

# Bending Cross

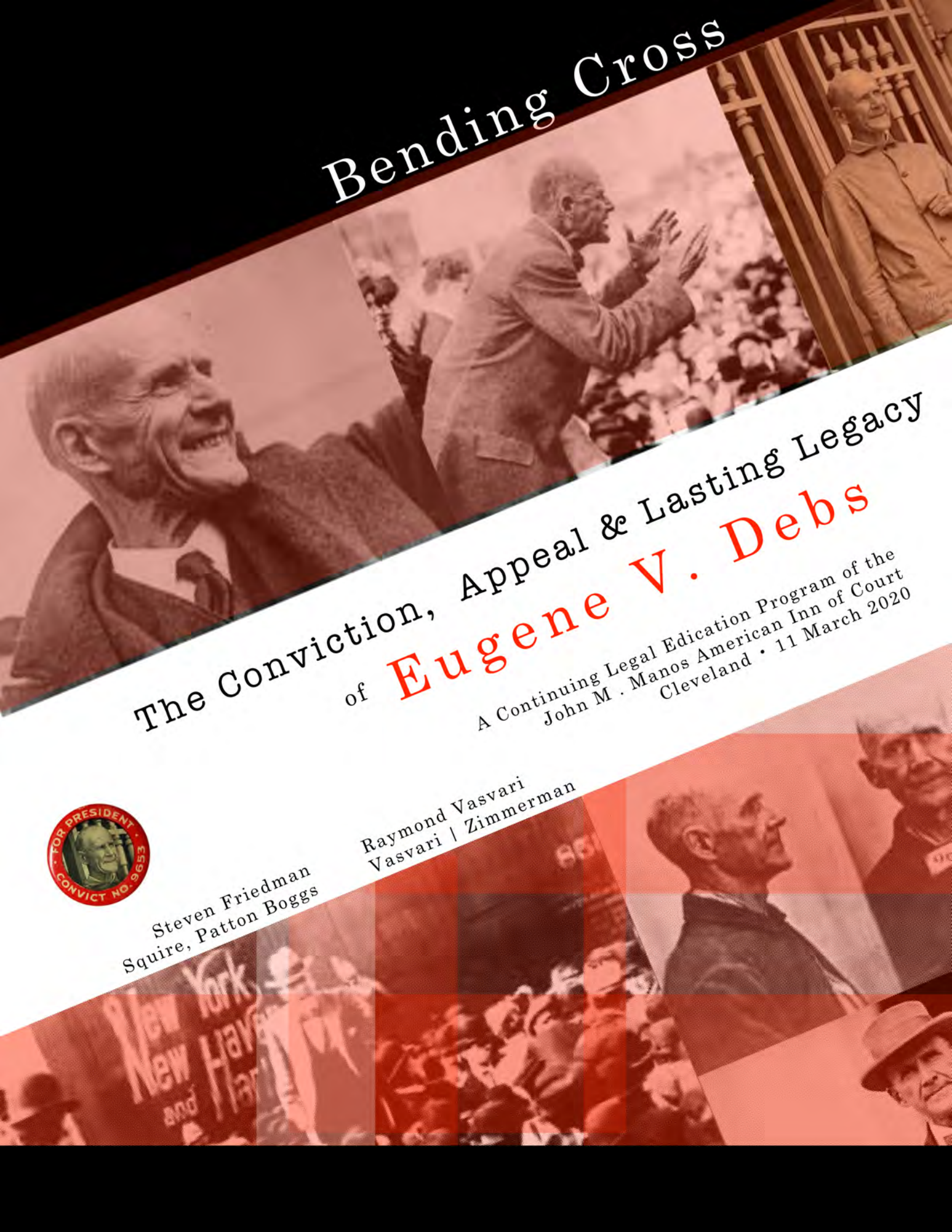
## The Conviction, Appeal & Lasting Legacy of **Eugene V. Debs**

A Continuing Legal Education Program of the  
John M. Manos American Inn of Court  
Cleveland • 11 March 2020



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## The Bending Cross: The Trial, Conviction and Vindication of Eugene V. Debs <sup>1</sup>

Cleveland • 11 March 2020

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Eugene Victor Debs was a labor activist, union organizer, five-time Socialist candidate for president and social reformer who left an indelible mark on progressive politics in the first decades of the twentieth century.

A pacifist strongly opposed American participation in the First World War, he was indicted under the Espionage Act in connection with a speech he gave in Canton, Ohio in June, 1918, in which he criticized the war and the draft. Debs was tried and convicted in the Northern District of Ohio, and sentenced to ten years prison. In 1920, he ran for president from his cell in the United States Penitentiary in Atlanta, winning nearly one million votes. Pardoned by President Harding, Debs died at home in Terre Haute, Indiana, in October 1926.

Debs' conviction was sustained by the United States Supreme Court in United States v. Debs, one of a series of seminal First Amendment cases arising out of communist and anti-war activity during the First Red Scare during the nineteen teens and twenties. His case helped lay the seeds for the eventual rejection of an early First Amendment jurisprudence that permitted the proscription and punishment of political speech based on a tendency to incite sedition.

A century after his trial, Debs remains both historically significant and an apt subject for study. The causes and crises of his age – income inequality, extensive military commitment overseas, incendiary rhetoric and the widespread discontent of labor – are the issues of our own.

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<sup>1</sup>Presented by Steven A. Friedman, Partner, Squire Patton Boggs and Raymond V. Vasvari, Jr., Partner, Vasvari & Zimmerman

## **Presentation Outline • Ninety Minutes**

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**VI.    From the Abrams Dissent to Brandenburg**

- A.     The Dissent in Abrams v. United States
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## **VII. The Allocution • Debs a Century Later**

- A. Debs as the High Water Mark of the Dangerous Tendency Test
- B. The Persistence of Incitement in an Age of New Media
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A Sampling of Political &  
Campaign Writings

# Eugene V. Debs

## The Majority Report

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**Source:** *New Times* (Minneapolis), v. 7. no. 29 (May 26, 1917), pg. 4.

**Online Version:** E.V. Debs Internet Archive, 2009

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At the recent Emergency Convention [St. Louis: April 7-14, 1917], called for the purpose mainly of defining and declaring the position of the Socialist Party toward the present war and toward war in general, three reports were submitted by the committee chosen to deal with that important matter and submit the result of its deliberations to the convention. A majority report and two minority reports were submitted. We advise our readers to carefully examine each of the reports which are now before the party for a referendum vote.

The majority report, submitted by a large majority of the committee and adopted by an overwhelming majority of the delegates composing the convention, is the report that in our opinion states the true internationalist position of our party and the one that ought to be adopted and made the party's permanent anti-war platform.

.....

The majority report has been violently assailed by some hitherto prominent members of the party. They are entitled to their opinion. They assert that the majority report is “treasonable.” We have not a bit of patience for this charge. To us it seems base and cowardly. Let the capitalist press, and not our own comrades, bring this charge. There are time when it is “treasonable” to be law-abiding and when to be “treasonable” is to be true to revolutionary principles and to the cause of humanity. We are aware without being reminded by our own comrades that the charge of treason may be brought against us by the servile hirelings of Wall Street who can construe the law to fasten the charge of treason upon any undesirable citizen, and that, like Karl Liebknecht, we may be put in jail or have to face a firing squad, but we would rather a thousand times meet such a fate than to be craven and cowardly as to resort to parlor tactics when red hell threatens to engulf us for feat of being deemed “treasonable” by the wolves of Wall Street.

The opponents of the majority report charge it with being pro-German. The charge is untrue. If it were true we would be just as strongly opposed to it as we are now in favor of it. This charge comes with poor grace from those who are themselves pronounced pro-Ally, and this alone sufficiently accounts for their opposition.

.....

We are neither pro-German nor pro-Ally. We are Socialists, international Socialists, and we have no use, not one bit, for capitalist wars.

We have no enemies among the workers of other countries; and no friends among the capitalists of any country; the workers of all countries are our friends and the capitalists of all countries are our enemies.

The class war is our war and our only war. We have no interest in national wars for ruling class conquest and plunder. In all these wars the workers are slaughtered while their masters wax fat in the spoils of conquest.

The time has come for the workers to cease fighting the battle of their masters and to fight their own; to cease being slaughtered like cattle for the profit of the ruling class and to line up in the class struggle regardless of race or nationality for the overthrow of class rule and for the emancipation of their class and humanity.

These are our principles and convictions as international revolutionary Socialists, and if this be treason we plead guilty and stand ready to take the consequences.

.....

The charge has been brought against the majority report that it encourages the Central Powers to wage the present war for the extermination of democracy and for extending the domain of autocracy and Prussianizing the world. Ye gods! And this is from men who have been recognized as leaders in the Socialist movement.

Let me remind these accusers that they are lined up side by side with the vultures of Wall Street without an exception— with Morgan, Rockefeller, Schwab and company; that they are hand in glove with Elihu Root, the deadly enemy of Russian refugees and the arch-foe of the working class and the common people.

Would they have us simple enough to believe for one moment that Wall Street is recruiting an enormous standing army and a navy... to fight for freedom and self-government, for justice and humanity?

These arch-enemies of democracy, these plunderers of the people, these corrupters of the courts, these debauchers of the electorate, these ruthless exploiters of the working class and despoilers of the nation, these red-handed murderers of our comrades at Ludlow, Cabin Creek, Calumet, Everett, and a hundred other places, these are our enemies and the enemies of our people, and it is a farce and a mockery, if not a crime, to attempt to persuade the working class of America that these, their brutal, relentless, uncompromising enemies, are their friends and waging a war in which they have plunged the nation for their freedom and for democracy and self-government.

.....

In their opposition to the majority report these comrades express the fear that it may be adopted because the great majority of comrades do not understand it. Precisely! They have little faith in the intelligence of the lower herd. It is too bad that the great majority are too ignorant to pass intelligent judgment upon a report which declares that the Socialist Party is opposed to having its members slaughtered in capitalist wars; too ignorant to appreciate the fact that Morgan, Rockefeller, and their plutocratic gang are their friends and putting up millions of their stolen dollars to save the poor American workers from Prussian militarism.

We are for the majority report. It states our position in plain terms and we propose to stand by it. Those who believe that it is “treasonable” and fear to be suspected of treason to capitalism, and those who believe that Wall Street is waging war to free the working class and democratize the world may leave the party but the party will live, it will appeal as never before to red-blooded Socialists, and it will bear its revolutionary banner proudly forward to victory.

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# Our Brotherhood

by Eugene V. Debs

Poem signed "E.V.D." published in *Locomotive Firemen's Monthly Magazine*,  
vol. 1, no. 5 (April 1877), pg. 141

Brother Sayre, as I've a moment to spare,  
I'll devote it unto your editorial chair,  
And try and explain as briefly as I can  
The love that I feel for our Brotherhood van.

The town of Port Jervis, now so familiarly known,  
Is the spot where the first rays of our Brotherhood shone;  
There they kindled and nurtured with heed,  
By a small band of noble-hearted firemen indeed.

Thus from obscurity all at once did arise,  
An object that bound together in brotherly ties,  
The locomotive firemen of the Erie Railway,  
In a manner that won the admiration of the day.

The effort was welcomed from near and afar  
By locomotive firemen as a guiding star,  
Whose refulgence revealed to the uncertain sight,  
A pathway leading unto inexorable right.

As a greeting to Benevolence, Sobriety, and Industry,  
Acclamations burst forth from all parts of the country,  
In honor of the advancement of so noble a cause,  
That has gained for itself an immortal applause.

From the East to the West in a glorious manner,  
Has progress unfurled our Brotherhood banner;  
Rearing its insignia in triumph to wave,  
Over the land of the free and the home of the brave.

*Terre Haute, Ind., March 12, 1877.*

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# Term Half Over:

## An Interview of Eugene V. Debs at Woodstock Jail, Aug. 22, 1895

Published as "Labor Leaders Set Free: Imprisoned ARU Directors Released at Woodstock," in *Chicago Chronicle*, Aug. 23, 1895. Copy preserved in Papers of Eugene V. Debs microfilm edition, reel 6, frame 0988.

Woodstock, Ill., Aug. 22 [1895].— At 6 o'clock this morning Sheriff [George] Eckert stepped to the barred door which for three months has stood between the President and Directors of the American Railway Union and liberty. The officer turned the big bolt and throwing open the heavy door said, "Boys, time is up."

A happy smile was on the face of the sheriff of McHenry County as he said these words and it was reflected on the features of the six men who have spent so many weary hours in jail.

\* \* \*

In the big cell room Eugene V. Debs was alone. Slowly he paced the floor, glancing now and then at the silent reminders of his faithful "boys," who had just gone, the chairs where each one sat in his favorite place, the books they studied during the long evenings, and the great pile of correspondence, which shows that Eugene V. Debs and his case are still fresh in the minds of people in every section of the country.

### **Leader Left Alone.**

Three months of confinement are before him. Three months of gazing at cell bars and heavy bolts, meant to confine criminals. The time ahead of him probably seems doubly hard, now that the boys who had cheered him on and helped to pass the days have gone forth to work for the cause. But the famous labor leader did not allow his

reflections on the future to depress his spirits. He grew even cheerful as the hours wore on and after sitting very quietly for some time he said:

I don't think I will be lonesome, although of course I will miss the boys at first. But I have work to do, lots of it, and I know they will be doing their work and that will help me to stand it. Then, you know, my wife is here and will be back and forth most of the time.

\* \* \*

We have a great work before us and we are going at it at once. For myself, it will take about two weeks for me to catch up on my correspondence. I get letters, hundreds of them, from all kinds of people, and they tend to show that there is something in the American which makes him side with the underdog when it has been abused too much. I see that in my own little case. There is a trend of popular feeling in our favor right along....

What we intend to do is to build up the American Railway Union and make it the strongest organization in the country. There are 880,000 railroad men in the country, and I know that seven-eighths of them are with us. But they do not speak their minds, attend meetings, or join the union for fear of the blacklist. the General Managers' Association has declared that no man who took part in the strike or who joins our union can work in this country and it passes the blacklist around, although there are a few laws against conspiracy, which, it seems, are intended only for labor unions, not managers' unions.

We are going to get around the blacklist simply by having a secret union. There will be no public meetings. No one will know who joins it and the man who denounces it to the company's agents may be a director. By Jan. 1 [1896] we will have agencies in all the principal cities of the union. [William] Burns will work in Chicago. [Roy] Goodwin is going to Winona and from there he will work out to the West. [Sylvester] Kelihier will establish headquarters in Minneapolis, which is his home. [L.W.] Rogers is going to Pueblo, Colorado, [James] Hogan to Ogden, Utah, and [George] Elliott will work in the East. It is a gigantic task, but with the help of our friends we will succeed. Each district supervisor will have a lot of assistants, who will go to the houses of the men who desire to join and there enlist them in the union. It is the only way to overcome the system of espionage under which we constantly work.

