

PROOF OF OVERT ACT HELD MISSING

I. W. W. Declared to Have Failed to Make Point.

DEFENSE OFFER REJECTED

Testimony as to Meetings in Which Plans Are Said to Have Been Made Against Reds Halting.

(Continued From First Page.)

Labor representative named Henry called upon O. C. Hand, defendant, and told him of what had been talked of at the session.

The witnesses by whom he declared he would prove the alleged conspiracy were named by Vanderveer as E. F. Khekland, Frank O'Day, Royal Eubanks and A. L. Dixon, all of Centralia.

Mrs. R. B. Elmendorf, Centralia, testified that she ran into the alley when she heard shots. She encountered soldiers and asked them what the trouble was. One of them replied that the legionnaires were raiding the I. W. W. hall.

"That was the volley of shots that you heard?" queried Special Prosecutor Abel.

"Yes," a vivacious witness was Mrs. A. Martina of Centralia, whose home is at Second and D streets, with the rear of the residence facing the alley behind Ax Hill's place. Mrs. Martina testified that she and her two daughters watched the parade from an upper rear window.

She testified that she had an unobstructed view of the intersection of Second street and Tower avenue, and that the head of the Centralia contingent was not in sight when firing began. The firing followed the blowing of a whistle by Lieutenant Cromier, mounted on horseback, who was the only legionnaire in sight, testified the witness. She placed the horseman some distance north on Tower avenue, while other witnesses, including the defendant, Bert Bland, have sworn that he was at the street intersection when the first shots were fired.

Lollana Moss, 12, Centralia, testified that she visited the scene of the tragedy an hour after the shooting and that she saw spots of blood on the sidewalk before the I. W. W. hall. She was not cross-examined.

Thus far the defense has failed wholly to prove that Warren O. Grimm, for whose murder the ten I. W. W. defendants are on trial, committed any overt act against the radicals or was party to any conspiracy against them, ruled Judge Wilson at the close of the morning session when he denied the admissibility of testimony relating to a conversation Grimm is said to have had with William Dunning, a member of the Lewis county trades council.

That the defense has produced more generalities relating to an alleged conspiracy, with the court's statement supplementary to the ruling, which decries that no testimony or evidence regarding an alleged commercial conspiracy in Centralia against the I. W. W. may be submitted until Grimm's connection is clearly shown. Evidence of what took place at certain meetings, said the court, cannot be introduced until Grimm's knowledge of such meetings or his presence thereat is shown.

"It is a question whether the evidence introduced thus far has shown an overt act," said Judge Wilson. "The strongest evidence is that of the deceased in a different position, but does not in any sense place the deceased in a position within the definition of committing an overt act."

No Plan to Harm Indicated.

"The evidence of Bray, which was the most favorable offered by the defense, was that he saw a man whom he thought was Grimm near the hall. The evidence also is that Bray did not know Grimm, and that he is not a member of the I. W. W."

"There is nothing in his testimony which places Grimm in attendance, or of even attempting to do anyone any harm, and this is giving the defense the benefit of the doubt."

"The court is of the opinion that the evidence falls far short of being sufficient to show an overt act upon the part of Grimm."

"The court did not mean to say that an overt act must be proved before evidence of a conspiracy could be shown, but knowledge of a conspiracy on the part of deceased must be shown before evidence of a conspiracy can be shown. You must first show the pre-concert and presence of Grimm in a conspiracy. You must prove the identity of the alleged conspirators."

The ruling came at noon—a distinct victory for Special Prosecutor Cunningham of Centralia in the alleged case of George F. Vanderveer, I. W. W. counsel, in the involved legal argument regarding the admissibility of testimony relating to alleged local conspiracies against the I. W. W. of Centralia and their hall.

Vanderveer had declared the right of self-defense, had declared that Grimm was slain in the exercise of that right by the defendants and had argued that the testimony for the defense shows that Grimm was committing an overt act near the I. W. W. hall when shot. He had also asserted that the right of self-defense extends to the posting of defenders outside the premises.

