



***Free Speech and Free Press
Go to Trial with Scott Nearing***

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What can I do? I can talk out when others are silent. I can say *Man* when others say *Money*. I can stay up when others are asleep. I can keep on working when others have stopped to play. I can give life big meanings when others give life little meanings. I can say *love*, when others say *hate*. I can say *every-man* when others say *one man*. I can try events by a hard test when others try them by an easy test.

What can I do? I can give myself to life when others refuse themselves to life.—*Horace Traubel*,



WHATEVER the opposition may assert, or an over-zealous prosecutor may contend, the issues in the case of Scott Nearing—moral, historical and legal,—are plain. No amount of misrepresentation can cloud them, no amount of sophistical argument can obscure them.

The question is whether a soldier of the common good can now or hereafter bring to bear scientific knowledge, idealism, and good purpose for the betterment of the condition of this nation and of all mankind. There is no other question in the Nearing case; there can be no other.

Scott Nearing is chairman of the national executive committee of the People's Council of America. He is also one of the best known lecturers upon social and economic subjects in the United States. He is not only a leader in radical thought in America, but he is an internationally famous authority upon economics and sociology. As a writer upon economic subjects he has, perhaps, rendered more practical service to the labor movement of the country than any other writer. His books are the kind of books that labor's representatives on wage committees and arbitration boards take into the council room to help win their contentions for them.

His purpose in life, the purpose for which he has put aside public honors, money, even the comforts of home, are epitomized in that "confession of faith" which he and Nellie Seeds Nearing on January 1 of last year, sent to their closest friends as a New Year's greeting: 1918

I believe in the future of mankind.

I believe in men and women—in their yearnings, aspirations, hopes, faiths, joys and loves.

I believe in liberty, justice and right, through which alone successive generations can build on the foundations of the past a broader life-opportunity for the future.

I believe that, as light destroys darkness, knowledge will drive out ignorance, understanding will triumph over fear, good will overcome evil, and love will banish hate.

I believe in the America that is a pioneer in the movement to free the human race by sowing the seeds of revolt against ignorance, fear, evil and hate; by spreading the gospel of the brotherhood of all men; and by proclaiming the glad tidings of justice and liberty secured through the guarantee to all of equal opportunity.

I believe that a fuller, freer democracy can be established only in the white heat of passionate devotion to a great ideal, and I solemnly declare that during the coming year, I will do my uttermost to collect the fuel of knowledge and with the spark of understanding start blazing in the hearts that are nearest to me the revolutionary, regenerative fires of a greater love.

That confession of faith, adequately exemplified in the books which Scott Nearing has written, in his utterances, in his financially unrequited work for the People's Council, in his private life, is among the facts in this case—the big fact in this case. By this he has won the en-

imity of those who live upon the toil of others; by this he has attained the hatred of those who defy government and the spirit of the people to reap huge unearned, criminal profits while men die for flag and country in France.

It was these men and the interests they represent, speaking through their press, who built up the poisonous fiction that Scott Nearing is, unconsciously, an enemy of the United States. They have not dared, they who have stopped short of no other slander, to say that he was consciously un-American.

It was these men and the interests they represent, who conducted months of agitation for the suppression of Nearing.

The Legal Aspects of the Case

Scott Nearing was indicted in April, 1918, for having written "The Great Madness," a pamphlet containing his scientific observations and social convictions upon certain problems arising out of the Great War and the relations of Big Business to that cataclysmic struggle. Freedom of speech and of the press, and the constitutional guarantees of these rights, were brought to bar in that indictment. It has no less significance than that—no indictment could have greater.

Upon the decision in this case depends, as it has depended upon no other, the right of radicals, the right of sociologists and economists, to utter their opinions and convictions; the right of opponents of the administration in power to criticise that administration or to discuss its acts in any manner short of the most fulsome praise. An adverse final ruling means the wiping out of the last vestige of freedom of speech in America.

Since the enactment of the Espionage Law, June 15, 1917, the department of justice has sought to use that statute to stifle free speech. This, needless to say, does not agree with the constitutional guarantees upon the subject. Witness the charge of Judge Hand in the Masses case:

"(11) Every citizen has a right, without intent to obstruct the recruiting or enlisting service, to think, feel, and express

- (a) Disapproval or abhorrence of any law or policy or proposed law or policy, including the Declaration of War, the Conscription Act, and the so-called sedition clauses of the Espionage Act;
- (b) Belief that the war is not or was not a war for democracy;
- (c) Belief that our participation in it was forced or induced by powers with selfish interests to be served thereby;
- (d) Belief that our participation was against the will of the majority of the citizens or voters of the country;
- (e) Belief that the self-sacrifice of persons who elect to suffer for freedom of conscience is admirable;
- (f) Belief that war is horrible;
- (g) Belief that the Allies' war aims were or are selfish and undemocratic;
- (h) Belief that the Hon. Elihu Root is hostile to socialism, and that his selection to represent America in a socialistic republic was ill-advised.