I will doubtless be released from this place on Nov. 20, as that will make 180 days of service. As soon as I get out I will go to Terre Haute, and I expect it will take me a month or more to



straighten up affairs in the business office of the union. About Jan. 1 I will start on a tour of the country, speaking and organizing unions. I would not attempt a consolidation, merely a unification, a harmonizing. In all matters of general concern the labor unions of the country should be united — the general purpose of all is the same. It should be easy to make arrangements for all to work in conjunction, and I thin that the labor leaders of the country will get together and formulate a plan of [attack?].

### **Change in Public Mind.**

It is marvelous how public sentiment is changing. Had we done in 1886 what we did last year we would have been executed. But the execution of the anarchists, whom we call anarchists for want of a better name, although they are not anarchists, taught the people a lesson. To the hanging of those men we owe our lives and people are just beginning to see what a monstrous act that hanging was. Year from now, a hundred, perhaps, there will be more monuments to those men who were hanged because they raised their voices in indignation against police invasion of the people's rights to assemble peaceably in mass meeting. Those things grown upon the people slowly. John Brown was hanged in 1859, but now his name is honored and revered and a hundred years from now it may be placed beside that of Lincoln, as the original emancipator of the negro.

Governor [John] Altgeld, I think, is the greatest governor in the United States, although I have never seen the gentleman. His act in pardoning [Michael] Schwab, [Samuel] Fielden, and [Oscar] Neebe showed him to be a brave man. He has the ability of a statesman and the courage of a true man. His friends advised him that he was courting political death, but he was brave enough to do it for right's sake.

I do not regret the time I have spent in jail, nor do any of the boys. It has been well and profitably employed and I do not look forward to three months more of imprisonment with any misgivings. I shall keep to the old schedule of working 16 hours a day and I have enough mater promised to papers and magazines to keep me busy for a long while. Besides, my wife will be here quite often, and Sheriff Eckert makes it as pleasant as possible.

### **Pleads for Prisoners.**

\* \* \*

There is one thing that should be changed — that is the way they hold court in these country districts. Twice a year court con-

venes to try any persons who may be in jail or out on bail. Now, suppose a poor fellow is arrested on complaint of someone for stealing an old coat or a loaf of bread. He is bound over to the criminal court and if he has no friends and cannot give bonds he must go to jail. Now, if the court has just adjourned, if it is the day after court, that man, whom the law presumes to be innocent until a case is proved, must stay in jail here six months awaiting trial. Think of it! My God! It is awful. That is a sentence in itself, and, if after being locked up on prison fare for six months he is not guilty or if no one appears to prosecute, what redress has he? None. Deprived of his liberty on a mere suspicion, locked up six months or for three or four months, because he is poor and has no friend to sign a bond! And this is the land of liberty and freedom! In Japan, where we send missionaries, the courts sit all the time. This system is wrong, hideously wrong. There should be a plan of taking the prisoners to where the court is sitting or some other way besides locking them up for months without a trial. In Chicago, of course, the volume of business causes delay, but here there is no court, no judge, no hope for months.

\* \* \*

*Edited by Tim Davenport*

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First Edition.

**Unionism is the Flower of the Past Century:  
A Labor Day Message<sup>1</sup>  
[excerpt]  
(September 3, 1910)**

The wage earners of the world today are poor as a rule and ignorant as a class, but they constitute the overwhelming majority. In other words, they have the power but are not conscious of it. The supreme demand of the day is to make them conscious of the power they possess by reason of their vast numbers.

Labor Day celebrations in the United States are advancing numerically, but in the enlightenment of the wage earner, in the awakening of him to the realization of his power, they are accomplishing nothing. Labor Day will see vast assemblages of men in parade. With banners and floats, uniforms and bands, they will march through the city, listen to some suave speaker, enjoy the fellowship of their kind, point out the great showing they make in their numbers, and the next day they will be back in the factories and the mills, toiling and sweating and not one particle better off for their celebration.

The working class alone does the world's work, creates its capital, digs its wealth from out of the ground, builds its factories, its mills, its railroads, conquers the rivers and the mountains, manufactures the things that support the people, feeds and clothes the multitude, and rears the majestic palaces that shelter the parasites.

The working class alone increases the knowledge and adds to the wealth of society. It is the only class that is essential to society and, therefore, the only class that can survive in the worldwide struggle for freedom.

A century ago the trade union movement started to develop into the tremendous power it is in the land today. Unionism, as applied to labor in the modern sense, is the fruit and flower of the last century. It has come to us for the impetus of our day in pursuit of its worldwide mission of emancipation. It is the manifestation of the desire and the need of the great majority that constitutes the working class to unite in order that they may rule as the sovereigns they are told they are but are not.

Wendell Phillips, in 1872, said: "I hail the labor movement for the reason that it is my only hope for democracy."<sup>2</sup> Unless there is power in your movement, industrially and politically, the last knell of democratic liberty in this Union is struck.

In the wage-earning army of this country lies the power to rule righteously and honestly. The immense numbers of laborers is the manifestation of that power. All that is needed is the awakening. That the laboring man does not realize his right and his power to rule is not all his fault. Deprived of education by the necessity of earning bread, spending his waking hours in endless toil, returning to his modest home at night with his energies spent in laboring for another's profit, he has little time to study, to learn, to think of the power he should exercise, and always there are those who would confuse him, minions hired to boss him, shrewd lieutenants of the rich paid to lead him astray, to falsely inform him, to prevent him from realizing his strength and so hold him in bondage.

But there is ground upon which to be optimistic. There is reason to rejoice at the growth of trade unionism. Wage-earners are awakening to the fact that the important thing to impress upon the mind of the trade unionist is that it is his duty to cultivate the habit of doing his own thinking.

The moment he realizes this he is beyond the power of the scheming politician, the emissary of the exploiter, in or out of the labor movement. And you may quote me as saying that the laboring men of Terre Haute are today in the grasp of men who would and do exploit them for their own gains. "No politics in the union" is the cry of these men. By it they hope to keep the wage-earner from exercising that right of franchise by which the laboring class, the great majority, could rule for itself. By dividing the votes between the two great political parties they hope to maintain for the men who boss them the power to rule the multitude.

To them this Labor Day demonstration is a credit. They are exhibiting their stock. They are showing the big bosses the vast army they lead. They are impressing their followers with their strength while all the time they are carefully guiding that strength to suit their own purposes by keeping the union out of politics.

In Terre Haute's Labor Day celebration one man I know has awakened and will take part. He is one of the great army that toils in a mill. He has not had the advantages of a good education. But in his modest little home there are all the standard works on economics and in his idle moments you will find him studying them. Place this man before a workingman's



audience and he would route Senator Beveridge with his oratory. He has learned the lesson of doing his own thinking. He knows why he wage-earner should rule and he knows the wage-earner does not rule.

It is in men like him that the future of this country rests. His kind will set this overwhelming majority of toiling workmen to thinking for themselves, acting for themselves, voting for themselves, and then Labor Day, with all its pomp and parade and music, will have a new significance. Then, and not until then, will labor exercise its power and right to rule the world.

Published as "Debs Pronounces Unionism Flower of Last Century" in *Terre Haute Tribune*, Sept. 4, 1910, undetermined page. Copy on Papers of Eugene V. Debs microfilm edition, reel 7.

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<sup>1</sup> Excerpt of a 90 minute interview granted to the *Terre Haute Tribune*, held at Debs's home in that city.

<sup>2</sup> Wendell Phillips, "Address to the Knights of St. Crispin," April 1872.

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# The Gunmen and the Miners.

by Eugene V. Debs

Published in *The International Socialist Review*, v. 15, no. 3 (Sept. 1914), pp. 161-162.

The time has come for the United Mine Workers and the Western Federation of Miners to levy a special monthly assessment to create a GUNMEN DEFENSE FUND.

This fund should be sufficient to provide each member with the latest high power rifle, the same used by the corporation gunmen, and 500 rounds of cartridges.

In addition to this every district should purchase and equip and man enough Gatling and machine guns to match the equipment of Rockefeller's private army of assassins.

This suggestion is made advisedly and I hold myself responsible for every word of it.

If the corporations have the right to recruit and maintain private armies of thieves, thugs, and ex-convicts to murder striking workingmen, sack their homes, insult their wives, and roast their babes, then labor unions not only have the right but it is their solemn duty to arm themselves to resist these lawless attacks and defend their homes and loved ones.

To the miners especially do these words apply, and to them in particular is this message addressed.

Paint Creek, Calumet, and Ludlow are of recent occurrence.

You miners have been forced out on strike, and you have been made the victims of every conceivable method of persecution.

You have been thrown into foul dungeons where you have lain for months for daring to voice your protest against these cruel outrages and many

of you are now cold in death with the gaping bullet wounds in your bodies to bear mute testimony to the efficacy of government by gunmen as set up in the mining camps by the master class during the last few years.

Under government by gunmen you are literally shorn of the last vestige of liberty and you have absolutely no protection under the law. When you go out on strike, your master has his court issue the injunction that strips you of your power to resist his injustice, and then has his private army of gunmen invade your camp, open fire on your habitations, and harass you and your families until the strike is broken and you are starved back into the pits on your master's terms. This has happened over and over again in all the mining states of this union.

Now the private army of gunmen which has been used to break your strikes is an absolutely lawless aggregation.

If you miners were to arm a gang of thugs and assassins with machine guns and repeating rifles and order them to march on the palatial residences of the Rockefellers, riddle them with bullets, and murder the inmates in cold blood, not sparing even the babes, if there happened to be any, how long would it be before your officials would be in jail and your unions throttled and put out of business by the law?

The Rockefellers have not one particle more lawful right to maintain a private army to murder you union men than you union men would have to maintain a private army to murder the Rock-

efellers.

AND YET THE LAW DOES NOT INTERFERE WITH THE ROCKEFELLERS WHEN THEY SET UP GOVERNMENT BY GUNMEN, AND HAVE THEIR PRIVATE ARMY OF MANKILLERS SWOOP DOWN ON A MINING CAMP, TURN LOOSE THEIR MACHINE GUNS, KILL WITHOUT MERCY, AND LEAVE DEATH, AGONY, AND DESOLATION IN THEIR WAKE, AND THEREFORE IT BECOMES YOUR SOLEMN DUTY TO ARM YOURSELVES IN DEFENSE OF YOUR HOMES AND IN DRIVING OUT THESE INVADING ASSASSINS, AND PUTTING AN END TO GOVERNMENT BY GUNMEN IN THE UNITED STATES.

In a word, the protection the government owes you and fails to provide, you are morally bound to provide for yourselves.

You have the unquestioned right, under the law, to defend your life and to protect the sanctity of your fireside. Failing in either, you are a coward and a craven and undeserving the name of man.

If a thief attacks you or your wife or child and threatens to take your life, you have a lawful right to defend yourself and your loved ones, even to the extent of slaying the assailant. This right is quite as valid and unimpaired — in fact it is even more inviolate — if the attack is made by a dozen or a hundred, instead of only one.

Rockefeller's gunmen are simply murderers at large, and you have the same right to kill them when they attack you that you have to kill the burglar who breaks into your house at midnight or the highwayman who holds you up at the point of his pistol.

Rockefeller's hired assassins have no lawful right that you miners are bound to respect. They are professional mankillers, the lowest and vilest on earth. They hire out to break your strike, shoot up your home and kill you, and you should have

no more compunction in killing them than if they were so many mad-dogs or rattlesnakes that menaced your homes and your community.

Recollect that in arming yourselves, as you are bound to do unless you are willing to be forced into abject slavery, you are safely within the spirit and letter of the law.

The constitution of the United States guarantees to you the right to bear arms, as it does to every other citizen, but there is not a word in this instrument, nor in any United States statute, state law, or city ordinance, that authorizes the existence of a private army for purposes of cold-blooded murder and assassination.

*"Mine guard" is simply a master class term for a working class assassin.*

Let the United Mine Workers and the Western Federation of Miners take note that a private army of gunmen is simply a gang of outlaws and butchers and that THEY HAVE NOT A SOLITARY RIGHT AN HONEST WORKING-MAN IS BOUND TO RESPECT!

Let these unions and all other organized bodies of workers that are militant and not subservient to the masters declare war to the knife on these lawless and criminal hordes and swear relentless hostility to government by gunmen in the United States.

Murderers are no less murderers because they are hired by capitalists to kill workingmen than if they were hired by workingmen to kill capitalists.

Mine guards, so-called, are murderers pure and simple, and are to be dealt with accordingly. The fact that they are in uniform, as in Colorado, makes them even more loathsome and repulsive than the common reptilian breed.

*A "mine guard" in the uniform of a state militiaman is a copperhead in the skin of a rattlesnake, and possible only because an even deadlier serpent has wriggled his way into the executive chair of the state.*

It remains only to be said that we stand for peace, and that we are unalterably opposed to vio-

lence and bloodshed if by any possible means, short of absolute degradation and self-abasement, these can be prevented. We believe in law, the law that applies equally to all and is impartially administered, and we prefer reason infinitely to brute force.

But when the law fails, and in fact, becomes the bulwark of crime and oppression, then an appeal to force is not only morally justified, but becomes a patriotic duty.

The Declaration of Independence proclaims this truth in words that burn with the patriotic fervor the revolutionary fathers must have felt when they rose in revolt against the red-coated gunmen of King George and resolved to shoot king rule out of existence.

Wendell Phillips declared that it was the glory of honest men to trample bad laws under foot with contempt, and it is equally their glory to protect themselves in their lawful rights when those who rule the law fail to give them such protection.

Let the unions, therefore, arm their members against the gunmen of the corporations, the gangs of criminals, cutthroats, woman-ravishers, and baby-burners that have absolutely no lawful right to existence!

Let organized labor, from one end of the country to the other, declare war on these privately licensed assassins, and let the slogan of every union man in the land be DOWN WITH GOVERNMENT BY GUNMEN AND ASSASSINATION IN THE UNITED STATES.

*Edited by Tim Davenport.*

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# Preparedness Will Crush You

by Eugene V. Debs

Published in *St. Louis Labor*, whole no. 492 (April 8, 1916), pg. 1.

Charles M. Schwab, the great steel magnate, is one of the leading exponents of military preparedness in the United States. Preparedness is to Mr. Schwab's mind the supreme necessity for our civilization. If the whole country and all its coastline would be covered with steel armor plate it would be the very thing, according to Mr. Schwab's idea of preparedness.

To Mr. Schwab and others like him preparedness is a very real and substantial thing. It pays enormously. It literally rakes in the millions and the millions have the true rink of patriotism.

If preparedness did not pay dividends in the coin of the realm it would not be synonymous with patriotism.

Preparedness is a spot cash proposition and Mr. Schwab is its incarnation.

GREAT IS PREPAREDNESS AND CHARLEY'S MILLIONS ARE ITS PROFIT!

• • • • •

Now, their could be nothing more supremely consistent than for Mr. Schwab and his plutocratic pals to go their whole length on preparedness, for who but they own the mills and all their accessories where preparedness is made to order at their own prices!