"Your honor has no right to assume, that when Grimm marched past the I. W. W. hall, to his death, that he was bent on a mission of mischief," said Special Prosecutor Cunningham, in replying to Vanderveer.

Right of Defense Argued.

"It is not open to speculation. There must be some positive proof of an overt act on the part of Grimm. It has not been proved. The defense situation that it is in a desperate situation and is practically forced to the wall, or it would never argue this point."

"We have returned to the original proposition, upon which the court ruled early in this case, that you must show an overt act on the part of Grimm in order to justify his killing."

In opening his argument, the I. W. W. counsel quoted supreme court decisions on the right of self-defense and the right to protect property, and declared that the present case is a parallel to several he cited.

"The persons defending themselves or their property are not required to retreat or endeavor to escape," he asserted. "The law throws no safeguards around those who attempt to commit a felony, or around conspirators."

mercial conspiracy in Centralia against the I. W. W., culminating in the Armistice day tragedy.

"Shooting is justified in the defense of your home, when you are inside that home," said C. E. Cunningham, special prosecutor, in reply. "I believe that the defendants are entitled to the construction that the hall was their home, but that is as far as this statute can go, and that is as liberal an interpretation as can be placed upon it."

"The law declares that killing in defense of others is justifiable when the slayer is in the presence of those in whose defense he shoots, and not otherwise. Counsel cannot contend, and does not, that the men on Seminary hill, in the Hotel Arnold and the Avalon hotel, were in the presence of the men in the I. W. W. hall."

"So the men on the hill and in those hotels were not acting lawfully when they shot in defense of the men inside the hall, because they were not in their presence, or that they shot out of the building because they were not inside the building."

Dismissing the phase of self-defense, Cunningham turned to the alleged conspiracy, declaring that it was an overt act by Warren O. Grimm in person.

"We proved deliberate murder or killing," he said. "They want to justify it on the ground of self-defense. The burden of proof is upon them. The supreme court has said that you cannot kill a man simply because he has threatened you."

Admitting that the purpose of argument was most favorable construction that might be placed upon testimony relative to Grimm's presence during the alleged raid, Cunningham declared that no part in the raid could be attributed to Grimm unless it was shown that the deceased himself had done something of the nature.

"What is there in the whole record," he asked, "giving their proof the most favorable construction, which proves that Grimm committed an overt act ever made a move against the hall or toward carrying out any purported threats?"

Grimm Not Pleaded.

Analyzing the testimony of Bray, now charged with perjury, the prosecutor showed that the witness had not testified positively that he saw Grimm receive a bullet in the chest at the rear of the hall. He pointed out that cross-examination has developed the fact that "Dutch Philizer of Chelalis was wounded there. He drew attention to Bray's testimony that the man he thought was Grimm stood with his back to the hall when hit by a bullet."

As for the testimony of Jay and Ray Cook, who swore positively that the head of the column rested exactly in front of the hall, the other witnesses, both the state and defense, have placed it near the intersection of Second street and Tower avenue, Cunningham declared it to be of such a nature that neither court nor jury could give it an instant's credence.

Proof of Shooting Cited.

"But you can take as true, if your honor wants to," argued Cunningham, "the testimony of the two Cooks, and it falls far short of providing an overt act, as did that of Bray. None of the defendants in the hall, in the Arnold or the Avalon or on the hill, say that Grimm committed an overt act."

"You denied that there was any shooting from the Avalon," said Cunningham, addressing Vanderveer, "and you denied to prove it. And we did prove it. And we proved that Grimm was shot from the Avalon."

In closing, Cunningham declared that the defense, before it can connect Warren O. Grimm with the act of uniformed men who may have rushed the hall, must first identify those men, tell who they were, and link Grimm definitely with them in the alleged overt act.

At the close of the session, and just prior to the noon adjournment, Judge Wilson again ruled that the defense had failed in its attempt to prove that Grimm committed an overt act, or knowledge of plot, and held that proof of any purported conspiracy must not enter the records.

MAJOR CALDWELL ELATED

SEATTLE MAYOR-ELECT CONGRATULATES CITIZENS.

Action of Voters at Election Held Vindication of City—Metropolis Declared Safe and Sane.

