

# TWENTY YEARS *for* FREE SPEECH!



¶ *A young Negro Communist organizer sentenced in Atlanta to 18 to 20 years solely for organizing black and white workers in an unemployed council.*

¶ *Read the amazing facts of this first conviction under an old Georgia statute penalizing incitement to insurrection.*

*Help the appeal!*

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AMERICAN CIVIL LIBERTIES UNION  
100 Fifth Avenue  
New York City

Lenin  
Herndon  
75  
1939



*Prosecutor Hudson, to the jury:*

“The theory of Communism is on trial as well as Herndon. This is not a trial of Herndon, but of Lenin, Stalin, Trotsky, and Kerensky.”

*Angelo Herndon, to the jury in his own defense:*

“You may do what you will with Angelo Herndon. You may indict him. You may put him in jail. But there will come other thousands of Angelo Herndons. If you really want to do anything about the case you must go out and indict the social system. But this you will not do, for your role is to defend the system under which the toiling masses are robbed and oppressed.”



## 20 Years in Prison for Mere Opinions!

THE longest sentence ever imposed since the war for political activity involving mere opinions was given a young Negro in Atlanta in January, 1933. He was a Negro Communist engaged in organizing blacks and whites together in a local Unemployed Council.

Found guilty of "attempting to incite insurrection" under an ancient Georgia law he was sentenced to 18-20 years on the chain gang. The law carries a provision for the death penalty. The jury was, however, "merciful."

This monstrous sentence is to be appealed to the higher courts, but the young Negro, Angelo Herndon, 19 years old, is in prison. Bail has been twice refused pending appeal.

Herndon is not the only victim of the recent persecution of Communists in Atlanta. Six others were arrested and indicted under the same law two years before. Two of them were women, two were white men, and two were Negroes, —all involved in various organizing activities among the unemployed. Their cases have not come to trial because they were carried up on law points to the Supreme Court of the state, where the constitutionality of the insurrection statute was recently upheld.

These Atlanta prosecutions under an act passed originally to prevent the uprising of Negro slaves are unique in the South. They are similar to the prosecutions under criminal syndicalism and sedition laws in other states. The South has no such laws. Lacking them, resort was had to this ancient statute in order to penalize mere membership in the Communist Party and the organizing activities of whites and blacks on a basis of equality. It was this stirring up of Negroes to join with whites in a common organization which aroused the prosecutions.



*Angelo Herndon*

### *The Facts*

**A**NGELO HERNDON, a Negro organizer for the Unemployed Councils, and a member of the Communist Party, came to Atlanta from Cincinnati in the summer of 1932. He was sent there by the Unemployed Councils.

In the conduct of his work he led a demonstration of about 1,000 black and white men, women, and children, to the Atlanta court-house to demand relief after the commissioners had announced that those who were hungry might come to the court-house to get relief. The demonstrators were not fed, but relief appropriations were almost at once increased. No disorder marked the demonstration. A few days later on an order of State Solicitor (prosecutor) John Boykin, Herndon was arrested. The police forcibly searched him and while he was in jail went to his room, which they thoroughly ransacked without warrant. A quantity of Communist literature was found.

For two weeks Herndon stayed in jail without any charge against him. A writ of habeas corpus was then sought which forced the state to bring the charge of "attempting to incite to insurrection." Bail was fixed at the prohibitive figure of \$5,000, later reduced to \$2,500. His friends were unable to raise even that amount until a few weeks before his trial in January, 1933. While in jail Herndon was subjected to maltreatment. He charges that he was systematically starved and once was forced to remain in a cell with a corpse for several days.

The International Labor Defense took charge of Herndon's case, employing two Atlanta colored lawyers: John H. Geer, who attended one of the local colleges and then, by self-study and through a correspondence course, qualified for the state bar examination; and Benjamin J. Davis, Jr., who graduated from Amherst College and the Harvard Law School in 1929. Although the International Labor Defense appreciated fully the added prejudice which colored lawyers would have to combat they very properly felt that that prejudice, too, must be met as an issue. With this position Herndon thoroughly agreed. These lawyers were assisted by A. W. Morrison, a young Atlanta white lawyer, who volunteered his services.

The attorneys endeavored unsuccessfully to prevent the case from coming to trial by moving to quash the indictment on the ground of exclusion of Negroes from service on the grand jury. A motion to quash the exclusively white jury panel was likewise denied. A demurrer to the indictment based on the unconstitutionality of the statute as violating free speech was overruled. The case finally came to trial in January, 1933, six months after Herndon's arrest.