The more preparedness the more profit. If war follows preparedness, as intended, all the better. Preparedness makes for war and war makes for preparedness, and both turn a stream of

minted gold into the Schwab's coffers. It is a dead sure thing and not a flaw in it. It simply cannot fail, provided, of course, the Henry Dubbs continue to swallow the "patriotic" dope and other soporific bunk administered by Schwab's editors, politicians, preachers, and other barkers and whippers-in.<sup>1</sup> That Mr. Schwab is eminently wise in his day and generation in going the limit for preparedness there is not the shadow of a doubt, and when it is remembered that he is the protege of that other illustrious apostle of preparedness, Andrew Carnegie, who in his day raked in the millions for as fine a grade of blow-hole plate as was ever put over Uncle Sam, it is not strange that he stands today as the pope of the propaganda for preparedness and that even the President of the United States is preaching preparedness as the only true gospel of political salvation.

Preparedness in the military sense demanded by the plutocrats in their frenzied propaganda is shrewdly calculated to buttress the capitalistic system which rears palaces for the Schwabs and digs rat-holes for their slaves. Preparedness as a political issue is for the exploiting class alone. They and they alone reap its harvests of gold, while its harvests of blood are for its deluded and betrayed victims.

Preparedness from the working class point of view is a fraud and a sham in so far as it means an army and navy controlled by the capitalist state, and it matters not a whit what kind of an army it is, how organized, officered, or sustained, as long as it is under the control of the political state of capitalism it will respond to the commands of the ruling class and the workers need expect nothing from it except to be crushed by it when they revolt against starvation.

• • • • •

The preparedness the working class need and sorely need is another matter. It has absolutely nothing to do with arming the

---

<sup>1</sup> "Henry Dubb" was a popular cartoon character from the socialist press drawn by Ryan Walker — a working man who continually accepted at face value the economic and political arguments of his social "betters," to his own lasting detriment.

political state of their masters, nor with entering their wards or fighting their battles. Working class preparedness has to do with education, with the clarification of the working class mind; it has to do with organization, sound and revolutionary, both economic and political, and it has everything to do with preparing the working class, in every way that may be necessary for the class struggle, however it may be fought, and the overthrow, by whatever means, of the capitalistic system that now enslaves and robs them.

Working class preparedness appeals to the fighting instinct, but not to the murder instinct. It means war, but war against WAR and not against HUMANITY. It means war against slavery and for emancipation.

**Preparedness for the workers means that they are to cease fighting and losing for their masters and for once in the world's history fight and win for themselves.**

*Edited with a footnote by Tim Davenport*

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Seditious Libel in America Before  
The Twentieth Century

# The Sedition Act Trials

*by*

Bruce A. Ragsdale

*Director, Federal Judicial History Office  
Federal Judicial Center*

*Prepared for inclusion in the project*

Federal Trials and Great Debates in United States History

Federal Judicial Center  
Federal Judicial History Office  
2005

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## The Sedition Act Trials: A Short Narrative

Between 1798 and 1801, in the midst of the threat of war with France, at least twenty-six individuals were prosecuted in U.S. federal courts on charges of publishing false information or speaking in public with the intent to undermine support for the federal government. The accused ranged from the editor of the most influential opposition newspaper in the nation to a New Jersey resident who drunkenly jeered President John Adams. All of the defendants were political opponents of the Adams administration. These prosecutions under the Sedition Act of 1798 provoked debates on the meaning of a free press and the rights of the political opposition. As the first federal trials to attract widespread public attention, the Sedition Act trials also prompted discussions of the political influence of life-tenured judges and of the proper relationship between the judiciary and the elected branches of the federal government.

### *Federalists and Republicans*

The public excitement surrounding the Sedition Act trials reflected the intense animosity between the recently formed Federalist and Republican political parties. Soon after the inauguration of the federal government in 1789, two political coalitions formed amid debates on the balance of federal and state authority and on the nation's ties to Great Britain and France. Federalists supported the administrations of George Washington and John Adams and were committed to a strong central government. Federalists believed a close alliance with Great Britain would ensure access to financial credit for American trade and manufacturing. Republicans united around Thomas Jefferson as Secretary of State and later Vice President, wanted to rely more on state governments, and encouraged greater popular participation in politics. Republicans supported closer ties with France and feared that the pro-British Federalists intended to establish an elitist or even monarchical form of government. Although these groups lacked the formal organization of later political parties, the contest between them was as fierce as any partisan conflict in the nation's history. Much of that political contest played out in a new kind of newspaper, which was sponsored by party supporters and designed to sway public opinion.

### *Foreign threats and domestic security*

Partisan conflict escalated in 1798 as the recurring hostilities between France and Great Britain threatened to pull the United States into war. After France threatened to intercept any American ships carrying British goods, the Adams administration asked Congress for a dramatic expansion of the army and navy and for new taxes to pay for this national defense. Many Federalists feared that the French posed an additional threat of domestic subversion through their Republican supporters in the United

States. To restrain the political activity of the many immigrants who supported the French and the Republicans, the Federalists in Congress won approval for the Alien Acts, which extended the period of residency required for citizenship from five to fourteen years and authorized the President to expel any noncitizen he determined to be a threat to the “safety and peace” of the nation. The Federalists then narrowly won support for an act that provided criminal penalties for public statements critical of the federal government and for conspiracies to oppose federal authority.

## *The Sedition Act*

The Sedition Act of July 1798 provided for the punishment of anyone who made false statements with the intent to “defame” the federal government or “to stir up sedition within the United States.” For many years, English and American courts had prosecuted individuals for this kind of seditious libel using the common law—a collection of court precedents and traditions—rather than acts of a legislature. Some doubted that the federal courts had jurisdiction over common-law crimes, so the Sedition Act provided the statutory authority for federal prosecution of seditious libel. Although early drafts included drastic penalties for even general criticisms of the government, the act incorporated recent liberalizations in American and English practice, such as permitting the truth as a defense and allowing juries to determine whether the law properly applied to the case. Federalist supporters argued that the act embodied a broadly accepted understanding of the freedom of speech, which was necessarily balanced by individual responsibility for false statements. At the same time, Federalists acknowledged that the act was aimed at the Republican printers who had been most critical of the Adams administration.

## *Free speech or licentious speech?*

Republicans in Congress responded to the proposed Sedition Act with the most sweeping defense of free speech yet articulated in the United States. They argued that in a representative government, citizens needed to have unrestricted access to a full range of political opinions if they were to make knowledgeable choices in elections. Federalists cited Republican newspapers and the published statements of members of Congress supporting the French as an apparent conspiracy to thwart the President’s national defense. It would be an “absurdity,” said Representative Robert Goodloe Harper of South Carolina, to suggest that governments did not have the authority to protect themselves against seditious publications. Harper and his allies in Congress insisted that the act would limit only licentious speech—speech or writing that was false and intended to subvert the government.

Although the Constitution said Congress could enact “no law . . . abridging the freedom . . . of the press,” many Federalists argued that this freedom, like the similar

freedom recognized by British and colonial law, only protected writers from the government's restraint of publication. In fact, political and legal practice in the United States in the 1790s reflected a broader understanding of freedom of the press. As the first opposition to emerge under the new form of government, the Republicans, in particular, recognized that the traditional freedom from "prior restraint"—censorship before the fact of publication—was insufficient to protect political dialogue in an elective system. For Republicans, the Sedition Act appeared to be a direct challenge to their ability to build public support. The three most widely publicized trials of seditious libel demonstrated the hazards awaiting opponents of the administration.

### *The trial of Matthew Lyon*

One of the first persons to be indicted and tried under the Sedition Act was a Republican member of Congress. Representative Matthew Lyon of Vermont was campaigning for reelection when a grand jury in October 1798 indicted him for publishing letters with the "intent and design" to defame the government and President Adams. The Irish-born Lyon was one of the most provocative Republicans in the Congress, and his brawl with the Federalist Roger Griswold on the floor of the House chamber came to symbolize a collapse of civility in public affairs.

Justice William Paterson, presiding in the U.S. Circuit Court for the District of Vermont, explained to the grand jury that seditious libel was a crime against the people who had elected government officials. The grand jury publicly thanked Paterson for his remarks and agreed that domestic "licentiousness" was a greater threat than "hosts of invading foes."

The first count of the indictment cited a published letter that Lyon wrote before passage of the Sedition Act. In this critique of the Adams administration, Lyon asserted that he had seen "every consideration of public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, or selfish avarice." Two other counts accused Lyon of further promoting sedition through his role in publicizing a letter in which the poet Joel Barlow blamed Adams and the Senate for the diplomatic crisis with France.

Charles Marsh, the federal district attorney representing the government, called witnesses to establish that Lyon had written the letter and that it had been published after passage of the Sedition Act. Other witnesses testified that Lyon read the Barlow letter at several campaign rallies.

Lyon presented his own defense, arguing that the Sedition Act was unconstitutional and that he had demonstrated no intent to undermine the government. Lyon, in an attempt to prove the truth of his published statements, asked Justice Paterson if he had observed "ridiculous pomp and parade" when he dined at President Adams's residence in Philadelphia. Paterson answered no but refused to respond when Lyon

asked if the President's house displayed more pomp and servants than at the neighboring tavern in Rutland, Vermont.

Paterson instructed the jury that its deliberations had "nothing whatever to do with the constitutionality or unconstitutionality of the sedition law," and could only consider whether Lyon published the letters and whether his intent was to stir up sedition. Paterson announced that the fact of publication was certain, so the jury had only to decide if the language could be interpreted as anything other than seditious. Within an hour, the jury returned a verdict of guilty. Paterson thought a member of Congress convicted of seditious libel deserved severe punishment, and he sentenced Lyon to four months in prison and a \$1,000 fine.

After initially being denied pen and paper in jail, Lyon wrote a widely publicized account of the trial. While still in jail, Lyon won reelection to the U.S. House of Representatives, and after taking his seat in Philadelphia he survived a Federalist attempt to expel him from the House.

Lyon's trial was the first of seven seditious libel proceedings in the circuit court of Vermont. Each of these related to Lyon's publications or to published defenses of the Republican congressman. At its October 1799 term, the court again ordered Lyon's arrest to answer the district attorney's charge that Lyon attempted to bring the federal courts into disrepute through his jailhouse writings, which sharply criticized the heavy fine, the jury selection process, and the marshal's abusive treatment of Lyon in jail. After attempting to carry out the arrest warrant, the deputy marshal reported in May 1800 that Lyon was not to be found in the district of Vermont. Lyon had left Vermont and did not return. Following adjournment of the Sixth Congress in March 1801, Lyon moved to Kentucky, where he won election to Congress in 1802.

### *The trial of Thomas Cooper*

Members of Congress and leading officials of the Adams administration crowded a Philadelphia courtroom for the trial of Thomas Cooper in April 1800. The trial in the nation's capital arose out of Cooper's criticism of the President and his suggestion that Adams had assisted in a published attack on Cooper's character. Cooper's attempts to call the President as a witness heightened the drama.

Cooper drew the attention of Federalists in the spring of 1799 when he briefly edited a newspaper in central Pennsylvania and joined the growing public criticism of the Adams administration. Federalists were particularly suspicious of the English-born Cooper, who had emigrated in 1794 to avoid the British government's persecution of supporters of the French Revolution. President Adams informed Secretary of State Timothy Pickering that Cooper's writings deserved prosecution for sedition.

An anonymous Federalist writer dismissed Cooper as merely a disappointed office seeker who had once applied to Adams for a government position. Yes, Cooper acknowledged in a printed handbill that became the subject of his indictment, he had

applied for an appointment from Adams, but he submitted the application when the President was “in the infancy of political mistake.” Cooper’s handbill then outlined the President’s subsequent offenses, including the abolition of the trial by jury in the Alien Act, the imposition of a standing army and a permanent navy, and interference with decisions of the federal courts.

When the U.S. Circuit Court for the District of Pennsylvania convened in Philadelphia in April 1800, a grand jury returned an indictment that cited the handbill as evidence of Cooper’s intent to bring the President “into contempt and disrepute and to excite against him the hatred of the good people of the United States.” Cooper served as his own counsel and challenged the premise of the Sedition Act, asserting that citizens could not rationally carry out the vote “if perfect freedom of discussion of public characters be not allowed.” Cooper offered a detailed review of public documents in an attempt to prove the truth of his statements about Adams. U.S. District Attorney William Rawle argued that “all civilized nations have thought it right at all times to punish with severity” a seditious libel. Rawle found Cooper’s “partial extracts” from the public documents and “misrepresentations” to be further evidence of his intent to defame the President.

Justice Samuel Chase, who presided along with District Judge Richard Peters, repeatedly challenged Cooper’s defense. Chase refused to allow a subpoena of the President, even though Cooper insisted that only the President could have known of his application for appointment and thus must have assisted in the publication that prompted the handbill. Chase’s charge to the jury included a strident defense of the Sedition Act, and he characterized one part of Cooper’s defense as “the boldest attempt I have known to poison the minds of the people.” The justice even offered the jury arguments that he thought should have been presented by the prosecutor.

The jury returned a guilty verdict after deliberating for less than an hour at a neighboring tavern. Before sentencing, Chase asked Cooper if other Republicans had agreed in advance to pay any fine. Cooper denied he was a paid party writer, and Judge Peters interjected that “we have nothing to do with parties.” Chase sentenced Cooper to six months’ imprisonment and a fine of \$400. Chase’s conduct during the trial, according to a Republican observer, had demonstrated “all the zeal and vehemence that might have been expected from a well fee’d lawyer,” and the justice’s undisguised contempt for the defendant magnified Republican mistrust of the judiciary.

### *The trial of James Callender*

Justice Samuel Chase proceeded on his circuit from Philadelphia to the circuit court in Maryland and then to Virginia, a bastion of Republican power, where he presided over the sedition trial of James Callender. Like so many of those indicted, Callender was foreign born, and he had left his native Scotland to avoid prosecution for his radical political writings. In this country, Callender worked as a new type of political

writer, dependent for his livelihood on the publication of partisan commentary. The Federalists considered “the vagrant Callender” as a “miserable, ragged vagabond” and a prime target for prosecution under the Sedition Act.

After gaining notoriety for his scathing and personally abusive political writings in Philadelphia’s Republican newspapers, Callender moved to Virginia where he enjoyed the patronage of Republican leaders, including Thomas Jefferson. He wrote for the Richmond *Examiner*, which Secretary of State Timothy Pickering ordered Virginia’s federal district attorney to inspect for any writings that could be prosecuted under the Sedition Act. Callender also prepared a pamphlet, *The Prospect Before Us*, in support of Jefferson’s presidential campaign.

The U.S. Circuit Court for the District of Virginia convened in Richmond in May 1800 with Chase sitting alongside the virtually silent district judge, Cyrus Griffin. U.S. District Attorney Thomas Nelson presented a grand jury with an indictment citing twenty passages from *The Prospect Before Us*, all critical of John Adams and illustrative of Callender’s exaggerated language. The grand jury approved the indictment that accused Callender of “false, scandalous, and malicious writing, against the said President of the United States.”