SEATTLE, Wash., March 3.—(Special.)—Major Hugh M. Caldwell, elected mayor yesterday, views his election as a vindication of the city against charges resulting from activities of radical elements who year after year has besieged with callers and friends on the telephone today who congratulated him on his victory and given support to his administration.

Major Caldwell is elated. He reiterated to friends who conferred with him today his campaign statements that he does not believe Seattle needs a cleaning insofar as vice is concerned, but needs one badly in relation to red activities. This will take up a considerable portion of his time upon taking office, he said. He issued the following statement this afternoon:

"Pleased as I am personally at the outcome of the election, I am more gratified on account of the city of Seattle. The good people of this city have, by their votes, emphatically told the world that Seattle is safe and sane, 100 per cent American and a good place in which to live. I desire to express my heartfelt thanks to the thousands of citizens who loyally aided in bringing about the vindication of Seattle and burying factional domination in this community. It will be my unalterable determination to perform the duties of mayor in such a manner as to merit the approval of all loyal citizens of this city."

JAIL MERGER PROPOSED

Montana Scheme Is Result of Falling Off in Arrests.

GREAT FALLS, Mont.—Between \$12,000 and \$14,000 annually, it is estimated, will be saved taxpayers of Cascade county if the plan now under consideration here to combine the city and county jails, is adopted.

Since the advent of prohibition, it is declared, arrests have fallen off to such an extent that there is hardly need for one jail, to say nothing of two. There is also a plan to operate a city detention hospital in the present city jail building, using the present county jail for the combined purpose.

SOVIET REIGNS IN SPLENDID STATE

Lenine's Communist Rule Not Real Communism.

MONEY CAN BUY ANYTHING

Equality of Material Possessions Is Non-Existent—Proletarian 'Bourgeoisie' Fast Developing.

(Continued From First Page.)

share equitably in the national wealth all productive enterprises, including the land, are, in principle, nationalized; that it, become the property of the state. Neither private ownership nor money as a medium of labor compensation, however, has been abolished, and with either in existence communism is obviously an impossibility.

All that the revolution has sought to do up to the present is to control both, without any considerable measure of success. For while capitalism in the larger sense of the term has been destroyed, together with private ownership on a large scale, capital continues to be accumulated and to make its influence felt. One man may still possess more than another in worldly goods and receive higher pay for his work. Equality of material possessions is as non-existent in the Russian social republic as it is in the American 'bourgeois' republic.

New Aristocracies Beginning.

Hence there are coming into existence new groupings of Russian population, new lines of social demarcation, new forms of social standing and of wealth. The beginning of a new aristocracy are detectable. One is found in the governmental hierarchy, the other in the ever-increasing speculative class. Each is dependent upon the other, for speculators can operate only with the tacit consent of the soviets and the soviets, for the moment, at least, cannot do without the speculators (which means all persons engaged in private trading, Governmental aristocracy has its boots imbedded in the Kremlin, that ancient Moscow citadel out of which there grew the far-flung might of the Romanoff dynasty.

In Soviet Russia today one speaks of the Kremlin as one spoke of Versailles in the magnificent days of Louis XIV. To dwell within its sacred precincts, to which none save the select have ingress, is to be of those destined of the greatest. Caucasian nation. Only the most eminent commissaries of the people and a few other soviet stars in the grand parade are domiciled there in the grandiose palaces that once housed the most famous figures of Muscovite history.

Chieftains Reign Like Czars.

Protected behind numerous curtains of bayonets and machine guns, the bolshevik chieftains have made this barbarically gorgeous nesting place of oriental autocracy the nerve center of world revolution. Within its buttressed walls they plan the progress of revolutionary Russia, and from its crowning gates they rally forth in their high-powered limousines on affairs of state even as the czars of old. Sentries guard the doors and prevent unauthorized visitors from gaining admission.

State Furnishes Limousines.

