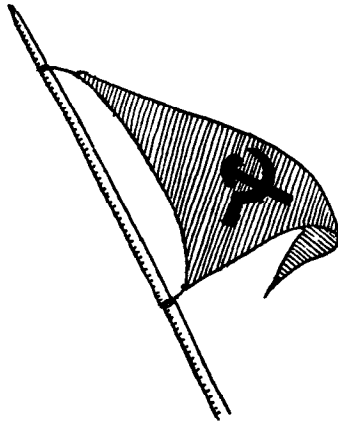

The California Red Flag Case

The facts of the conviction of five young women for displaying a red flag at a children's summer camp.



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April, 1930.



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The California Red Flag Case

The Conviction and Appeal

FOR displaying a little red flag at a children's summer camp in the mountains back of San Bernardino, five young women were convicted in October 1929, and sentenced to prison terms of 6 months to 5 years,—one of them to one to 10 years. One of the five is a member of the Communist Party, one of the Young Communist League; three are not Party members but sympathizers.

An appeal was taken from this conviction at San Bernardino to the Court of Appeals sitting at Fresno, where it was argued on March 4th, 1930. If the conviction is sustained it will go to the California State Supreme Court on the issue of the constitutionality of the law. There is some hope of success there, since the California Supreme Court knocked out in 1920 an anti-red flag ordinance of the city of Los Angeles. That decision said:

“Nothing would seem to be more certain than that the inhabitants of the United States have both individually and collectively the right to advocate peaceable changes in our Constitution, laws or form of government, although such changes may be based upon theories or principles of government antagonistic to those which now serve as their basis. And it seems equally certain that an organization peaceably advocating such changes may adopt a flag or emblem signifying its purpose, and that the display or possession of such flag or emblem cannot be made an unlawful act.”

If the Supreme Court of California affirms the conviction and upholds the law, application will be made to the U. S. Supreme Court for a review on the ground that the law violates rights guaranteed by the federal constitution.

How the Case Arose

For three years a little group of radicals in Los Angeles had run a summer camp for working-class children. The so-called “Camp Conference” in charge was a delegate body representing half a dozen

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political and industrial organizations. Several of them were affiliated with the Communist Party. The children came chiefly from Communist families.

The camp was conducted without interference in the summers of 1927 and 1928 with the same sort of activities as in 1929, although no red flag was displayed in the earlier years. About 40 boys and girls were accommodated, ranging in age from six to sixteen.

Their parents paid board at the low rate of \$6.00 a week, made possible by the fact that all the adults volunteered their services. A sympathetic landlord also rented them his ranch near the town of Yucaipa for a nominal sum.

On August 3, 1929, when about 40 boys and girls had been at the camp for several weeks, a raid was suddenly made on it by several automobile loads of members of the American Legion from the local post at Redlands, a few miles from Yucaipa. The Legionnaires were led by George H. Johnson, district attorney of San Bernardino County, himself a member of the Legion. It is claimed that the Legion Post was prompted to this patriotic activity by the Better America Federation of Los Angeles and the Intelligence Bureau of the Los Angeles police department, both of whom keep close check on radical activities.

Driving into the camp the raiders found children playing baseball, some off hiking in the mountains, and some studying economics under the leadership of Yetta Stromberg, a 19-year-old American girl, former student at the University of California at Los Angeles. They found up on the hillside about one hundred yards away, a small flag-pole on which was flown every morning a little home-made triangular red flag on which had been painted a black sickle and hammer. This is the flag of Soviet Russia, and also the official emblem of the Communist parties throughout the world.

The raiders discovered that every morning about seven o'clock the children went through a flag-raising ceremony, standing at attention beside their beds. One of the children ran up the flag while

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the others saluted, reciting in unison this pledge:

"I pledge allegiance to the workers' red flag,
And to the cause for which it stands,
One aim throughout our lives,
Freedom for the working class."

The flag was then lowered and put away until the following day's ceremony. No American flag was found at the camp.

Search of the camp library disclosed a cardboard box labeled "Please do not touch," which was found to contain Communist literature and sheet music. Miss Stromberg testified that it was her personal property sent out for her own reading and use, and that neither the children nor the adults knew of it. No evidence of its use was found.

The raiders confiscated the flag and the literature and arrested six women and one man. Three or four boys and girls were held as witnesses. The prisoners held were:

Yetta Stromberg, leader of study groups,

Emma Schneiderman, who played the piano,

Mrs. Sarah Cutler, mother of Miss Schneiderman, who was at the camp for a day's visit to her daughter,

Jennie Wolfson, manager,

Esther Karpeliff, who washed and cleaned up,

Bella Mintz, the cook and

Isadore Berkowitz, man-of-all-work around the place.

The Charges

The prisoners were taken to the jail in San Bernardino while the prosecution figured out the charges on which they could be held. It was proposed at first to charge them with criminal syndicalism, but prosecutions under that law in California have been unpopular since 1924. The District Attorney then discovered the anti-red

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flag law enacted in 1919, but never used in all the years since. The law reads:

"Any person who displays a red flag, banner, or badge or any flag, badge, banner, or device of any color or form whatever in any public place or in any meeting place or public assembly, or from or on any house, building or window as a sign, symbol or emblem of opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character is guilty of a felony."

