation in the ranks of sedition trial defendants and lawyers on both sides of the case. It was indicated, unofficially, that it may be necessary to go to the beginning and rehear all of the voluminous evidence introduced during the many months the trial has been in process.

"Officials of the Justice Department, expressing shock at Eicher's sudden death, confirmed that the whole vast structure of the mass sedition trial, which already has cost thousands of dollars, was reduced to ruin by the event.

"The trial would have to start from scratch again, they said. The indictments, however, would not be vitiated by Eicher's death.

"The U.S. District Attorney's Office expressed the opinion that the sedition trial will have to be retried. It was explained that in some cases a new judge can be appointed to try a case when there is an agreement between counsel, but it was doubted that such an agreement could be reached in this instance.

"A native of Iowa, which he represented in Congress, Justice Eicher took the oath of office February 3, 1942, at ceremonies in the courthouse presided over by Associate Justice William O. Douglas of the U.S. Supreme Court.

"Eicher was elected to Congress in 1933 from the First Congressional District of Iowa. He served three terms. He was appointed to the SEC in 1939. He was a graduate of the University of Chicago.

"Justice David A. Pine announced that all branches of United States District Court will be closed today in memory of Chief Justice Eicher."

Substantial sums of taxpayer's money continued to be spent by Rogge who tried desperately hard to keep the case alive. While the trial itself formally ended by court order on December 7, 1944, it was not until November 22, 1946, almost two years later, that Chief Justice Bolitha J. Laws dismissed the indictments and called the case "A TRAVESTY ON JUSTICE."

Rogge had been fired in the meantime, on personal orders of President Truman, for making government secrets public for personal purposes, after which the case was turned over to T. Lamar Caudle of "mink coat" fame for prosecution. Judge Laws stated in his decision of dismissal that the defendants' constitutional right "to a speedy trial had been denied" and that "I can reach no other conclusion than that there is a serious doubt as to the validity of these cases."

Laws said that when a retrial was in prospect, Rogge told him he doubted if the higher courts would ever sustain a conviction in the case.

"If these defendants are guilty, it would seem that any serious doubt as to their guilt would be resolved in more than five years of intensive investigation by able counsel and investigators of the department of justice," said the decision.

"The defendants have been before the court upon these charges for nearly four and one-half years. All of them were brought here from other parts of the

country to stand trial. Because of the impoverished state of eighteen of the defendants, they were represented by counsel not of their own choice but assigned by the court to serve without compensation. As in all long delayed cases, the witnesses are now scattered; some are not accessible, more particularly the defendants who are without funds . . . I do not see how these defendants now can possibly obtain fair trials."

And thus the curtain dropped on America's most disgraceful and distasteful courtroom episode aptly and correctly labeled by an honest Judge Bolitha J. Laws, "a travesty on justice."

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