Many tenants, owing to the nature of their work, have automobiles at their disposal, which, however, are not always used only in line of duty. Indeed, on a gala night at the Moscow grand opera there are practically as many cars parked outside as there were in the old days—only they are all the property of the state and merely temporarily assigned to their individual users. Still, the fact that some individuals ride to the opera in limousines while the rest walk is

necessarily productive of class division.

Already there is a slang term for the former—the proletarian bourgeoisie, they are called. It must not be supposed that the soviet leaders spend much time in joy-riding or going to the theater. To my certain knowledge they are one of the hardest working groups of men and women in the world today. But it undoubtedly gives one furiously to think to see the lovely wife of Comrade So-and-so, resplendent in a set of superb sables and a bewitching toque that might have come straight from the Rue de la Paix, alighting from a glistening Rolls-Royce at the portals of the first 'Soviet house,' formerly the fashionable Hotel National.

Class Distinctions Queer.

Such spectacles in the exception and not the rule, of course, but then exceptions sometimes become rules. Still more startling is an experience I had in one of the government departments whither I went to lunch with an official who, not being a communist, was not to be in the Kremlin. Noticing that there were two mess halls, I asked why.

"Well," he said, gravely, "the larger is for the common herd and the other is for the communists." I once remarked to a high foreign office functionary that it was splendid to see Sadoul, the French captain who has turned bolshevik and has been condemned to death by a court martial in Paris, to be separated so long from his wife and children.

"Why doesn't he bring them here then?" the communist queried. I said I fancied one reason was that Sadoul hesitated to expose his family to the hardships of Moscow life.

Lenine's Pay Small.

"That is absurd," was the indignant retort. "He is a member of the third international and a very important personage and as such his family would be lodged in the Kremlin and naturally get better food than the average person—in fact, they would have everything here they need."

In the governmental aristocracy must also be listed technicians and specialists who, if they do not live in the Kremlin, are otherwise far better off than the bolshevik commissaries themselves, in that they draw much money in pay. Technicians, with all high soviet officials, gets only 6000 rubles a month—less than the skilled workman can earn—whereas, engineers, architects, doctors, scientists, artists and even some lawyers are paid 50,000 and more.

R. Keely, an American industrial efficiency expert who came to Russia four months ago to study industries under the soviet system and who has given the Moscow government technical advice with regard to factory management, received ratings from four different official sources as a result of his complaint to Lenine that which there grew the far-flung might of the most envied individuals in Moscow.

All Experts Wax Rich.

I met a lawyer who had been legal representative of several factories before the revolution. Owing to his knowledge of administrative affairs, after the revolution he was retained in the same capacity by their soviet directors and was making, according to his own admission, larger fees than before—not merely larger in point of money paid him, of course, but larger in proportion to the cost of living. He was living at the rate of 2000 a month. (It is practically impossible to accurately estimate the value of the soviet ruble in American currency. The highest rate of exchange I was able to get was about 120 rubles to the dollar, but it should be three or four times that today.)

The theatrical artists are classified as specialists and receive enormous salaries, compared with non-specialist workers. Chalapine, the celebrated basso, gets as high as 50,000 rubles for one concert. Ballet dancers are also of the "proletarian bourgeoisie," even the coryphees drawing 5000 and 6000 rubles a month. So much for the governmental aristocracy.

The aristocracy, or rather plutocracy, of speculation is quite as extensive, though less clearly defined. Practically all Russians speculate to a greater or lesser extent. It is only the big speculators, those who derive all or a bulk of their income from speculative barter, however, who may be considered the charter members of the new aristocracy. Every now and then some of them are jailed, and before the death sentence was abolished a few were shot, but the vast majority feel themselves quite safe, because they know the government recognizes them as a necessary evil.

Opponents Take Opposite View.

The bolsheviks insist, however, that at the worst the margin between the lowest wage and highest income is far narrower in the soviet republic than elsewhere. No soviet employee receives a salary as big as that of the president of France, they aver, and no traders illegitimately

equal the profits realized by capitalism in Europe and America. "There can never be a J. P. Morgan in Russia," they like to boast. Peace, coupled with industrial rehabilitation, they add, will eventually provide a government with enough manufactured goods to get on an adequate trading basis with the producers of foodstuffs and raw materials and so do away with speculators.