### *The Prosecution*

HERNDON was indicted under a statute penalizing incitements to insurrection, first passed in 1861 through the influence of slave-holders alarmed at the prospect of uprisings among Negroes through northern anti-slavery propaganda. This statute carried the death penalty only. The law was revised in 1866 and again in 1871 in the interest of carpet-bagger rule to include all incitement to insurrection, without, of course, special reference to slaves. It was aimed at the threatened efforts of the champions of the lost Confederate cause to overthrow carpet-bagger rule. The statute as finally changed and in force today carries both a death penalty or imprisonment from 5 to 20 years in the discretion of the jury.

The indictment contains no charge of any specific act by Herndon. It is a blanket indictment simply charging that he was "attempting to incite insurrection." Certain activities are cited in the indictment to support the charge:

1. Calling and attending certain public assemblies and mass meetings.
2. Persuading persons to join the Communist Party.
3. Circulating insurrectionary (meaning Communist) literature, specifically:—

*"The Life and Struggles of Negro Toilers"* by George Padmore.

*"Party Organizer"*—Special Issue, May-June 1932, issued by Central Committee, Communist Party of the U. S. A.

*"Communism and Christianity"* by former Episcopal Bishop William Montgomery Brown.

### *The Trial*

HERNDON was brought to trial on January 16, 1933 in a court-room packed to suffocation with over 600 Negro and white workers before Judge Lee Wyatt, visiting judge from LaGrange, Georgia, in the Fulton Superior Court. For three days the case was argued, not on the ground primarily of Herndon's activities, but on the issues of civil liberties, Communism, and Negro rights. Communist literature, Soviet Russia, and proletarian revolution were used to arouse the prejudices and fears of the jury. Assistant Solicitor John H. Hudson tried the case. He declared that "the theory of Communism is on trial as well as Herndon. This is not only a trial of Herndon, but of

Lenin, Stalin, Trotsky, and Kerensky," Mr. Hudson had said prior to the trial. "As fast as the Communists come here we shall indict them and I shall demand the death penalty in every case."

The prosecutor made a particular point of Herndon's championship of equal rights for Negroes and "self-determination for the black belt," where Negroes constitute a majority. "Stamp this thing out with a conviction" was his ringing plea. He urged the death penalty.

The witnesses for the state were all public employees. E. A. Stevens, star witness and one of the prosecuting attorneys, testified that Herndon admitted membership in the Communist Party as well as organizing the Unemployed Council in Atlanta. Stevens had investigated Herndon after a complaint had been registered against the relief demonstration at the court-house.

Watson, an Atlanta detective, and Stevens constantly referred to Herndon and others as "niggers" and "darkies" until vigorous objections by defense counsel were sustained by the court.

The attitude of the judge was obviously hostile and prejudiced. Motion after motion made by the defense was overruled. Over defense counsel's objection, he admitted the literature seized in Herndon's room without a search warrant and permitted it all to be read to the jury.

### *The Defense*

**T**HE defense could make little headway against the flood of prejudice and passion aroused by the prosecution. To no avail were the arguments that the literature found in Herndon's possession passes freely through the mails and that the Communist Party is legally on the ballot in Georgia. Their attempt to put on the stand white economists as expert witnesses was blocked by the court. They showed clearly that the prosecution had failed to prove that Herndon had incited or attempted to incite riot or that he had even made a speech or distributed any literature.

The sole charges against Herndon that could be sustained were membership in the Communist Party, possession of Communist literature, and the organizing of the Unemployed Council and its demonstration at the court-house. These, they maintained, could not be offenses under any law of Georgia. The attorneys brought out the issues of the repression of Negroes, the right to workers to organize, Negro equality, and "self-determination for the black belt."

Herndon testified in his own defense, justifying his activities. He said:

"You may do what you will with Angelo Herndon. You may indict him. You may put him in jail. But there will come other thousands of Angelo

Herndons. If you really want to do anything about the case you must go out and indict the social system. But this you will not do, for your role is to defend the system under which the toiling masses are robbed and oppressed."

After three days the case went to the jury which promptly brought in a verdict with a recommendation for "mercy", fixing sentence at 18-20 years. A motion for new trial was promptly made and is set for argument in May, 1933. It will doubtless be denied, and appeal will be taken to the State Supreme Court on these issues:

1. The exclusion of Negroes from the grand and petit juries.
2. The exhibition of prejudice during the trial, to which exceptions were taken.
3. That the evidence did not sustain the verdict.

It is unlikely that the case will be argued in the Supreme Court until the fall.

### *Help to Appeal is Needed!*

Funds are needed by the International Labor Defense to meet the costs of the appeal. The American Civil Liberties Union, regarding this as a case of the utmost importance to the cause of civil liberty in the South, is aiding. We call on all our interested friends to contribute to the fund of \$1,500 for court costs and modest attorney fees, in the effort to upset this monstrous conviction. Use the coupon on the back page.

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American Civil Liberties Union  
100 Fifth Avenue  
New York City

Date.....

1. I will contribute \$..... for the appeal in the Herndon case.
2. I suggest others likely to be interested.

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