An information was promptly filed by the District Attorney in the Superior Court of San Bernardino County charging that the prisoners did "wilfully, unlawfully and feloniously display a red flag and banner in a public place and a meeting place as a sign, symbol and an emblem of opposition to organized government," etc., and also that they together formed a conspiracy "to use and display a red flag."

The prisoners were released on bail of \$1,000 each, raised by the International Labor Defense who took charge of the case. This organization employed John Beardsley, Los Angeles attorney.

The Trial

The case was called for trial in October before a jury in the Superior Court at San Bernardino, presided over by Judge Charles L. Allison. The evidence centered in the box of Communist literature belonging to Miss Stromberg, though there was no testimony that anyone but she knew of it. Yet the court permitted the District Attorney to read it all to the jury, arousing their prejudices and inflaming their patriotic sentiments by appeals to the American flag behind the Judge's bench. Although the defense objected, the judge took the view that it was proper to read this literature because it was found in the camp and the jury should be allowed to give it whatever weight they saw fit.

The Legion witnesses testified as to the flag. The defense admitted the display of the red flag, denying, however, any conspiracy. They contended that the display of the flag was not a violation of the law because the flag was an expression of political opinion, which, under the constitution, no law may forbid.

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During the trial one juryman was discovered at the noon recess in conversation with a Legion witness who was to return to the stand for further testimony in the afternoon. The Judge held that no misconduct had been shown because it was not possible to prove what had been said in the conversation, except by the witness himself, who denied that they had discussed the case.

The jury was out 23 hours. They brought in a verdict of guilty against all the defendants except Mrs. Sarah Cutler, the mother who was visiting the camp for the day. The jury found all the defendants guilty of conspiracy to display the red flag, but not guilty—save for Miss Stromberg—on the count which charged them with displaying it! Miss Stromberg was found guilty on both counts.

The reason for the jury's lengthy deliberation was the effort of one juryman, a Hollander by birth and an orange grower, to acquit them all. He finally yielded to the compromise verdict. He was so remorseful after having done so that he wept when he told about it afterwards, and turned over to the International Labor Defense the \$26.00 he received as juror's fee.

After the jury brought in its verdict and before the Judge passed sentence a tragedy occurred among the defendants. Isadore Berkowitz, the one man convicted, hanged himself in a room at the Workers' Cooperative Center in Los Angeles. Berkowitz had been a soldier in the American Army in France in the world war. He had been gassed and had suffered from it ever since.

Judge Allison sentenced the four young women convicted of conspiracy to indeterminate terms of 6 months to 5 years at San Quentin Prison. Miss Stromberg, convicted on both counts, was sentenced to one to 10 years. Immediately Mr. Beardsley filed notice of appeal and the prisoners were released on bail of \$4,000 each, except in the case of Miss Stromberg whose bail was fixed at \$7,500.

The Appeal

The appeal came on for hearing before the District Court of Appeals at Fresno on March 4, 1930. The defense contended:

First, that the charge of conspiracy standing alone did not constitute a public offense;

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Second, that the verdict of guilty of conspiracy is fatally inconsistent with the verdict of not guilty on the charge of displaying the red flag (as against all the defendants except Miss Stromberg);

Third, that the jury, judge and district attorney all were guilty of misconduct in the trial;

Fourth, that the California red flag law is unconstitutional both in relation to the state and federal constitutions.

On the constitutional question Mr. Beardsley contended that displaying the flag of a political party is one means of "publishing one's sentiments." The California constitution provides that "every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

An incident in court before the judge sentenced the defendants throws some light on the temper of the officials. Mrs. Kate Crane Gartz of Altadena, a wealthy woman who champions unpopular causes, wrote to Judge Allison commenting on the verdict in which she said:

"Could not you tell as you listened to 'Yetta' that she was a young woman of high principles and ideals and not a criminal fit only for crucifixion?" She wound up by saying "So I say, go easy with these young enthusiasts."

Mrs. Gartz was cited for contempt and fined \$75.00, the judge commenting "If anyone could write a private letter to a judge advising him what to do about a case there would no longer be respect for our courts."

The Financing of the Defense

The International Labor Defense took charge of the case from the beginning, the Civil Liberties Union joining in the appeal. The fees and legal expenses have so far totalled \$2,500, of which \$1,050 has been paid. The Civil Liberties Union has agreed to share jointly with the I. L. D. the remaining amount. The Union has also offered to carry the case on appeal, if necessary, to the U. S. Supreme Court.

Those who are interested to contribute please use the coupon on the last page.

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Red Flag Laws in Other States

The laws in 28 states against the display of the red flag as a political emblem were all passed by the legislatures in one year—1919. One state alone, Massachusetts, repealed this law because it made illegal the display of the crimson flag of Harvard. Other states do not seem to have colleges with red flags!

No prosecution has been brought in any state under these laws and the issue of their constitutionality has therefore never come before the courts. Presumably no violations of the law have been flagrant enough to attract the attention of the authorities. It should be noted that the red flag of Soviet Russia was freely displayed, even in official ceremonies, at the receptions in 1929 to the Soviet flyers. The sole state supreme court decision involving the issue is that quoted on the first page affecting a local ordinance in Los Angeles.

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