But the opponents of bolshevism are inclined to the opposite view, which is that peace, depriving the dictators of an excuse for enforcing drastic measures and maintaining a huge army, is far likelier to afford greater opportunities for speculation, since it will reopen communication with the outside world and bring foreign capital to Russia. The efficiency which the latter development is bound to bring to bear on the task of industrial reconstruction, it is argued, will react favorably on the aspirations of the Russian capitalists and help them to persuade the political powers to modify still further the communist program.

Compromise Believed Inevitable.

A compromise on the part of the soviets, according to this theory, will be inevitable, since the bolsheviks cannot remain on top of the heap without bowing to the demands of realistic conditions. Into this belief there enters also the presumption that a soviet aristocracy having been created about the Kremlin as a nucleus, this new ruling class will go a long way on the road to concessions rather than surrender its hard-won privileges.

In a word, the situation is this: Everbushka, the bolshevik, understands the need for foreign capitalistic assistance in rebuilding an almost wholly paralyzed industrial organism; nobody among the bolsheviks believes that the new Russian capitalist or speculator class can be suppressed in time of peace. Hence, what becomes of communism as an immediate practical possibility?

SPOUSE STABBED BY WIFE

WOMAN RELEASED, HOWEVER, ON HUSBAND'S PLEA.

Jealousy Declared to Have Been Motive for Attack—Court Is Asked to Arrest Man.

NEW YORK, March 3.—(Special.)—Jules von Tilsler, a musical publisher of 204 West Ninety-fourth street, stabbed early Tuesday by his wife, Mrs. Eselle von Tilsler, who inflicted a slight wound, appeared in the west side court when his wife was arraigned and asked Magistrate Simpson to show clemency. The magistrate discharged Mrs. von Tilsler.

Mrs. von Tilsler admitted she was jealous of her husband, who is a brother of Harry von Tilsler, but said she stabbed him in self-defense, with a silver table knife. The wound is in the left side of the back.

Mrs. von Tilsler is about 5 feet 4 inches and weighs about 90 pounds, while her husband is 6 feet 4 inches tall and weighs about 225 pounds.

"Last week," said Mrs. von Tilsler to the magistrate, "I received a telephone call from a mysterious woman who said my husband had been living with another woman since 1917. This excited me greatly. My husband went to Boston last week, and sent me a telegram yesterday that he would be home that night."

"During the day the mysterious woman telephoned again, saying: 'Your husband is going to meet the other woman today.' I then telegraphed my husband that I was seriously ill and signed the name of the famous physician, Dr. E. S. Loring."

"He came home yesterday. I told him of this mysterious woman. He denied it. Last week I was in an automobile wreck, which excited me. He told me it was all a lie. Your honor, I love my husband and I could not get it off my mind. I walked the floor all night."

"About 4 o'clock this morning I brought the subject up again. He told me to go to sleep or he'd put me to sleep. He has struck me on other occasions. He jumped up and dived at me. I picked up a table knife and in self-protection I stabbed him in the back. He fell on the bed and I immediately called an ambulance. We were married in 1900, and there has always been a little trouble."

Mrs. von Tilsler turned to her husband and said: "Yes, and you even told this woman that when I died you would give her my house and my clothes. You also told her you were trying to divorce me, but at the present time you couldn't because of the automobile accident."

Turning to the court, Mrs. von Tilsler continued: "May I make an application to have this man arrested for stealing my jewels?" The magistrate directed her to Assistant District Attorney Lynch. She did not say what jewels had been taken from her.

Burglars Take Meerschmum Pipe.

ALBANY, Or., March 3.—(Special.)—When burglars broke into the general merchandise store of Homer Spear, at Tangent, Monday night, they not only took cash and merchandise, but carried off the proprietor's meerschmum pipe. When Mr. Spear went to the store in the morning he missed his pipe and then, upon looking around, found that some knives, jewelry and other small articles were missing and that the burglars had secured about \$5 in cash.

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assistant District Attorney Lynch. She did not say what jewels had been taken from her.

Burglars Take Meerschmum Pipe.

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