

defense, under the able management of Louis B. Boudin, completely smashed the case of the prosecution.

Boudin first succeeded in having the first count under the Espionage indictment dismissed; and before the case went to the jury, he made a motion to dismiss the Espionage indictment entirely, on the ground that the statute referred to attempts to incite mutiny, insubordination and the refusal of service in the *actual armed forces* of the United States, not among men liable to service, and that the evidence did not show that there were present at the meeting any men actually in the military service of the United States. In spite of the frenzied arguments of Prosecutor Content, the Judge granted the motion. This is an important ruling, as it shows that there should be no indictments under this section of the Espionage Act unless the actual military forces are involved.

In his address to the jury, Mr. Content indulged in a lot of talk about Americanism, and free speech not being free licence, and insisted upon a verdict of guilty.

In his speech to the jury Boudin made a powerful argument on the merits of the case. This was a prosecution of over-excitement. Conspiracy is very broad and indefinite, a peculiar thing, and it is largely left to the imagination to say whether there was or was not any conspiracy. The simple fact is that there has been no evidence introduced to show that these defendants entered into a conspiracy. They had never met prior to the meeting, and it is absurd to contend that they conspired to themselves violate the law by agreeing to refuse military service. Their ideas were determined before they spoke at the meeting. The purpose of the meeting was to discuss the status of Conscientious Objectors, to create public sentiment to influence the government and the President to recognize their convictions. The law recognizes conscientious objections in its provision exempting objectors affiliated with certain religious creeds or organizations. These men were agitating the problem of the non-religious Conscientious Objectors, a general public problem discussed by many individuals, including the President and the Secretary of War, as the evidence introduced by the defense

shows and proves; and this meeting, the speeches and the leaflet were part of this general public discussion. The speeches and the leaflet may be unlawful in themselves, but they have no relation whatever to the charge of conspiracy, in fact, are in flagrant violation of the charge. In order to find these defendants guilty you must find that they engaged in a conspiracy.

When the case went to the jury, there were two counts in the indictment, the one alleging that the defendants conspired to themselves violate the draft law, the other that they conspired to aid, induce and abet others to do the same thing. The jury found the defendants not guilty on the first count, and guilty on the second.

Judge Ervin imposed a sentence of thirty days for each defendant in the Mercer County, N. J., penitentiary. The reason for his light sentence, according to the judge, was the youth of the defendants—Fraina being 25 years old, and Cheyney 21. Prosecutor Content pleaded for a particularly heavy sentence for Fraina, whom he accused of being the more dangerous of the two, editor of *The New International*, and the leader of the Conscientious Objector propaganda.

The case is being appealed, in spite of the light sentence, because of the vital issues involved. This is the first case where Conscientious Objectors have been convicted because of their propaganda, and through this conviction a blow is struck at the whole movement for freedom of conscience and action.

The issue is serious. It must be fought vigorously and determinedly. The defense is organizing a campaign to arouse public sentiment, and needs co-operation and support.