At trial, Callender’s prominent lawyers included Virginia attorney general Philip Nicholas and other Republicans who volunteered their services. The lawyers defending Callender repeatedly clashed with Chase over rules and procedures, raising fundamental questions about the authority of the federal courts and the degree to which practices in the state courts governed proceedings in federal courts within that state. In disputes over the role of the jury and presentation of evidence, the Republican lawyers sought to limit the discretion of federal judges, whom they increasingly saw as partisan.

Justice Chase proved a formidable and often high-handed opponent to the Republican defense. When attorney William Wirt asserted that juries in Virginia had authority to rule on law and therefore could rule on the constitutionality of the Sedition Act, Chase dismissed the argument as illogical. Chase imposed a nearly impossible standard for submitting evidence to prove the truth of Callender’s statements and refused to allow the lead witness to appear. Chase frequently interrupted the defense lawyers, announcing that they relied on weak authorities or misunderstood the intentions of the court. Callender’s frustrated lawyers eventually walked away from the case, as had the lawyers in another politically charged case that Chase had recently presided over in Philadelphia.

What the jury heard about Callender came almost exclusively from the government’s attorney, Thomas Nelson, who reviewed each statement cited in the indictment and explained why he thought it met the criteria for conviction under the Sedition Act. Chase devoted most of his lengthy instructions to the jury to a sweeping rejection of the argument that a jury might consider the constitutionality of a law. The jury returned a guilty verdict, and Chase sentenced Callender to nine months’



imprisonment and a \$400 fine. While in the Richmond jail, Callender continued to write newspaper editorials supporting the election of Jefferson.

### *Prosecutions and the role of the federal courts*

The Lyon, Cooper, and Callender trials were the most publicized of the Sedition Act proceedings, all of which heightened Republican distrust of the federal judiciary. Many Republicans were convinced that the federal courts were dominated by Federalist partisans. Federal judges, particularly the Supreme Court justices serving in the circuit courts, had ardently defended the constitutionality of the Sedition Act and had urged grand juries to dismiss Republican arguments for a broader definition of freedom of speech. Justice William Cushing warned one grand jury that if “licentiousness” went unpunished it would enable “the worst men in a community, to overturn the freest government in the world.” Justice James Iredell told another grand jury that the First Amendment was not intended to protect seditious libel from punishment.

The judges’ support of the Sedition Act helped to win convictions of some of the most outspoken Republicans, but the Federalists soon paid a heavy price. The number of Republican newspapers grew sharply during the time the Sedition Act was in effect, and these newspapers helped to mobilize support for Jefferson’s election as President. The sedition trials fed Republican suspicion of the judiciary, and when the Republicans came to power, they repealed the Federalist expansion of the federal courts. Chase’s conduct in the Callender trial became one of the foundations of the articles of impeachment voted against him by the House of Representatives in 1804. Although the Senate acquitted Chase, his impeachment marked the end of the kind of broad-ranging jury instructions that had occasionally politicized the courts in the late 1790s.

### *Freedom of speech and political opposition in the early republic*

The expiration of the Sedition Act on March 3, 1801, failed to settle questions about the legal limits of political speech and the right of the political opposition to criticize officeholders and the government. When Republicans became the object of strident newspaper attacks during the following decade, some of them were willing to prosecute Federalist editors for seditious libel. President Thomas Jefferson, stung by relentless personal criticism, suggested that selected prosecutions in the state courts would help to temper the partisan press. The state prosecutions, however, remained relatively infrequent and largely ineffective in slowing the development of a partisan press. Although seditious libel prosecutions of partisan newspapers would not entirely disappear until the 1830s, more and more Americans accepted the right of the political opposition to criticize the government. A new political culture based on

widening suffrage, broader citizen participation, and greater competition for votes made older notions of seditious libel unworkable and irrelevant.



## The Courts and Their Jurisdiction

The U.S. circuit courts had jurisdiction over all prosecutions under the Sedition Act. The circuit courts were established by the Judiciary Act of 1789 to serve as the most important trial courts in the federal judiciary. These courts, which operated until 1911, had jurisdiction over most federal crimes, over suits between citizens from different states (known as diversity jurisdiction), and over most cases in which the federal government was a party. The circuit courts also heard some appeals from the district courts. Since the Sedition Act authorized criminal penalties of greater than six months' imprisonment or \$100 fine, the circuit courts had jurisdiction rather than the district courts.

Except for a brief period from 1801–1802, the circuit courts before 1869 had no judges of their own. Each justice of the Supreme Court was assigned to a regional circuit and, along with the local district judge, presided over the circuit court that met in each district within the circuit.

### *U.S. Circuit Court for the District of Vermont*

When Vermont joined the Union in 1791, Congress established the state as a single judicial district and assigned it to the Eastern Circuit, which consisted of the other New England states and New York. The U.S. Circuit Court for the District of Vermont convened in Windsor, Vermont, each May and in Rutland, Vermont, each October. Justice William Paterson served as the circuit justice in 1798. The district judge who sat with Paterson in 1798 was Samuel Hitchcock, who was appointed to the court by George Washington in 1793. Hitchcock served on the district court until 1801, when President Adams appointed him to the new (and short-lived) judgeship of the U.S. Circuit Court for the Second Circuit.

### *U.S. Circuit Court for the District of Pennsylvania*

Congress established the U.S. Circuit Court for the District of Pennsylvania in the Judiciary Act of 1789 and assigned the district to the Middle Circuit, which also included Delaware, Maryland, New Jersey, and Virginia. The court convened in Philadelphia each April and October. Justice Samuel Chase served as the circuit justice in 1800. The district judge who sat with Chase in 1800 was Richard Peters, who was appointed by George Washington in 1792. Peters served as a district judge until his death in 1828.

## *U.S. Circuit Court for the District of Virginia*

Congress established the U.S. Circuit Court for the District of Virginia in the Judiciary Act of 1789 and assigned the district to the Middle Circuit, which also included Delaware, Maryland, New Jersey, and Pennsylvania. The court convened in Richmond each May and November. Justice Samuel Chase served as the circuit justice in 1800. The district judge who sat with Chase in 1800 was Cyrus Griffin, who was appointed by George Washington in 1789. Griffin served as a district judge until his death in 1810.

## The Judicial Process: A Chronology

July 14, 1798

President John Adams signed the Sedition Act into law.

### *The trial of Matthew Lyon*

U.S. Circuit Court for the District of Vermont

October 5, 1798

A grand jury in the U.S. Circuit Court for the District of Vermont returned an indictment of Matthew Lyon on three charges of violating the Sedition Act.

The court issued a warrant for Lyon's arrest.

October 6, 1798

The deputy marshal of the district arrested Lyon in Fairhaven, Vermont.

October 7, 1798

Lyon appeared before the U.S. circuit court in Rutland, Vermont, and pleaded not guilty to all of the charges.

October 9, 1798

The trial of Lyon opened with Justice William Paterson presiding and District Judge Samuel Hitchcock sitting with him in the circuit court. Charles Marsh, the U.S. district attorney for Vermont, presented the government's case against Lyon. Lyon served as his own lawyer, although Vermont state Supreme Court Judge Israel Smith assisted him.

On the same day, the jury returned a verdict of guilty. Justice Paterson sentenced Lyon to four months in prison, a \$1,000 fine, and the costs of the prosecution, which were \$60.96.

February 9, 1799

Lyon was released from the jail in Vergennes, Vermont. During his incarceration, he was reelected to the U.S. House of Representatives, and he immediately left to take his seat in Philadelphia.

October 11, 1799

The federal district attorney, Charles Marsh, presented the U.S. Circuit Court for the District of Vermont with an information alleging that Lyon had libeled the federal government and the courts of justice in his published account of his trial and imprisonment.

November 7, 1799

The U.S. Circuit Court for the District of Vermont issued an arrest warrant for Matthew Lyon to answer the charges in the information of the district attorney.

April 21, 1800

The deputy marshal for the district reported that he had sought Lyon for arrest, but that he could not find Lyon in the district.

### *The trial of Thomas Cooper*

U.S. Circuit Court for the District of Pennsylvania

April 8, 1800

Judge Richard Peters, district judge for the District of Pennsylvania, ordered the arrest of Thomas Cooper to answer the charges in an indictment drafted by William Rawle, the federal district attorney for the District of Pennsylvania. The draft indictment charged Thomas Cooper with seditious libel against the President of the United States in connection with a handbill that Cooper published in November 1799.

April 11, 1800

Thomas Cooper was arrested to answer questions related to the district attorney's indictment.

April 14, 1800

A grand jury in the U.S. Circuit Court for the District of Pennsylvania returned a true bill of indictment against Cooper for his seditious libel against the President of the United States.

April 15, 1800

Cooper pleaded not guilty and presented the court with twelve facts of evidence that he planned to present in defense of his statements in the handbill.

April 19, 1800

The trial of Thomas Cooper began, with Justice Samuel Chase presiding and District Judge Richard Peters sitting with him. William Rawle presented the government's case. Cooper served as his own counsel. The jury returned a verdict of guilty.

April 24, 1800

Justice Chase sentenced Cooper to six months' imprisonment and imposed a fine of \$500 as well as the costs of prosecution.

October 8, 1800

Judge Richard Peters authorized the release of Thomas Cooper from jail.

### *The trial of James Callender*

U.S. Circuit Court for the District of Virginia

May 24, 1800

A grand jury in the U.S. Circuit Court for the District of Virginia returned a true bill of indictment against Callender for publishing *The Prospect Before Us*, a pamphlet with words defaming the President of the United States, in violation of the Sedition Act of 1798. Justice Samuel Chase ordered the marshal to arrest Callender to answer the charges in the indictment.

May 27, 1800

Callender, along with Meriwether Jones and William Branch Giles, posted security for the defendant's appearance to answer the charges in the indictment.

May 28, 1800

Callender appeared before the U.S. Circuit Court meeting at the State Capitol in Richmond and pleaded not guilty. Justice Chase denied the defense attorneys' motion for a postponement until the November session to allow the defense to gather evidence and to subpoena witnesses, but Chase granted a postponement until the following week.

June 2, 1800

Justice Chase granted a postponement of one day.

June 3, 1800

The jury was sworn in, and the trial began. On the same day, the jury returned a verdict of guilty.

June 4, 1800

Justice Samuel Chase sentenced Callender to nine months' imprisonment and imposed a fine of \$200. The court also ordered Callender to post security for his good behavior for two years.

March 3, 1801

The Sedition Act expired according to the original terms of the statute.

## Legal Questions Before the Federal Courts

### *What was required for conviction under the Sedition Act?*

Under the terms of the Sedition Act, conviction on charges of seditious libel required that the statements made by or published by the defendant were false, that the defendant intended to defame the government or incite opposition, and that the effect of the statements was malicious. Under earlier English and American practice, conviction for seditious libel required only evidence that the publication or utterance had a tendency to incite opposition to the government.

The act's grounds for conviction reflected recent changes in American thought and practice. A defense based on the truth of an allegedly seditious statement had been offered in the famous trial of John Peter Zenger in 1735, and following the American Revolution this defense was recognized by some state constitutions and accepted by many commentators on the law, including John Adams. In the 1780s, state courts, which heard only occasional cases of seditious libel, placed greater emphasis on evidence of malicious intent.

In practice, the Sedition Act's supposed liberalizations in the law of seditious libel provided little support for the defendants prosecuted under the act. Most judges followed traditional rules that made defense difficult or impossible, and the judges' instructions to the juries weighed heavily in favor of conviction.

### *What was the jury's role in trials under the Sedition Act?*

The Sedition Act granted juries the "right to determine the law and the fact, under the direction of the court, as in other cases," which meant that the jury could decide if the provisions of the Sedition Act applied to the case. Traditionally, juries in libel cases only determined the fact that the defendant was responsible for the publication, and the judge determined if the published statement constituted seditious libel. In the early years of American independence, many citizens came to expect that the jury would exercise a broader authority, and this expectation was affirmed in state law and practice. For example, the Pennsylvania Constitution of 1790 guaranteed juries in a libel case the right to consider the applicability of the law as well as the facts. In 1792, the British Parliament passed a libel law that gave the jury the right to consider the law, and this law was widely reported and discussed in the United States.

James Bayard, a congressman from Delaware, warned his colleagues in the House of Representatives that granting juries the right to consider whether the law applied to a specific libel case would enable juries to rule on the law's constitutionality, but such a provision was nonetheless accepted in the final version of the Sedition Act. In the James Callender trial, the defense attorneys argued that the Sedition Act, as well as

Virginia state practice, granted the jury authority to consider constitutionality. Justice Samuel Chase dismissed this claim and asserted that only the federal judiciary had authority to rule on the constitutionality of a law. During the prosecutions under the Sedition Act, judges often claimed that the act's use of the phrase "under the direction of the court" gave them broad authority to instruct the jury on interpretation of the statute.

### *How did the federal courts select juries at the time of the Sedition Act trials?*

The Judiciary Act of 1789 provided that juries in federal courts would be selected by lot or by other procedures "now practised" in the state in which the federal court met. It also directed federal courts to summon juries from geographical areas so as to encourage an impartial trial. The call for a jury was to be issued by the clerk of court and carried out by the marshal of the district. Marshals, as presidential appointees, were sometimes accused of partisanship, and several of the defendants in the Sedition Act trials, including Matthew Lyon and James Callender, alleged that the marshals had deliberately selected Federalist juries.

In 1800, in an effort to prevent partisan manipulation of jury selection, Senator Charles Pinckney of South Carolina proposed a bill that would have required all federal courts to select juries by lot from a list of all qualified jurors in a federal judicial district. The Senate postponed consideration of the bill, but the Congress did pass an act in 1800 specifying that federal courts that follow state practice in jury selection must do so according to the procedures used by the highest court of the state.

### *What sort of statements constituted an intent to defame the government or "to stir up sedition"?*

Indictments under the Sedition Act most frequently related to perceived attacks on the reputation of the President or other federal officeholders rather than to alleged incitements to rebellion. The presiding judges frequently urged juries to convict any defendant whose language might damage public opinion of federal officeholders. Justice William Paterson instructed the jury in the Lyon trial to find the defendant guilty if the language quoted in the indictment was intended to make the President "odious or contemptible," and Paterson strongly implied that the language met that test. Justice Samuel Chase told the jury in the Thomas Cooper trial that Cooper's statements were "directly calculated to bring him [John Adams] into contempt with the people" and "to arouse the people against the President so as to influence their minds against him on the next election."

Federalist defenders of the Sedition Act maintained that it punished "licentious"



speech but did not restrict liberty of speech. The distinction between licentious speech and liberty of speech was a familiar part of British and colonial libel law through much of the eighteenth century. “Licentious” referred to any speech that was false and undermined support for governmental authority, but the legal application of the term was always imprecise and contested. The Sedition Act offered no more exact definition of seditious speech. During congressional debates, Federalists maintained that the Sedition Act would apply only to “malicious falsehoods,” but Republicans, like John Nicholas of Virginia, warned that the definition of “licentious” was so subjective that anyone in authority might use the law to suppress the opposition.

### *How could defendants establish the truth of a published statement?*

In newspaper editorials and in courtrooms, Republicans argued that the truth defense provided by the Sedition Act was ineffective, since most of the statements cited in the indictments were opinions. As Albert Gallatin had asked during the House of Representatives’ debate on the proposed act, “How could the truth of opinions be proven by evidence?”