"(12) It is the constitutional right of every citizen to express his opinion about the war or the participation of the United States in it, about the desirability of peace, about the merits or demerits of the system of conscription, and about

the moral rights or claims of "conscientious objectors" to be exempt from conscription. It is the constitutional right of the citizen to express such opinions even though they are opposed to the opinions or policies of the administration, and even though the expression of such opinions may unintentionally or indirectly discourage recruiting and enlistment. It is likewise the right of any group of citizens associated together for the publication of a magazine to express such opinions in the pages of such magazine by means of articles, drawings or cartoons. To bring the expression and publication of such opinions in such magazine within the offense charged in this indictment it must be shown that the intent of such publication was to wilfully obstruct recruiting or enlistment in the military or naval service of the United States to the injury of the service or of the United States, and that two or more persons, including each defendant found guilty, had entered into a deliberate conspiracy to effect such result."

While this is the law, Big Business has so effectively used its control of the means of publicity and propaganda in the United States that it is well nigh impossible to procure a jury of twelve men who can remember, in the presence of war hysteria, that free speech is a fundamental right. The fact that juries returned verdicts of guilty in 226 of 250 cases is proof of the desperate necessity of making the utmost legal defense.

There were three distinct steps in the attempt to stretch the statute, which may be exemplified by three typical cases. The first was that of Fred Krafft, Socialist nominee for governor of New Jersey. Krafft was convicted on a charge of attempting to cause insubordination in the army by making seditious remarks in the presence of soldiers in uniform. It was not claimed that he committed this offense merely by making a public address. The charge that his remarks were addressed to soldiers in uniform and that they were intended to have a direct effect upon the service, all of which the prosecution contended that it had concretely and positively proven, was considered a substantial, a vital element in the case. In other words, the prosecution asked for conviction upon the plea that the defendant had, by word of mouth, directly addressed to men then in the army, tried to produce insubordination or mutiny. The fact that Krafft was making a public address and that no effort had been made to secure the attendance of soldiers was disregarded.

In "The Masses" case, an effort was made by the prosecution to go one step farther—a most significant step. It attempted to make the act apply to articles and cartoons, in opposition to war and conscription, as such, upon the theory that such expressions may constitute a violation of the law, even if not directly addressed to persons subject to the draft or in the military or naval services. Thus, the prosecution depended upon a mere supposition that copies of a magazine containing the articles and cartoons objected to may have reached persons eligible for enlistment or subject to draft or in active service. In this case, however, the prosecution still attempted to show a direct connection between the subject matter published and the subject of obstructing the draft or recruiting.

In the Nearing case, another step, the most radical and dangerous of all, was taken. In this instance no effort is made to show that the pamphlet in question was directly addressed to men in service or eligible to service. Nor is there any direct connection between the subject matter of the pamphlet and that of recruiting or conscription or the service itself. The only effort to establish a basis for prosecution is in a theory

heretofore unheard of outside of the columns of those newspapers which have taken it upon themselves to abolish all expression of radical thought in America. This theory is that a general and academic discussion of the causes, motives and interests of the war may be legally construed into a violation of the Espionage Act, solely because the pamphlet was written from a Socialist and working class viewpoint.

This remarkable legal theory implies, of course, that such a viewpoint expressed in print, or from the platform, tends to affect the sentiment of loyalty generally, and thus, and thus only, tends to produce insubordination and obstruct recruiting and enlistment. If that theory be upheld it will mark the absolute end of all free discussion of the subject of war, the right of all political opposition to the administration in the conduct of the war. The American people can no longer have a shadow of a right to demand an accounting of Washington. It means dictatorship, pure and simple.

Thus the present fate of radical expression in America is bound up in the Nearing case. More than that, it may set a precedent by which the speakers of even the old, conservative parties may be silenced. Free speech in the United States then stands and falls, for the present, with Scott Nearing.

A demurrer in the Nearing case, setting forth that the acts with which he is charged do not constitute a violation of the Espionage statute is to be heard in the near future. If this demurrer is overruled, the case will, in all probability, come to trial in the summer and the most vital legal contest ever made to retain the constitutional privilege of free speech will be on.

A Record That Measures Up

We have said that Scott Nearing's life is epitomized in his "Confession of Faith." It might have been said that his life and his deeds are bound up in the fragment of one sentence, which like everything that Nearing does is of a piece with the whole. "I believe," he wrote, "that a fuller, freer democracy can be established only in the white heat of passionate devotion to a great ideal." Many men write magnificently; some who write supremely well live in such manner as to give a richer meaning to their words. "The white heat of a passionate devotion" fuses word and deed and makes them organically one. So it is with Nearing.

