

Book Review

by Will Ross

Red Scare in Court: New York Versus the International Workers Order by Arthur J. Sabin

Professor Arthur J. Sabin of the John Marshall Law School in Chicago set himself a hard task when he decided to write about the law suit which resulted in the dissolution of the International Workers Order. First of all, he was going to write a book about a lawsuit involving, of all things, insurance law. Speaking as an attorney myself, I can say that there are few things more boring to many lawyers than insurance law. Secondly, this case involved a bench trial; in other words, the judge alone ruled on the evidence and made the ultimate decision in the case. Accordingly, the trial would have none of the histrionics of a jury trial that would make the law suit itself more interesting to the reader. To his credit, Professor Sabin has succeeded in overcoming these two obstacles in writing a very interesting, perceptive and important book.

“But,” the inevitable question of *Kent Collector* subscribers is, “why should I care about the IWO anyway? I know Kent was president of the organization, but that was just a figurehead position. In any event, Kent gives the IWO case very little space in *It’s Me O Lord*, which means he didn’t view it as being very important.” These ideas are wrong.

At the time of its dissolution, the International Workers Order was the largest left wing organization in the United States. Rockwell Kent not only understood this fact when he joined it in 1939, he revelled in it. In fact, it is fair to say that from the time he became president of the Order in 1944 until

its dissolution in 1953, the IWO occupied a central place in Kent’s life. Reading his column of personal opinion in the IWO bi-monthly, *Fraternal Outlook*, we see a man who understands very well that the IWO was more than a fraternal insurance company. The August-September 1948 issue contains an extensive article concerning “Testimony of the International Workers Order to the Platform Committee of the Progressive Party.” Leading off the article was the testimony of the IWO’s president, Rockwell Kent.

His involvement in the organization, and its fight against destruction, occupied much of his time and thoughts. They are a metaphor for his own problems with the government that would come to a head in the 1950s. They were to find a reflection in his art, including his autobiography. This aspect is seen in works, especially prints, such as *Eternal Vigilance is the Price of Liberty*, *It’s Later Than You Think*, *Heavy, Heavy Hangs Over Thy Head*, and even *Merry Christmas*. All of these are in addition to the direct attack of *The Smith Act*. His dustjacket illustration for *The Judgment of Julius and Ethel Rosenberg*, done in 1955, also shows the stress he was feeling at the time. Accordingly, to understand the Rockwell Kent of the 1950s we must understand the lawsuit against the IWO.

In any book that involves a trial, especially a political trial, it is almost impossible for the author to successfully submerge his own thoughts and beliefs. An yet, such a submergence is essential if the reading audience is to have a fair chance to evaluate the evidence and come up with its own conclusions. To a remark-

able extent Professor Sabin has done this, while keeping alive the sense of drama which surrounded this case. That is not an easy thing to do. Yet, there is no doubt about the sympathy which Professor Sabin has for the IWO and its members. While he has not allowed this sympathy to color his descriptions, I believe it did keep him from asking some of the hard questions about the IWO, its leaders and their case.

After reading the book, there can be no doubt that, except for Kent, the main people behind the IWO were members of the Communist Party of the United States and may even have had important positions in the Party. The evidence seems pretty impressive that the Party may even have had a deciding hand in the decision to create the Order in the first place. Even after it became obvious that Communist con-

nections were not in the best interests of the Order, people like Sam Milgrom and others maintained their connections, arguably because they felt they had the right to do so. This obvious Communist connection, which was never convincingly disavowed by any of the leadership of the Order at the trial, was some of the most damning evidence against them.

Even more important from our perspective as Kent collectors is asking whether Kent was a “useful idiot” as president of the Order. Evidently, Kent had been kept in the dark about the extensive Communist connections the Order had in the early 30s and later. This evidently included, according to Kent, concealing the extent of the evidence presented at the hearing itself. Professor Sabin asks the question this way, “Was Kent simply a figurehead who had



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Originally published in the Kent Collector, Fall 1993

naïvely looked the other way as to who his fellow officers were and how the (Communist) Party line had dominated IWO politics and programs?” But the question can be asked another way, which changes how we view the IWO leadership – Was Kent deliberately duped as to the Party influence in the IWO? It is arguable that it was a combination of the two. Certainly after 1948 the Communist leaders in the Order knew of Kent’s severe problems with the Party’s disastrous involvement in Henry Wallace’s 1948 Presidential campaign. (See Part Four, Chapter XXVII, “Politics”, *It’s Me O Lord*). These Order leaders could have kept quiet on their Communist connections, knowing that Kent would probably openly and noisily quit rather than be connected with an organization that had a pervasive Communist influence. In fact, as Professor Sabin sets forth in his book, Kent said exactly this after the Court’s Opinion came out. These leaders found this concealment easy to do since Kent’s personal beliefs were close to the Party’s. He would only be told that the IWO supported a stand which, incidentally, was that of the Communist Party as well. It is also certainly possible that Kent turned a blind eye from what his heart may have told him was true, since he believed in the purposes of the Order so deeply. However, if Kent was naïve, it was in believing that other people were as scrupulously honest as he was.