In most of the Sedition Act trials, the defendants attempted to acquit themselves by establishing the truth of their allegedly seditious statements. None was successful. Matthew Lyon’s interrogation of Justice William Paterson regarding the pomp displayed at President Adams’ house was largely rhetorical, but Lyon demonstrated the difficulty or even absurdity of proving the truth of an opinion. Thomas Cooper rooted his defense in an objective review of the government’s actions, but the repetition of his published statements brought further accusations of seditious libel. Callender’s attorneys never presented their witnesses because Chase rejected the attorneys’ proposed questions. In the Callender and Cooper trials, Chase demanded that any evidence speak to the entire libel, even if, as in the indictment of Callender, the charge cited twenty distinct statements. Chase’s ruling was based on long-established procedures governing libel cases in Great Britain, but it provoked enormous anger from the many Americans who had come to expect the truth of a statement to acquit a defendant in a seditious libel case.

*Did the Sedition Act violate the First Amendment's protection against any law "abridging the freedom of speech, or of the press"? What limits or restrictions could the Congress or the federal courts impose on the Constitution's protection of free speech and a free press?*

Several defendants argued that the Sedition Act was unconstitutional, but no judge allowed the jury to rule on this question. Neither did any court issue a decision regarding the constitutionality of the Sedition Act. The constitutionality of the act, however, was an important subject of public debate. Republicans, including Thomas Jefferson, insisted that it was unconstitutional, and several newspapers printed the Bill of Rights alongside drafts of the bill.

The congressional debates on the Sedition Act and the arguments presented during the Sedition Act trials revealed very different interpretations of the protections offered by the First Amendment. Most accepted the idea that certain limits on speech and the press were acceptable under the Constitution, but there was sharp disagreement on what the acceptable limits were and whether federal or state courts should enforce those limits. Federalists claimed that the First Amendment only codified the standard common-law protection from "prior restraint" (censorship before publication) and that the amendment did not prevent the government from prosecuting publications that were false or that deliberately incited opposition to the government.

James Madison, who drafted the Bill of Rights in 1789, denied that the First Amendment was just a restatement of common-law rules. The amendment, rather, was intended to protect the people from legislative acts that punished speech as well as executive actions that prevented publication. The Constitution, according to Madison, neither granted Congress authority to pass such an act nor justified it as necessary and proper. In the few instances when licentious speech required regulation, Madison asserted, it was under the jurisdiction of the states.

In 1964, in *New York Times v. Sullivan*, the Supreme Court referred to the broad consensus that the Sedition Act was "inconsistent with the First Amendment."

*What was the common law of seditious libel? Did the federal courts have jurisdiction over crimes defined by the common law?*

For many years in Great Britain and in the American colonies, the crime of seditious libel was defined by the common law—the court rulings and traditional procedures based on a supposed ancient, natural law of England. In the last quarter of the eighteenth century, most Americans knew of the common law of seditious libel as

it was described by Sir William Blackstone in his *Commentaries*, published between 1765 and 1769 and widely used in legal education in the United States. According to Blackstone, the common law defined seditious libel as any public statement tending to expose the government or government officials “to public hatred, contempt, and ridicule,” and freedom of the press under the common law was limited to the protection from any prior restraint on publication.

Opinions varied widely on whether this definition of the common law of seditious libel applied in either state or federal courts. Seditious libel trials were quite rare in state courts at this time, and when they occurred judges sometimes modified Blackstone to allow the truth of the statement to be offered as a defense, to require demonstration of malicious intent, or to grant the jury a role in determining if the law applied to the facts of the case. These modifications in the common law were familiar enough to convince the Federalist authors of the Sedition Act to incorporate the new provisions into the act in 1798.

Neither the Constitution nor any laws of the early Congress granted the federal courts jurisdiction over crimes defined by the common law. Several justices of the Supreme Court were willing to exercise that jurisdiction, but one, Justice Samuel Chase, questioned the federal courts’ authority to do so. Only a few seditious libel prosecutions in federal courts were brought under the common law, and none resulted in conviction. In 1812, the Supreme Court declared that the federal courts had no jurisdiction over any crimes defined solely by the common law.

### *What did the federal courts decide in related cases?*

#### A grand jury presentment against Representative Samuel Cabell

In May 1797, a federal grand jury in Richmond, Virginia, accused Representative Samuel Cabell of inciting popular opposition to the federal government and encouraging foreign threats to American independence. The accusation came in a presentment, the form by which a jury recommends an indictment, and followed a grand jury charge from Justice James Iredell, who was presiding in the U.S. Circuit Court for the District of Virginia. Iredell never mentioned Cabell in his charge and later denied any role in the presentment, but the charge warned that certain individuals were provoking political divisions that would invite foreign interference and ultimately subjugation of the new nation. The grand jury referred to the “real evil” of letters that Cabell and other members of the House of Representatives circulated to their constituents. Only Cabell was cited by name, surely for a recent letter that condemned the talk of war with France and stated that the election of Adams would “sicken” the “patriotism of 76.”

No indictment of Cabell followed, but the presentment provoked a national outcry from Republicans. Newspaper articles and private correspondence about

the presentment revealed Republicans' deep distrust of the federal courts and their belief that federal judges used grand jury charges to advance the political goals of the Federalists. Cabell publicly described the jury as "a band of political preachers." Jefferson petitioned the Virginia House of Delegates with recommendations for official action against the members of the grand jury. The grand jury was led by retired Supreme Court Justice James Blair and it included prominent Federalists whom Justice Iredell considered the "most respectable Men in the State." For Republicans, the attack of these influential individuals on a member of the House of Representatives was proof that the Federalists were determined to use the courts to silence political opposition. Senator Henry Tazewell of Virginia concluded that "Thus have a Court and Jury erected themselves into a tribunal of political Censors."

### Common-law indictments for seditious libel

Just before the Congress passed the Sedition Act in July 1798, two controversial Republican printers were indicted in federal courts on charges of seditious libel. Both were indicted under the authority of the common law, even though Justice Samuel Chase had suggested that the federal courts had no jurisdiction over common-law crimes. The prosecution of these harsh critics of the Adams administration indicated the sense of urgency among Federalists. Neither printer was brought to trial, and subsequent prosecutions for seditious libel were brought under the authority of the congressional statute.

### Benjamin Franklin Bache

In late June 1798, as the Senate began consideration of a sedition bill, Benjamin Franklin Bache was arrested and indicted in the U.S. Circuit Court for the District of Pennsylvania. Bache, grandson of Benjamin Franklin, was the editor of the nation's leading Republican newspaper, the *Aurora*. His publication of an intercepted letter from the French foreign minister brought charges that Bache was acting as an agent of the French government. Bache was able to defend himself before the federal government formally charged him with treason, but his defense included published statements highly critical of President John Adams and Secretary of State Timothy Pickering. The indictment cited these statements as "tending to excite sedition, and opposition to the laws." With a trial scheduled for the October term of the circuit court, Bache was released on bail and continued to publish in the *Aurora* his criticisms of the administration. Bache remained at work in Philadelphia during the yellow fever epidemic that claimed his life that September. Although Bache's case never went to trial, his successor at the *Aurora*, William Duane, was indicted under the Sedition Act.

## John Daly Burk

In early July 1798, John Daly Burk was indicted for suggesting that President Adams had falsified the text of a published letter describing the government's negotiations with France. Three weeks earlier, Burk had become editor of the New York newspaper, the *Time Piece*, and announced that he planned daily editions as well as a national weekly to carry his staunchly Republican editorials. Secretary of State Pickering debated whether to deport the Irish-born Burk under one of the alien acts or to seek an indictment for seditious libel. The federal attorney in New York, meanwhile, secured a warrant for Burk's arrest, and the printer was indicted in the U.S. Circuit Court for the District of New York on charges of "seditious and libellous" statements about the President. His business partner, James Smith, was also indicted for a personal libel of Pickering. Leading New York Republicans, including Aaron Burr, posted bail for both of them. Although Burk continued to criticize the government through the *Time Piece*, he and Smith quarreled and dissolved their partnership in August. With the newspaper out of business, Burk offered to leave the country in return for an end to the prosecution. The Adams administration agreed, and Burk ostensibly left for Louisiana. In fact he moved to Virginia, where he lived under an assumed name until the election of Jefferson.

## United States v. Hudson & Goodwin

In 1812, the Supreme Court decided that the federal courts did not have any jurisdiction over crimes defined by the common law, as opposed to those defined by the Constitution or by acts of Congress. During the first decade of the federal government, federal judges expressed varying notions about criminal common law jurisdiction. In *United States v. Worrall*, a circuit court case of 1798, Justice Samuel Chase ruled that the federal courts did not have criminal common-law jurisdiction, but the question did not go to the Supreme Court. The Sedition Act had been passed in part to accommodate the doubts raised by Justice Chase.

The already infrequent number of common-law criminal prosecutions in the federal courts declined after 1798, although in 1806 Pierpont Edwards, a judge appointed to the U.S. District Court of Connecticut by President Jefferson, encouraged a grand jury to bring an indictment under the common law for seditious libel against two Federalist printers. Barzillai Hudson and George Goodwin, publishers of the *Connecticut Courant*, republished a report that President Jefferson and the Congress had secretly bribed Napoleon. When Judge Edwards and Circuit Justice Brockholst Livingston differed on the circuit court's jurisdiction over a common-law crime, the judges, following a procedure set out in statute, certified the case for consideration by the Supreme Court. Justice William Johnson, in the Supreme Court's unanimous opinion, declared that the federal courts had no criminal common-law jurisdiction

and that the justices considered the question “as having been long since settled in public opinion.”

## Legal Arguments in Court

### *The trial of Matthew Lyon*

The arguments of the federal district attorney against Matthew Lyon were as follows:

1. Lyon, as charged in the indictment, wrote the letter published in Spooner's *Vermont Journal*, and he repeatedly read a letter written by Joel Barlow at public gatherings.
2. The offensive passages cited in the indictment clearly fit within the definition of libel set out in the Sedition Act.
3. Lyon declared his intention to undermine support and respect for the federal government.

Charles Marsh, the federal attorney for the District of Vermont, called several witnesses to establish that Lyon's letter to Spooner had arrived in Vermont and was set in type after the passage of the Sedition Act. Other prosecution witnesses testified that Lyon had read the letter "from a diplomatic character in France" at several public events, and that at one of the events a listener responded with a call for revolution. Marsh also produced evidence that Lyon's wife had delivered to the printer a copy of the Barlow letter in Lyon's handwriting.

Marsh addressed the jury with a lengthy argument that Lyon's published writings demonstrated an intent to defame the government.

Lyon's defense consisted of the following:

1. The court had no jurisdiction because the Sedition Act was unconstitutional. Even if the act were constitutional, it would be unconstitutional for the court to apply the act to writings composed before the passage of the act.
2. Lyon did not intend to defame the President or the government.
3. The contents of the publications were true, and thus did not violate the Sedition Act.

Lyon, who had no legal training, served as his own counsel at the trial. He called as his only witness the presiding justice, William Paterson, in a not-too-serious attempt to prove the truth of his allegedly libelous writings about President Adams' taste for pomp. When prosecution witnesses testified that Lyon had read the Barlow letter to public gatherings and produced a "tumult," Lyon elicited their admission that the "tumult" would not have occurred without the provocation of two Federalists in the crowd.

Lyon presented his defense in a two-hour address to the jury. He argued that none of his actions amounted to “anything more than a legitimate opposition.”

### *The trial of Thomas Cooper*

The arguments of the federal district attorney against Thomas Cooper were as follows:

1. Cooper clearly and repeatedly demonstrated “a malicious and deliberate intention to injure the character of the President.”
2. Cooper took advantage of his legal training and his writing skills to disseminate seditious principles in a remote area where the people were more easily deceived.

William Rawle, the federal attorney for the District of Pennsylvania, emphasized Cooper’s intent to defame President Adams. Despite Cooper’s insistence that he was only criticizing the public conduct of Adams, Rawle argued that “the whole tenor” of Cooper’s remarks was an assault on the character of the President. Cooper had furthermore compounded his original libel by repeating his criticism of Adams in court and distorting the government’s policies through a highly selective reading of public documents.

All civilized nations, Rawle asserted, punished seditious libel and recognized the danger presented by unchecked criticism of legitimately elected governments. The publication of seditious writings challenged the will of the people by undermining public confidence in elected leaders. Rawle argued that Cooper’s behavior was particularly dangerous because he was a gifted writer who wrote for a poorly informed audience. Rawle told the jury “it was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications.”

Cooper’s defense consisted of the following:

1. The statements in the handbill were true and accurate descriptions of the actions of President Adams, and thus by the terms of the Sedition Act could not be considered seditious libel.
2. An objective examination of the public conduct of the President could not in itself be seditious libel.

Cooper, who was trained as a lawyer, served as his own counsel. The greatest part of his defense was based on a detailed review of President Adams’ conduct in an effort to prove the truth of the statements made in the handbill. Cooper relied on numerous public documents to establish the policies carried out or supported by Adams. Cooper also hoped to subpoena the President and various members of Congress to testify, but Justice Samuel Chase refused the subpoena of the President



and ruled that the subpoena of members of Congress would require a delay of the trial until the adjournment of Congress.

Although Cooper did not directly challenge the constitutionality of the Sedition Act, he argued that the act's restrictions on public debate and its intimidation of any political opposition undermined citizens' ability to make informed decisions in elections. Acknowledging that a genuine libel on the President should be punished, Cooper insisted that his published handbill was an objective criticism of the policies of Adams, not an attack on the President's character.

### *The trial of James Callender*

The arguments of the federal district attorney against James Callender were as follows:

1. Callender wrote and published the passages cited in the indictment.
2. The cited passages were clearly malicious, and the malicious tone was sufficient to establish Callender's intent to defame the President.
3. The constitutional right to participate in elections, to withdraw support for an incumbent officeholder, and to speak out in favor of a new candidate did not include a right to "vilify, revile, and defame" the opposing candidate.

Thomas Nelson, the federal attorney for the District of Virginia, devoted most of his attention to establishing Callender's role in writing and publishing *The Prospect Before Us*, which was the basis of the indictment. The succession of witnesses involved in the publication and dissemination of the pamphlet described an almost conspiratorial collaboration between Republican printers and political leaders.

Nelson also offered the jury a defense of the Sedition Act based on a widely held Federalist definition of legitimate political speech. Once citizens elected an official, public criticism of that officeholder threatened to silence the voice of the people.

Callender's defense consisted of the following:

1. Juries in Virginia had the power to consider and decide questions of law as well as the facts of the case, and since the Constitution was the supreme law of the land, the jury had the power to declare the Sedition Act unconstitutional.
2. The Sedition Act made falsehood an essential component of seditious libel, but the indictment cited statements of opinion that could not be proved true or false.
3. A defendant tried under the Sedition Act could present evidence and call witnesses to establish the truth of one portion of the publication cited in the indictment, rather than address the truth of the entire publication.

