

Mail Ban Procedure Decried

San. 4/16/42
**'Social Justice'
Case Seen as Step
To Gag Critic**

By DAVID LAWRENCE.

Justice Oliver Wendell Holmes, America's greatest liberal jurist, once wrote in a Supreme Court opinion that freedom of speech was "freedom for the thought we hate."

In another opinion Justice Holmes said that freedom of speech was a sacred right, but that it did not give any one the right "to cry fire in a crowded theater."



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These two points furnish background in trying to appraise the latest and perhaps the most sensational effort yet made by the Roosevelt administration to stifle press criticism in wartime.

The magazine *Social Justice*, founded in 1936 by Father Coughlin, has been barred from the mails. The statute under which this is alleged to be justified is the Espionage Act of 1917, which says that any matter in violation of that law can be declared "non-mailable" by the Post Office Department.

But there has been no hearing and no indictments and no actual court proceedings under the statute and yet to all intents and purposes the action of the Postmaster General in ordering the current issue of *Social Justice* withheld from the mails is sufficient to stop the publication from circulation.

Procedure Questioned.

The question at issue is not whether the magazine should or should not be suppressed—America unquestionably will not miss such a vituperative journal—but whether it shall be killed off by a simple edict of a governmental department without any formal hearing or without any opportunity for the publication to protect itself against irreparable damage.

The question at issue is not whether *Social Justice* is guilty of violating the Espionage Act, but whether Congress intended that any publication which happens to print matter called "non-mailable," but really unpalatable to the administration in power during wartime, shall be subject to suppression overnight.

No great harm would have ensued in giving the editors of the publication in question a reasonable time within which to appear at a hearing and present their defense or within which to file proceedings against individuals alleged to be financially supported by or in contact with the enemy.

Intent Is Chief Factor.

An examination of the Attorney General's formal complaint lists various quotations from *Social Justice* which plainly parallel the viewpoint of the Axis powers in trying to promote disunity in America. This in itself is not a violation of the law because nearly every newspaper in America for the last two years has printed press association dispatches from Berlin publicizing widely the ravings of Hitler and his denunciation of racial groups in our midst. Mere printing of Axis propaganda is not in itself a violation of law. What matters is whether the intent of the editors is "to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies."

The Attorney General must prove to the satisfaction of a jury that the editors of the publication sought "wilfully to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States."

Inference Not Sufficient.

About the only tie-up adduced by the Justice Department is that men in the armed forces doubtless are reading the pro-Axis propaganda in *Social Justice*. The inference is plain that the magazine was sympathetic with the Axis cause, but the statute does not permit inference to be substituted for proof of an enemy connection.

Few persons in America can have any sympathy with the vicious propaganda contained in *Social Justice*, but the tests proposed by Justice Holmes become pertinent. Is this freedom "for the thought we hate" or is this crying "fire in a crowded theater"? Certainly it is not the former and if it is the latter is there proof that *Social Justice* creates a conflagration in a theater or just a bonfire on a vacant lot?

It is possible that the vast majority of Americans, including men

in our armed forces, are so lacking in intelligence that they cannot understand the difference between pro-Axis viewpoints and that newspapers and magazines have to be suppressed or threatened so that the press may become afraid to print valid criticism calculated to help the war effort? Already one of the so-called "liberal" papers exults over what has happened and significantly warns that those members of the press which have been critical will hereafter "be apprehensive and perhaps a little more careful from now on."

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