An American of Americans, educationally the joint product of American institutions of learning and that school of experience which confers its chief benefits upon those youths who labor with their hands for a living, Scott Nearing's work as educator, sociologist and economist is known wherever there are colleges and universities. If he should never write another line, his international fame as a scientist is secure. This extraordinary achievement for a man of thirty-four is, however, but the lesser side of Nearing. It is in his passionate preaching of the truths deduced from his science, in his fearless proclamation to the world of the hope of industrial democracy that he will live as one of the outstanding figures of the age.

Born in Morris Run, Pa., in 1883, Nearing was educated in the common schools and high schools of Philadelphia, the University of Pennsylvania and the Temple School of Oratory in Philadelphia. His degree of Doctor of Philosophy was conferred by the University of Pennsylvania. After several years as secretary of the Child Labor Commission of Pennsylvania, he returned to the state university as instructor in the Wharton School. There he became first a leader of educational movements and then of national and international thought.

Scott Nearing is no compromiser. He is a co-operator in the finest sense of the word, but he has never compromised a principle. It was because of his mental and moral inability to be silent when wrongs cried for righting, to utter scholastic platitudes pleasing to the influential when the world is hungry for militant truth, that he was removed from his position as assistant professor in the Wharton School after the students had waged a historic fight to retain his services. This was not his first sacrifice for principle, but it was one of his most notable ones and he does not yet consider it a sacrifice.

His removal from the University of Pennsylvania faculty did not detract, however, from his value as a writer and speaker. He still might have made a great deal of money; he still might have enhanced his earning capacity and his scholastic fame. Nearing's mind was not intent upon these things, however. It was bent upon tomorrow—the tomorrow of economic equality and social justice. His refusal to compromise in his views regarding the relations of Big Business to the World Struggle led to the acceptance of his resignation as dean of the School of Arts and Sciences of Toledo University, the action being taken by a vote of 4 to 3 at a meeting at which two supporters of the dean were absent. This was a mere incident to Nearing, as was his dismissal from the University of Pennsylvania. He was fighting for a better day and was paying very little attention to milestones.

Having previously begun his work as a lecturer on social and economic problems before radical groups, he threw in his lot with the People's Council of America. When that body was permanently organized in Chicago and New York last September, he was drafted as chairman. He has served since virtually without remuneration, making his living by lecturing for nominal fees, rather than for his regular ones at the Rand School, and before Socialist organizations and radical groups.

Service to the Labor Movement

While teaching in colleges and universities, Nearing was also lecturing before student bodies, social service organizations and the like. But, more important, he was writing books. These books, whether they be compilations of statistics, vitalized by his scientific conclusions, or philosophical considerations of economic and sociological problems, all come, at the core, to one great principle—democracy, and through democracy, the regeneration of the world into a sphere of social justice. This was the burning passion of his life and because of this he has rendered exceptional service to the labor movement.

His various books touching upon or treating of the child labor problems have served to arm with facts those who have been fighting to eliminate this curse.

His volumes, "Wages in the United States" and "Financing the Wage Earner's Family," have brought still more facts which, in the hands of strike committees and labor's representatives on boards of arbitration, have won increases for the workmen.

"Anthracite" was one of the chief factors in bringing an increase of 16 per cent. for the anthracite coal miners when their wage contract was renewed in 1916.

Every line he has written, every word he has spoken, has come sooner or later back to the cause of labor, for this man realizes the great fundamental truth that until the worker with brain and hand receives that which he produces, there can be neither economic equality nor social justice in the world—that humanity cannot make proper progress and civilization is pitifully, brutally incomplete.

Big Business Hates Him—What Say You?

Scott Nearing is no mere sentimentalist. He is hard-thinking, hard-hitting—his blows tell. Big Business has the greater part of the press. It has the economic power. It has created an agitation for the imprisonment of Nearing. It has surrounded this man with a cloud of misrepresentation until the servants of the government have felt it incumbent upon them to bring him to trial. He has been indicted for writing that which science has taught him and which fearless devotion to truth as he sees it has bid him say. The courts will be called upon to decide whether a man speaking thus in good conscience and with the public weal at heart, with no intent to interfere with the conduct of the war, is violating the Espionage Act.

In order that Scott Nearing may have a square deal in court, it is necessary that his trial be thoroughly prepared for. In order that the radical movement, whose fate, for the present, is largely bound up with his, may have a square deal, the defense must be the most complete possible. Under our present system, with the courts exceedingly busy and the burden of paying for his defense resting upon the shoulders of the defendant, no court, howsoever fair of intent, can do complete justice to a defendant who is not thoroughly armed with legal preparation.

Scott Nearing has laid fame, money, ambition, even liberty itself upon the altar. For the services he has rendered, he will accept nothing. He does not ask even the expense of his defense in court. But those with whom he has associated do ask that a sufficient sum of money be contributed to meet the cost of giving Scott Nearing, and with him the right of free speech and free press for the radical movement, the best possible legal defense.

He has given all that a man can give, short of life itself. What have you to give?