The prominent attorneys who defended Callender emphasized broad legal challenges to the Sedition Act rather than a focused defense of their client. William Wirt, who later became the longest-serving U.S. attorney general, asserted that juries had the power to consider the constitutionality of the statute under which a defendant was charged. Many Republicans supported this argument, and Justice Chase was determined to prevent its application in a federal court. Philip Nicholas, who was attorney general of Virginia, emphasized the absurdity of trying to prove the truth of a political opinion. The confrontation with Justice Chase over the presentation of evidence and the subpoena of witnesses was part of an effort to establish the authority of state procedures in federal court proceedings. The lawyers withdrew from the case in protest of Justice Chase's interference with their defense.

## Biographies

John Adams (1735–1826)

*President of the United States during passage of the Sedition Act and the trials under it*

The role of John Adams in the passage of the Sedition Act and in the subsequent prosecutions in the federal courts has been the subject of controversy since his presidency. Adams never directly advocated a sedition law nor played any role in its consideration by the Congress, but in public addresses in the spring and early summer of 1798 he stated that the domestic opposition presented a danger to the security of the nation and that “the spirit of libelling and sedition” might require regulation by law. Adams may have assumed that any prosecutions would be in state courts, as had been the practice in the past. (His wife, Abigail Adams, privately indicated her strong support for federal sedition legislation.) After signing the Sedition Act into law, Adams specifically recommended the prosecution of Thomas Cooper and endorsed the case against William Duane of the *Aurora*, but otherwise the President was removed from the prosecutions. Adams’ secretary of state, Timothy Pickering, was the only member of the administration to play an active role in coordinating the prosecutions.

To contemporary observers, however, President Adams seemed to be at the center of many of the trials because they revolved around allegedly seditious statements about him: Matthew Lyon accused Adams of “ridiculous pomp”; Thomas Cooper alleged that Adams meddled with the independent judgment of the federal courts; and the hapless Luther Baldwin of New Jersey was indicted for drunkenly making a vulgar remark about Adams as he passed by in a parade. To skeptics and critics of the Sedition Act, the trials all too often appeared to be attempts to bolster the honor and reputation of the President, and as such Adams became the further object of their partisan opposition.



*John Adams*

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Adams surely was unused to being cast as an opponent of free speech. During and immediately after the American Revolution, Adams was often at the forefront in advocating American notions of freedom of speech and a free press. He supported changes in the common law to permit the truth as a defense in libel cases and to expand the jury's role in determining questions about the law as well as the facts of a libel. By 1788 he proudly declared the nation's press "the most free in the world." Adams, however, continued to accept traditional distinctions between free speech and licentious speech, and he believed that government needed to protect itself against the latter. Faced with the rise of the partisan press in the 1790s, and particularly with the French war crisis of 1798, he supported the Sedition Act and the subsequent prosecutions.

During his long retirement after leaving the presidency in 1801, Adams distanced himself from the Alien and Sedition Acts and recognized the damage they had done to his historical reputation. He never accepted the more libertarian definitions of a completely unfettered press, however, and he worried that the rise of strictly partisan newspapers deprived most of the reading public of the dialogue and exchange of ideas that he believed were so important to the functioning of a republican government.

### James Thomson Callender (1758–1803)

#### *Pamphleteer and defendant in a sedition trial*

On both sides of the Atlantic, James Callender tested and often exceeded the boundaries of acceptable political behavior. In his extensive political writings, he delighted in provocative language and exaggerated accusations. With no attachment to place or loyalty to former allies, Callender appeared to be a kind of political mercenary who was as likely to launch a personal attack as to advocate a political viewpoint. Callender presented the most extreme example of what Federalists hoped to curb with a seditious libel law.

Callender was born in Scotland and became involved in radical politics by the time he was thirty. Like many ambitious men of his generation, he was attracted to the ideas of the French Revolution and hoped for significant reform in the British political system. His publication of the *Political Progress of Britain* in 1792 brought an indictment for seditious libel, and he left for Philadelphia, then capital of the United States. There he was quickly indoctrinated into the politics of the new nation as he worked as a newspaper recorder of debates in the House of Representatives. He lost that job when his editor discovered that he was writing anonymously for the leading Republican paper. Callender became a full-time partisan writer and developed close ties with the most influential Republicans, including Thomas Jefferson. In 1797, Callender gained public attention when he exposed Alexander Hamilton's affair with a married woman and forced the former secretary of the treasury to acknowledge the relationship.

Passage of the Sedition Act was a warning to leave the nation's capital, and Callender moved to Virginia. There he wrote regularly for the Republican *Examiner* of Richmond and maintained regular contact with Jefferson, who contributed occasional financial support. In 1800, Callender published a pamphlet, *The Prospect Before Us*, in support of Jefferson's election as President and sent President Adams a copy. In May, Callender was indicted in the U.S. Circuit Court in Richmond on the basis of a selection of passages from this lengthy pamphlet.

At the June trial, Callender was represented by Philip Nicholas, the attorney general of Virginia; William Wirt, clerk of the Virginia House of Delegates and future U.S. attorney general; and George Hay, author of an important pamphlet on free speech. The clashes between these leading Republican lawyers and Justice Samuel Chase dominated the trial and overshadowed Callender, although the U.S. attorney offered a lengthy discussion of the seditious nature of *The Prospect Before Us*. Callender was convicted and sentenced by Chase to nine months' imprisonment and a \$400 fine.

Jefferson privately contributed \$50 to the refund of the fine and as President pardoned Callender. Jefferson, however, refused Callender's request for a presidential appointment as postmaster of Richmond. Callender soon went to work for a Federalist newspaper and criticized the newly empowered Republicans. Callender achieved a different kind of notoriety in 1802 when he became the first person to publish a report that Jefferson kept an enslaved woman as his mistress at Monticello. Callender identified a slave named Sally as the mother of two children by the President.

Increasingly plagued by alcoholism, Callender drowned in the James River in Richmond in 1803.

## Samuel Chase (1741–1811)

### *Supreme Court justice and presiding judge in the Cooper and Callender trials*

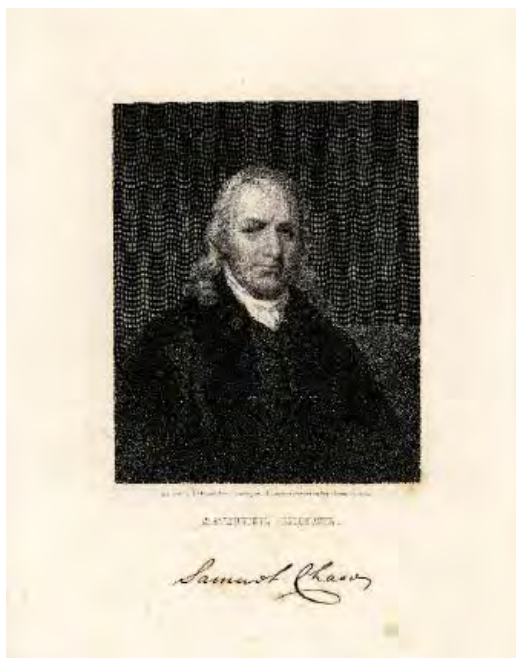
Justice Samuel Chase was the most controversial judge in the Sedition Act trials and became the target of Republican accusations about the politicization of the federal bench. Chase's domineering and even arrogant manner provoked conflicts throughout his career and often overshadowed his formidable and original legal mind. His impeachment in 1804 marked the high point in partisan conflicts over the judiciary in the early years of the nation.

Chase was born in Somerset County, Maryland, and studied law in Annapolis. He became a strong defender of colonial rights in the years leading up to the Revolution, and as a delegate to the Continental Congress, Chase signed the Declaration of Independence. At the Maryland ratification convention in 1788, Chase voted against acceptance of the proposed Federal Constitution, but by the mid-1790s he was a committed Federalist. In 1795, after several years as chief judge on the Maryland General Court, Chase was appointed justice of the Supreme Court of the United States by George Washington.

Chase was one of the most influential justices on the early Supreme Court and helped to define the scope of federal judicial authority. His circuit court ruling that the federal courts had no jurisdiction over common-law crimes was not affirmed by the Supreme Court until 1812, but it convinced members of Congress to introduce a sedition bill to establish federal jurisdiction over the traditional common-law crime of seditious libel.

In the spring of 1800, when the judiciary was at the center of partisan conflicts, Chase inflamed Republicans with his abrasive personality and his aggressive intervention in trials. As circuit justice presiding in the trial of Thomas Cooper, Justice Chase offered the jury arguments in favor of Cooper's conviction. A month later he presided over the retrial of John Fries, leader of an anti-tax insurrection, and so restricted the conduct of the defense attorneys that they quit the case. In the circuit court for Delaware, Chase coerced the district attorney and the grand jury into considering an indictment of a Republican printer he suspected of seditious libel. During the Callender trial, Chase barred the key defense witness and made it virtually impossible for the defense lawyers to establish the truth of Callender's writings.

Chase openly campaigned for the reelection of John Adams in 1800, and when the presidential election was thrown into the House of Representatives, he prevailed upon members of Congress to vote against Jefferson. After Chase used a grand jury charge to denounce Republicans for the repeal of the Judiciary Act of 1801, Jefferson suggested that Congress consider impeachment. The House of Representatives impeached Chase in March 1804, citing the partisan grand jury charge, Chase's conduct in the trials of Fries and Callender, and his actions in Delaware when he "did descend from the dignity of a judge and stoop to the level of an informer." The only Supreme Court justice to be impeached, Chase was acquitted in the Senate trial. The closely watched proceedings, however, marked the end of such openly partisan behavior on the part of federal judges as well as the end of the brief Republican effort to remove unsympathetic judges.



*Samuel Chase*

Engraving by J.B. Forrest after drawing by J.B. Longacre after original portrait by John Wesley Jarvis. Reproduced from the Collections of the Supreme Court of the United States.



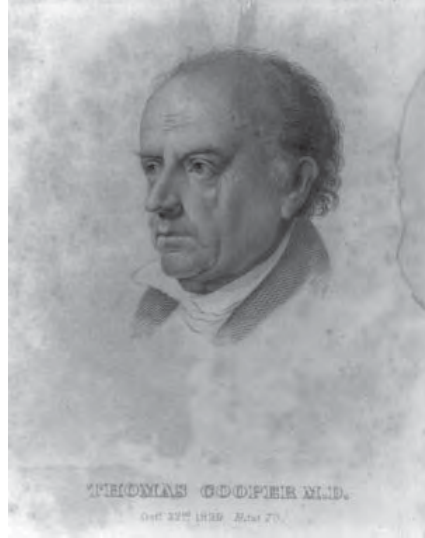
## Thomas Cooper (1759–1839)

*Republican pamphleteer and defendant in sedition trial*

A lifetime of principled public stands placed Thomas Cooper at the center of some of the great political conflicts of his era. At Oxford University he was denied a degree because he refused to take an oath supporting the doctrines of the Church of England. His speech before the radical Jacobin Society in France in 1792 made him the object of an attack in Parliament by Edmund Burke and exposed him to prosecution for sedition. After emigrating in 1794 to the United States and settling in Pennsylvania with other English political dissenters, Cooper joined with the Republican critics of John Adams and a presidential administration that seemed to endorse all that he had opposed in British politics. In old age, as a professor in South Carolina, Cooper emerged as one of the intellectual founders of the doctrine of nullification and extreme state rights in defense of the interests of slaveholding states. The political activities of Cooper paralleled a remarkably varied career that included work in the law, manufacturing, scientific experimentation, and university teaching in the sciences, political economy, and the law.

In the spring of 1799, Cooper served briefly as editor of the *Sunbury and Northumberland Gazette*, through which he published political essays that attracted the admiration of Republicans and provoked the ire of Federalists. Federalists were further angered in March 1800 when Cooper challenged the Senate's attempt to bring its own charges of contempt against a prominent Republican printer. In April 1800, Cooper was indicted in the U.S. Circuit Court in Philadelphia for his November 1799 publication criticizing the policies of President Adams.

Cooper's high-profile trial in the capital of the new nation was one of the few sedition prosecutions specifically endorsed by President John Adams. Cooper's dramatic attempt to subpoena members of Congress, cabinet officers, and the President himself attracted even more attention from the leading figures in the government. Cooper defended himself with a detailed review of the statements cited in the indictment, seeking to establish that the statements were true representations of Adams' policies and that Cooper's intentions were not malicious. Justice Samuel Chase narrowly restricted Cooper's ability to prove the truth of the statements, and then presented



*Thomas Cooper*

Engraving by A.B. Durand after C. Ingham, n.d., Prints and Photographs Division, Library of Congress [reproduction number LC-USZ62-50257].

the jury with a charge that essentially asserted Cooper's guilt. After the jury declared Cooper guilty, Chase sentenced him to six months' imprisonment and a \$400 fine.

Cooper spent his time in jail writing political letters and a treatise on bankruptcy law. He was released in October 1800, several days following the death of his wife. Cooper immediately rejoined the political battle in the approaching presidential election. He also traveled to New York, where he called for the prosecution of Alexander Hamilton, a leading Federalist, on charges of sedition for a published letter in which Hamilton sharply criticized President Adams.

After serving as a state judge in Pennsylvania and teaching at universities in Pennsylvania and New York, Cooper spent many years as a professor and then president at the University of South Carolina. In 1850, Congress agreed to refund Cooper's heirs for the fine, with interest.

### Matthew Lyon (1749–1822)

*Member of Congress and defendant in sedition trial*

One of the earliest prosecutions under the Sedition Act centered on an Irish-born member of Congress who had come to represent much of what Federalists feared about the potential excesses of popular government. In the early stages of party conflict, the Republican Matthew Lyon established a newspaper devoted exclusively to his political writings. As a new member of the U.S. House of Representatives, Lyon in 1797 immediately challenged the customary procession by which House members paid their respects to the President. In one of the era's most notorious episodes of partisan rancor, an exchange of insults between Lyon and Connecticut Representative Roger Griswold led to Lyon spitting in his colleague's face. When Federalists failed to win the vote to expel Lyon from the House, Griswold attacked Lyon with a cane in the House chamber. Lyon defended himself with a pair of fireplace tongs in a struggle that was soon satirized in a print distributed throughout the nation. By the time he began campaigning for reelection, Lyon was known to Federalists as the "Beast of Vermont."

Lyon had emigrated to Connecticut as an indentured servant at age fifteen. Within a few years he moved to the region that would become Vermont and joined the militia group known as the Green Mountain Boys. He participated in the capture of Fort Ticonderoga and served in the Continental Army, although he was discharged from the service because of a mutiny of troops under his command. After the Revolution Lyon established several successful manufacturing enterprises, and by the 1790s he was actively involved in Vermont politics. After three attempts, he was elected to the House of Representatives for the term beginning in March 1797.