Trials are difficult things to write about, much less write about well. The extensive use of the trial transcript in this book, along with Professor Sabin’s writing style, is a great help. He explains often complex undertakings very well, and gives the reader a true sense of what was occurring at the trial itself. Unfortunately, even the best transcript is only one half of a trial. The

art of judging requires looking at people’s eyes and seeing how they respond. It is as much soulcraft as lawcraft. As a trial lawyer for many years, and now as an administrative judge, I understand the difficulties Judge Henry Clay Greenberg had in deciding this case. Professor Sabin is obviously upset that Judge Greenberg found against the Order. What must be kept in mind while reading this book, is that a judge does not decide a case in a vacuum. He cannot make a decision merely because he believes it to be right. A judge can only work with the record given to him. The parties must give him sufficient evidentiary support to reach the conclusion they want. In all frankness, I do not believe the IWO did this. I believe a fair reading of the transcript shows Judge Greenberg looking, almost begging, for the Order to show him that they were no longer Communist dominated. This they failed to do. Whether this was a purposeful strategy or an inability to rebut the arguments, is a conclusion readers must draw for themselves.

Did the judge give in to “red scare” attitudes? Possibly, but we must remember that we are looking at the case with the benefit of hindsight. Though I am sure Professors Sabin and Kinoy (one of the IWO’s attorneys) would disagree, I believe that through naïveté, wrong strategy or hubris, the Order’s leaders thought that if the Order could maintain its political activities, they could deny their own obvious personal political attitudes, and the Court would allow them to continue on their merry way. To put it another way, the State created the field of battle—that the IWO was a Communist inspired, if not led, political association—but the IWO refused to fight on this field. Instead, they always viewed that case from a very narrow standpoint of insur-

ance law concerning their Corporate Charter. In my opinion, this was a fatal mistake. Despite their best intentions, the IWO case was a political trial. If they had realized that it was, or realizing that it was, if they had chosen to fight on that field, the result may have been different. Indeed, the question can be asked, did the IWO leadership *purposely* fail to effectively defend their case? Did they wish to create a political trial, hoping for victory but willing to accept defeat in order to have appellate court look at the case?

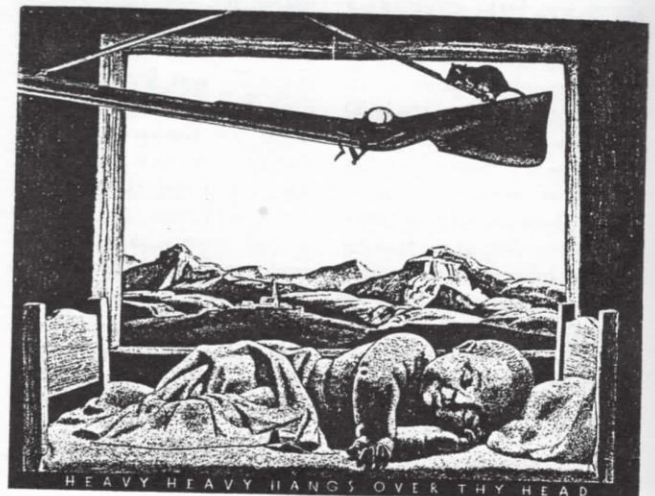
One other question, could the judge have decided for the Order, even if he wanted to? It must be remembered that, on appeal, the New York Court of Appeals opinion was even more conservative than Judge Greenberg’s. He could have written an eloquent opinion defending the IWO, but it would all be for naught if it was not written in a way that would avoid reversal on appeal. This aspect of judging is barely touched on by Professor Sabin, but must be kept in mind in reading the book. My own conclusion is that, while Judge Greenberg’s decision may have been *wrong*, I do not believe it was totally without support in the record.

One final comment on trials. Professor Sabin makes

much of the fact that the vast majority of the State’s witnesses were “paid, professional informers.” As a former prosecutor and criminal defense attorney, I can say that the mere status of a witness as a paid professional informer does not, as a general rule, destroy that witness’ truthfulness or effectiveness. In fact, speaking of credibility, other than Kent, most of the IWO witnesses did not come across very well at all. Their persistent claiming of the Fifth Amendment privilege, justified or not, exasperated the judge and kept him from finding out facts he felt he needed to make a complete decision.

Looked at in retrospect, did the IWO deserve to be dissolved for Communist Party leanings? Probably not. The Communist influence, which did exist for a long time, had become less and less important as the Order had become more and more successful as an insurance company. Could the IWO have prevented dissolution? Once again, probably not. The tenor of the times, combined with the evidence, and lack of evidence, presented to Judge Greenberg made it impossible, in my judgment, for him to have written a defensible opinion preserving the Order at that time.

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While the preceding are “criticisms”, I hope they do not prevent readers of this review from buying the book. Rather, I hope they will provide another perspective for the discerning reader to use in reading the book. Understanding the context of the IWO in Kent’s life is essential to understanding him during a very difficult part of his life. Professor Sabin has admirably succeeded in explaining this topic in a lively and intelligent manner. It is written in a way that is understandable for the layman, yet still interesting for the legal professional. As Kent collectors, this book deserves a place on your bookshelf. 🍷



Merry Christmas