During debates on the Sedition Act, Lyon predicted he would be among its first targets. He was indicted for writing and publishing a letter allegedly defaming the President and for publishing and publicly reading from a letter written by a promi-



nent Republican who was critical of the administration's policy toward France. Lyon pleaded not guilty and submitted a second plea stating that the Sedition Act was unconstitutional. When his lawyers failed to arrive in time for the trial, Lyon defended himself in his own provocative style and called as his only witness the presiding justice, William Paterson. Paterson guardedly agreed to comment on President Adams' style of entertaining but then rebuffed Lyon's obviously facetious line of questioning. Lyon was convicted and sentenced by Paterson to four months' imprisonment and a \$1,000 fine. While in jail he wrote letters seeking support for his reelection to Congress and published an account of the trial.

After Lyon won reelection from jail, Federalists tried and failed to expel him from the House of Representatives. Meanwhile the federal district attorney in Vermont sought to arrest him on new charges of seditious libel. At the end of his congressional term in 1801, Lyon moved to Kentucky where he was twice elected to the House of Representatives. He later moved to the Arkansas territory and ran for election as a delegate to Congress. In 1840, Congress granted Lyon's heirs reimbursement for his fine, with interest.



*"Congressional Pugilists"*

This satirical print offered a view of the notorious brawl between Representatives Matthew Lyon and Roger Griswold on the floor of the House of Representatives chamber in Congress Hall in Philadelphia. [Philadelphia], 1798. Prints and Photographs Division, Library of Congress [reproduction number LC-USZ62-1551].

## William Paterson (1745–1806)

*Supreme Court justice and presiding judge in the Lyon trial*

At the trial of Matthew Lyon, Justice William Paterson served as the presiding judge in the U.S. Circuit Court for the District of Vermont. Paterson also held the distinction of being the only federal judge interrogated by a defendant in a sedition trial. His conduct during the Lyon trial convinced many Republicans that the federal judiciary was firmly on the side of the Federalists in the worsening partisan conflicts of the late 1790s.

Paterson was born in Ireland and as a young child moved with his parents to New Jersey. He held several public offices in New Jersey during the Revolutionary War and served as the state's first attorney general. As a delegate to the Federal Convention, Paterson presented what was known as the New Jersey Plan, which provided for equal representation of states in a unicameral Congress, and contributed to the compromise that resulted in the establishment of the Senate and House of Representatives. As a senator from New Jersey in the First Congress, Paterson worked with Oliver Ellsworth of Connecticut to draft the Judiciary Act of 1789 that established the federal court system. Paterson resigned from Congress to serve as governor of New Jersey in 1790, and in 1793 George Washington appointed him as an associate justice of the Supreme Court.

Paterson, like all of the justices of the Supreme Court in the early years of the nation, was assigned to a judicial circuit in which he traveled several times a year to preside in each district of the circuit with the local district judge at sessions of the federal circuit courts. In October 1798, he convened the circuit court in Rutland, Vermont, and offered the grand jury a lengthy charge describing the dangers of licentious speech and the urgent need to pay attention to the crimes of sedition codified in the recent act of Congress.

The indictment of Lyon cited his allegedly seditious description of President Adams' "unbounded thirst for ridiculous pomp." Ostensibly to prove the truth of the statement, Lyon asked Justice Paterson if he had observed unusual pomp when he attended dinner parties at the President's house. Paterson replied that he had not and refused to answer further questions from Lyon.

Paterson warned the jury members that they were not authorized to judge the constitutionality of the Sedition Act. The only proper questions for the jury, according



*Justice William Paterson*

By James Sharples. Reproduced from the Collections of the Supreme Court of the United States.

to Paterson, were whether Lyon published the cited publications and whether he did so seditiously. Paterson left the jurors with little flexibility on either question: Lyon admitted to the publication; and Paterson asked the jurors if the language cited in the indictment “could have been uttered with any other intent than that of making odious or contemptible the President and the government.” After the jury returned a guilty verdict, Paterson preceded his sentencing of Lyon with a stern lecture on the special responsibilities of a member of the House of Representatives.

Paterson continued to serve on the Supreme Court until his death.

### *The district judges*

The Judiciary Act of 1789 provided that district judges would sit with a justice from the Supreme Court of the United States to form the U.S. Circuit Court for each judicial district. The circuit courts were the most important trial courts in the federal system and heard cases involving all major federal crimes, including those prosecuted under the authority of the Sedition Act.

#### Samuel Hitchcock (1755–1813)

*U.S. district judge for the District of Vermont*

Samuel Hitchcock was a Federalist political opponent of Matthew Lyon in several elections for the House of Representatives before serving as the district judge in Lyon’s trial for seditious libel. Hitchcock was born in Hampshire County, Massachusetts. He attended Harvard College and read law before establishing a legal practice in Vermont. Hitchcock served in the Vermont legislature from 1789 to 1793 and was a delegate to the state constitutional convention in 1791. He also served as the state’s attorney general until George Washington appointed him to be district judge in 1793.

Hitchcock resigned as district judge in 1801 when John Adams appointed him to serve in the newly created position of judge for the U.S. Circuit Court for the Second Circuit. Hitchcock’s judgeship, along with those of the other so-called “midnight judges,” was abolished in 1802 when the Republican-dominated Congress repealed the Judiciary Act of 1801. He returned to the practice of law in Vermont until his death.

#### Richard Peters (1744–1828)

*U.S. district judge for the District of Pennsylvania*

Richard Peters’ role as judge in several highly politicized trials made him a target of Republican critics of the judiciary and nearly led to his impeachment when the House of Representatives impeached his colleague, Justice Samuel Chase. Born to

an influential Philadelphia family, Peters attended the College of Philadelphia, studied law, and held several posts under the colonial government. During the Revolutionary War he served on the Board of War of the Continental Congress. Peters later was elected to the Continental Congress and also served in the state legislature.

In January 1792, Peters was appointed as district judge for Pennsylvania by George Washington, with whom he maintained an active correspondence regarding their mutual interest in agriculture. On the district court, Peters became one of the most important judges in developing admiralty law for the new nation, and on the district's circuit court he sat on several controversial trials arising out of the state's fractious politics. In 1795, he and Justice Paterson presided over the treason trials of participants in the anti-tax Whiskey Rebellion. In 1799, Peters sat with Justice James Iredell in the first trial of John Fries, who was accused of treason after leading an insurrection to prevent the collection of federal taxes. At the retrial of Fries in 1800, Peters sat with Justice Chase, who assumed the role of Fries' defender after Fries' attorneys quit in exasperation with Chase's arbitrary rulings. In the trial of Thomas Cooper a month before, Peters had attempted to restrain the excesses of Chase, and he recognized that his service with the domineering and abrasive Chase exposed him to guilt by association. "I never sat with him without pain," Peters later wrote of Chase. In 1804, the House of Representatives appointed a committee to inquire into the possible impeachment of Chase and Peters for their conduct during the Fries trial. The committee recommended the impeachment of Chase but concluded that there were no grounds for impeaching Peters.

In 1818, Congress divided Pennsylvania into two judicial districts and assigned Peters to the Eastern District, where he served until his death.



*Richard Peters*

Artist unknown, n.d., Simon Gratz Collection, The Historical Society of Pennsylvania.

### Cyrus Griffin (1748–1810)

*U.S. district judge for the District of Virginia*

Cyrus Griffin's long career in public service brought him into contact with the leading figures of the day, but he impressed few and earned the harsh criticism of Thomas Jefferson. He played almost no recorded role in the sedition trial of James Callender or the treason trial of Aaron Burr, being completely overshadowed by Justice Samuel Chase in the former and by Chief Justice John Marshall in the latter.

Griffin was born in Virginia and studied law in Edinburgh and London. He re-



turned to Virginia on the eve of Independence and served first in the Virginia state assembly and then in the Continental Congress. In 1780, the Congress appointed him to the only continental judicial body, the Court of Appeals in Cases of Capture, and he served on the court until it was abolished in 1787. Griffin was reelected to the Continental Congress in 1787 and served as its last president before the new Federal Constitution went into effect.

George Washington appointed Griffin in 1789 as the first U.S. district judge for Virginia after the state's leading jurist, Edmund Pendleton, declined the nomination. Griffin later appealed to Washington for an appointment to the Supreme Court, but he failed to win any other positions. Although Griffin assured President Thomas Jefferson that he supported the Republicans, he did nothing to aid the government's case in the Burr trial. Soon after Griffin died, Jefferson advised President James Madison to appoint a judge who would make up for the years that the Virginia court suffered under a "cipher" and a "wretched fool."

### *The attorneys for the United States*

In each of the sedition trials of 1798–1800, the prosecutor was a federal attorney who had been appointed by the President. The Judiciary Act of 1789 provided that a lawyer would be appointed in each judicial district to prosecute all federal crimes and to represent the federal government in all civil cases in which it had an interest. Generally referred to as district attorneys (a statute of 1948 changed the title to U.S. attorneys), these government lawyers were until 1820 appointed by the President for indefinite terms. In 1820, Congress stipulated that the attorneys would be appointed for four-year terms, and the President had the authority to remove them from office before that time. In the early years of the federal government, the secretary of state served as the principal liaison between the executive branch and the district attorneys.

#### Charles Marsh

##### *District of Vermont*

Charles Marsh initiated seven prosecutions of seditious libel in the U.S. Circuit Court for Vermont, all related to the original prosecution of Matthew Lyon. At the trial of Lyon in October 1798, Marsh called witnesses to establish that Lyon wrote the letter critical of President Adams and repeatedly used another letter for "political purposes" and in ways that were "highly disrespectful to the administration." Nine months after Lyon was freed from jail, Marsh filed an information charging Lyon with seditious libel in connection with a published letter in which Lyon criticized his treatment by the federal marshal. Marsh secured a warrant for Lyon's arrest, but the deputy marshal could not locate Lyon, who had left Vermont, anywhere in the district. Marsh also

prosecuted the publishers of Lyon's letters and those who defended Lyon in print.

Marsh was born in Connecticut in 1765 and moved to what became Vermont when he was young. He attended Dartmouth College and studied law at the famous school of Tapping Reeves in Litchfield, Connecticut. President George Washington appointed Marsh as district attorney for the district of Vermont on December 30, 1796. President Thomas Jefferson removed Marsh from office and appointed David Faye as his successor on January 6, 1802. Marsh was elected to the U.S. House of Representatives for the term of 1815–1817. He was one of the early members of the American Colonization Society, which sought to settle freed American slaves in West Africa. Marsh died in 1849.

## William Rawle

### *District of Pennsylvania*

As the federal district attorney for Pennsylvania from 1791 to 1800, William Rawle served as the U.S. government's prosecutor in some of the most controversial cases of the early republic. He brought the case against the Whiskey Rebels in 1795. He argued the case against John Fries in both trials of the leader of the anti-tax insurrection of Northampton County. Even before passage of the Sedition Act, Rawle secured a common-law indictment against Republican printer Benjamin Franklin Bache for seditious libel (Bache died before his trial began). Rawle then served as the prosecutor of Thomas Cooper on charges of seditious libel as defined by the Sedition Act.

Rawle was born in 1759 to a prominent Quaker family in Philadelphia. During the Revolutionary War, he traveled with his Loyalist family to British-occupied New York City and there began the study of law. He went to London in 1781 to study at the Inns of Court, and then returned to Philadelphia in 1783 to begin the practice of law. Despite his Loyalist ties, he became a well-respected lawyer in Philadelphia, and when the federal government moved there in 1790, Rawle became a close associate of many officials and was appointed as district attorney by George Washington.

Rawle resigned in early May 1800, soon after President Adams pardoned John Fries, who had been sentenced to hang. Rawle was succeeded by Jared Ingersoll, who



*William Rawle*

Lithograph by Albert Newsam, based on portrait by Henry Inman. National Portrait Gallery, Washington, D.C.

directed the sedition prosecution against William Duane. Rawle died in 1836 after many years of involvement in anti-slavery activities and civic organizations.

## Thomas Nelson

### *District of Virginia*

On April 28, 1796, George Washington nominated Thomas Nelson to be district attorney for Virginia, and the following day the Senate confirmed his appointment. Nelson served as the district attorney in one of the most pro-Republican states at a time when the federal courts became increasingly involved in partisan controversy.

Nelson was born in 1764. His father, also named Thomas Nelson, signed the Declaration of Independence and served as governor of Virginia. The younger Nelson served as attorney general for Virginia.

Soon after James Callender began to write for the Richmond *Examiner*, Secretary of State Timothy Pickering ordered Nelson to examine each issue to look for libelous matter. When Nelson drafted an indictment of Callender in the spring of 1800, it was not based on the newspaper writings but the far more detailed and inflammatory pamphlet, *The Prospect Before Us*. In the trial of Callender, Nelson was one of the few participants who focused on the defendant and his publication. He presented a detailed review of excerpts from the pamphlets and explained to the jury why he thought each met the standard for conviction for seditious libel.

Nelson served until his death in 1803. Upon Nelson's death, President Thomas Jefferson appointed George Hay, one of Callender's defense attorneys, to serve as the new district attorney for Virginia.

## *Federalists and Republicans*

The nation's first political parties developed gradually and to the surprise of almost everyone in public life in the 1790s. Within a few years of the inauguration of the federal government in 1789, officeholders faced persistent divisions over questions about the proper extent of the new government's authority. The debates over the establishment of the Bank of the United States in 1791 revealed sharply different ideas about the balance of state and national power. The recurring diplomatic crises associated with European wars emphasized the divisive political implications of alliances with European powers.

By the time the nation debated the proposed Jay Treaty with Great Britain in 1795–1796, two well-defined political coalitions articulated starkly different visions for the nation's government. The emerging parties established rival newspapers to advocate policies and to mobilize public opinion. During the Adams administration, partisanship reached new extremes as Federalists and Republicans responded to the French war crisis and prepared for the presidential election of 1800.

These first political parties had no formal national organizations like later parties, and many people expected that parties would recede once the direction of the national government became more clearly defined. The intense partisan conflict, however, raised concerns about the ultimate success of the experiment in representative government.

## Federalists

The Federalists emerged in the 1790s as a coalition of individuals who supported a strong national government, diplomatic ties with Great Britain, and the political leadership of men of property and experience. The term “Federalist” originally applied to those who supported the ratification of the Federal Constitution. By the mid-1790s, “Federalist” defined a group aligned with the administration of President George Washington. (Although Washington supported most Federalist policies, he steadfastly avoided partisan activity.)

The early Federalists were closely associated with the policies of Secretary of the Treasury Alexander Hamilton. Hamilton’s visionary fiscal programs were based on the British model of a strong central bank and government encouragement of wealthy investors who would promote commerce and manufactures. Hamilton and his Federalist supporters believed that only the federal government could inspire confidence among people of wealth and thereby create the strong national economy needed to secure a republican form of government over an extended geographical area. Federalists favored an alliance with Great Britain as the nation that was most likely to promote commerce and investment in the United States. Federalists also believed that the government of Great Britain stood as a strong model of constitutional order, as opposed to what they saw as the radicalism of the French Revolution.

Most Federalists believed that representative governments were easily undermined by an excess of democracy. The stability of the new national government thus depended on the establishment of a certain distance from the direct voice of the people. Once elected, officeholders should be free from popular pressures. Federalists also believed that government was safest in the hands of what they called “independent” individuals, which usually meant people of wealth and social standing. In the opinion of the Federalists, state governments in the 1780s presented a threat to republican government precisely because they were too beholden to an electorate that made frequent changes in officeholders and demanded that government serve narrow, local interests. In any number of policies, from the funding of the national debt to the organization of the federal courts, Federalists hoped to expand the authority of the national government at the expense of the states.

By the war crisis of 1798, the growth of an opposition party and fears about foreign intrigue combined to convince many Federalists that the survival of the federal government required restrictions on new types of political behavior and controls on



the many immigrants who filled port cities and generally supported Republicans. The Alien and Sedition Acts represented the Federalists' effort to curb the new kind of opposition and to enforce an older style of politics that rested on a deference toward officeholders.

Federalist support was strongest in New England, but some centers of support existed even in the South, such as in South Carolina. After the defeat of John Adams in 1800, the Federalists never again held the presidency, and their membership in Congress declined. By the close of the War of 1812, the party virtually ceased to exist.

## Republicans

The Republicans of the 1790s coalesced around the broad issues of limiting federal power, defending state authority, and expanding popular participation in politics. Republicans also opposed any sort of alliance with Great Britain, which they believed would always attempt to keep the United States in a kind of colonial dependence.

Republicans first appeared as a coalition of opponents of Alexander Hamilton's policies, which they feared would concentrate too much power in the national government and would create a small elite of merchants and financiers. Republicans believed that state governments were much more likely to protect popular liberties than was the more distant and less-accountable federal government. They also feared that the rise of an urban aristocracy was a serious risk in an extended republic like the United States. An economy based on agriculture and independent artisans would be a more secure foundation for representative government.

In the recurring debates on European alliances, the Republicans were sympathetic to France because of ties dating from the American Revolution and the liberal, republican politics of French reformers. Even as many in the United States became disenchanted with the course of the French Revolution and French restrictions on American commerce, the Republicans adamantly opposed closer ties to Great Britain. Great Britain's mercantile and commercial strength, they feared, would restrict the economic growth of the United States. Furthermore, Great Britain's monarchy and hierarchical society were fundamentally at odds with the republican principles of the United States government.

Initially the Republicans were led by James Madison in the House of Representatives. Thomas Jefferson, as secretary of state in the Washington administration, became the most important rallying point for Republicans, and as vice president under John Adams, Jefferson became the recognized leader of the party.

Throughout the 1790s, new forms of popular political organizations and broad-based participation in political debates expanded the support for Republicans. Republicans were strongest in the South, especially in Virginia, where they enjoyed support among many wealthy slaveholders. In the cities of the Middle Atlantic, and

even in New England, many immigrants and independent tradesmen supported the Republicans.

During the Sedition Act prosecutions, many Republicans argued for a new understanding of free speech that emphasized the necessity for an unfettered exchange of ideas under a government based on popular participation in elections. As the first opposition party under the new Constitution and as the direct target of the Sedition Act, many Republicans felt compelled to defend the need for some sort of political organization outside the formal institutions of government. The election in 1800 of Jefferson as President and a Republican majority in Congress helped to legitimize political parties and to ease fears about the transition of power under the Constitution. The election of 1800 also marked the beginning of a steady ascendancy of the Republicans. With the decline of partisan conflict after the War of 1812, the label of Republican became so widely used as to lose much of its meaning. (In 1819, a leading national political newspaper stopped denoting government officials by party.)

The Republicans of the early United States have no connection with the modern Republican Party, which traces its roots to the 1850s.

## Media Coverage and Public Debates

The Sedition Act trials were thoroughly rooted in the newspaper culture of the new nation. Among those indicted under the act were the leading Republican newspaper editors and others who used the press to promote Republican politics. In an age before formal case reports, newspapers were the most important source of information about the trial proceedings, and these accounts themselves occasionally became the subject of sedition prosecutions. The press had been instrumental in the formation of the Federalist and Republican parties, and in many ways the debates surrounding the passage of the Sedition Act and the federal prosecutions concerned the legitimacy of newspapers as a forum for political organization and public debate.

The newspaper coverage reflected public interest in the sedition trials, many of which became public events that attracted large and often prominent audiences. Representative John Allen of Connecticut, an ardent Federalist who insisted on the need for a sedition law, attended the Matthew Lyon trial in Vermont. Secretary of State Timothy Pickering actually sat on the bench near the judges during the trial of Thomas Cooper, while a number of other government officials attended that trial, which was held in the nation's capital of Philadelphia. John Marshall, who succeeded Pickering as secretary of state, attended James Callender's trial in Richmond, where state government officials helped to defend the accused.

Republican opposition to the Alien and Sedition Acts was so intense that it prompted debates on the nature of constitutional government itself. In the most famous statements of opposition, resolutions of the Virginia and Kentucky legislatures declared the acts unconstitutional and called on other state legislatures to follow with similar resolutions. Secretly written by James Madison and then-Vice President Thomas Jefferson, the Virginia and Kentucky Resolutions created their own backlash from ten state legislatures that explicitly rejected these assertions of states' authority to decide the constitutionality of a federal law. Madison, as a member of the Virginia legislature, wrote a report explaining the reasons for the Virginia Resolution and argued that the Sedition Act and the subsequent prosecutions violated the First Amendment protecting free speech.

As the trials progressed, Republican supporters offered a bolder assertion of the rights of free speech. One of the most widely read Republican pamphlets was a collection of letters by "Hortensius," actually written by George Hay of Virginia. Federalists replied with their own defenses of the Sedition Act. Alexander Addison, a Federalist state judge in Pennsylvania, delivered a grand jury charge in defense of the Sedition Act, and this was subsequently published in several editions in 1798 and 1799. George Washington thought highly enough of it to forward a copy to John Marshall, then a candidate for the U.S. House of Representatives, and to Supreme Court Justice Bushrod Washington, a nephew of Washington's.

The partisan character of the prosecutions under the Sedition Act inevitably made

the trials and the role of the judiciary controversial issues in the presidential election of 1800. Senator Charles Pinckney of South Carolina, in an article promoting the election of Thomas Jefferson, argued that the sedition prosecutions were a threat to the public's right to free discussion of public affairs.

# Historical Documents

## *The Sedition Act*

*The Sedition Act of 1798, the last of the acts passed in response to the French war crisis, served as the authority for the prosecution of Republican opponents of the Federalist administration. The approved act was in several ways less severe than early proposals or the version approved by the U.S. Senate. Senator James Lloyd of Maryland offered a draft that would have created the crime of peacetime treason, punishable by death. The Senate version of the bill eliminated this harsh penalty, but retained the provisions for punishing any speech, true or false, that defamed the President, federal judges, or the motivations of the Congress.*

*The approved act, as revised by the House of Representatives, established a crime of sedition against the federal government; it provided a statutory base for the prosecution of seditious libel of the President, Congress, or the government in general, but omitted reference to federal judges; and it incorporated recent liberalizations in the trial of seditious libel cases. Under English common law and colonial American practice, conviction for seditious libel depended solely on the defamatory nature of the words. Under the Sedition Act and in accordance with recent changes in state practice, the prosecution needed to prove both falsehood and an intent to defame the government. Defendants were allowed to demonstrate the proof of their statements as grounds for acquittal. Juries had the authority to decide if the law properly applied to a case, and judges were limited in the punishments they could impose. In practice, however, these liberalizations in the seditious libel law proved of little assistance to defendants.*

*Although the government relied on section one of the act and its definition of seditious conspiracy to prosecute some of the participants in Pennsylvania's anti-tax rebellion, most public attention and debate focused on section two and the related prosecutions of seditious libel. The act's expiration date of March 3, 1801, marked the end of the presidential term.*

[Document Source: *Statutes at Large of the United States of America, 1789–1873* 1 (1845), 596–97.]

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Chap. LXXIV. An Act in addition to the act, entitled “An Act for the punishment of certain crimes against the United States.”

1 Stat. 596

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to

impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

## Debate on the sedition bill in the U.S. House of Representatives, July 1798

*The House of Representatives' debate on the sedition bill displayed the sharp divisions between Federalists and Republicans. The debate centered on the need for a sedition act and on the constitutionality of the version offered by Representative Robert Goodloe Harper of South Carolina. Harper's revision of the Senate bill incorporated several recent liberalizations in the law of seditious libel, such as allowing the truth of a statement to be used as a defense against the criminal charges. Harper also removed the federal courts as a protected target of seditious libel. Harper's revisions, however, did nothing to temper Republican opposition to the bill.*

*Republicans insisted that no recent developments justified such a drastic law, which they argued was motivated by a partisan desire to silence the opposition. Federalists recounted examples of the inflammatory language filling Republican newspapers and pointed to recent outbreaks of violence as evidence of the impact of an unchecked press. The threat of war added to the need for a sedition act.*

*At the opening of the House debate on the sedition bill, a Republican representative asked for a reading of the Bill of Rights, just as Republican newspapers had printed the constitutional amendments alongside the first drafts of the bill. Federalists asserted that the prosecution of seditious libel was well within the accepted understanding of the First Amendment and that every government had a right to defend itself against malicious criticism. Republicans replied that the act would clearly violate the language of the First Amendment and that of the Tenth Amendment, which reserved for the states all powers not expressly delegated to the federal government. The House approved the Sedition Act by a vote of 44 to 41.*

### John Allen

*Federalist of Connecticut—remarks of July 5, 1798*

*John Allen, a one-term congressman from Connecticut, offered a strident defense of the proposed sedition bill. At the opening of debate on a motion to reject the Senate version, Allen insisted that the bill was desperately needed to defend the new nation against the same kind of violent rebellion that had overtaken revolutionary France. He was convinced that a conspiracy of Republican printers was intent on undermining public support for the federal government. Allen's exaggerated language indicates the depth of alarm among many Federalists.*

*[Document Source: Annals of Congress, 5th Congress, 2d sess., 2098.]*

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While this bill was under consideration in the Senate, an attempt is made to render it odious among the people. "Is there any alternative," says this printer, "between an abandonment of the Constitution and resistance?" He declares what is

unconstitutional, and then invites the people to “resistance.” This is an awful, horrible example of “the liberty of opinion and freedom of the press.” Can gentlemen hear these things and lie quietly on their pillows? Are we to see all these acts practised against the repose of our country, and remain passive? Are we bound hand and foot that we must be witnesses of these deadly thrusts at our liberty? Are we to be the unresisting spectators of these exertions to destroy all that we hold dear? Are these approaches to revolution and Jacobinic domination, to be observed with the eye of meek submission? No, sir, they are indeed terrible; they are calculated to freeze the very blood in our veins. Such liberty of the press and of opinion is calculated to destroy all confidence between man and man; it leads to a dissolution of every bond of union; it cuts asunder every ligament that unites man to his family, man to his neighbor, man to society, and to Government. God deliver us from such liberty, the liberty of vomiting on the public floods of falsehood and hatred to everything sacred, human and divine! If any gentleman doubts the effects of such a liberty, let me direct his attention across the water; it has there made slaves of thirty millions of men.

At the commencement of the Revolution in France those loud and enthusiastic advocates for liberty and equality took special care to occupy and command all the presses in the nation; they well knew the powerful influence to be obtained on the public mind by that engine; its operations are on the poor, the ignorant, the passionate, and the vicious; over all these classes of men the freedom of the press shed its baneful effects, and they all became the tools of faction and ambition, and the virtuous, the pacific, and the rich, were their victims. The Jacobins of our country, too, sir, are determined to preserve in their hands, the same weapon; it is our business to wrest it from them.

### Robert Goodloe Harper

*Federalist of South Carolina—remarks of July 5, 1798*

*Harper offered a more reasoned defense of the sedition bill, which he thought was well within accepted definitions of freedom of the press. He decried the claims for an unrestrained freedom of the press that challenged traditions rooted in the common law of England and most famously articulated in Blackstone’s Commentaries. That traditional understanding of freedom of the press protected writers and printers from any prior restraint of publications, but the government still held the authors and printers responsible for any violations of law contained in the publication. Many would have challenged Harper’s reliance on the authority of Benjamin Franklin, who made these remarks in regard to personal, not seditious, libel.*

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2102.]



He had often heard in this place, and elsewhere, harangues on the liberty of the press, as if it were to swallow up all other liberties; as if all law and reason and every right, human and divine, was to fall prostrate before the liberty of the Press; whereas, the true meaning of it is no more than that a man shall be at liberty to print what he pleases, provided he does not offend against the laws, and not that no law shall be passed to regulate this liberty of the press. He admitted that a law which should say a man shall not slander his neighbor would be unnecessary; but it is perfectly within the Constitution to say, that a man shall not do this, or the other, which shall be injurious to the well being of society; in the same way that Congress had a right to make laws to restrain the personal liberty of man, when that liberty is abused by acts of violence on his neighbor.

He remembered a very respectable authority in this country (Dr. FRANKLIN) had said, in an essay of his, called “the Court of the Press,” that the liberty of the press could never be suffered to exist without the liberty of the cudgel; meaning no doubt to say, that as the use of the latter must be restrained, so must also the former, or else human life would be deplorable. Nor would the rational liberty of the press be restricted by a well defined law, provided persons have a fair trial by jury; but that liberty of the press which those who desire, who wish to overturn society, and trample upon everything not their own, ought not to be allowed, either in speaking or writing, in any country.

## John Nicholas

*Republican of Virginia—remarks of July 10, 1798*

*Nicholas argued that the Constitution prohibited any federal law for the prosecution of seditious libel. The Bill of Rights expressly forbids any laws restricting freedom of speech or of the press, and it prohibits the federal government from exercising powers reserved for the states. Nicholas also denied that any law could effectively distinguish between free speech and licentious speech. The effect of the act, despite the supposed safeguards added by Representative Harper, would be to intimidate all forms of speech, and especially speech made opposing the government. The President’s influence over the officers of the judiciary added further concern about the partisan enforcement of a seditious libel law.*

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2139–41.]

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Mr. Nicholas rose, he said, to ask an explanation of the principles upon which this bill is founded. He confessed it was strongly impressed upon his mind, that it was not within the powers of the House to act upon this subject. He looked in vain amongst the enumerated powers given to Congress in the Constitution, for an authority to pass a law like the present; but he found what he considered as an

express prohibition against passing it. He found that, in order to quiet the alarms of the people of the United States with respect to the silence of the Constitution as to the liberty of the press, not being perfectly satisfied that the powers not vested in Congress remained with the people, that one of the first acts of this Government was to propose certain amendments to the Constitution, to put this matter beyond doubt, which amendments are now become a part of the Constitution. It is now expressly declared by that instrument, "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people;" and, also, "that Congress shall make no law abridging the freedom of speech, or of the press."

Mr. N. asked whether this bill did not go to the abridgment of the freedom of speech and of the press? If it did not, he would be glad if gentlemen would define wherein the freedom of speech and of the press consists.

Gentlemen have said that this bill is not to restrict the liberty of the press but its licentiousness. He wished gentlemen to inform him where they drew the line between this liberty and licentiousness of which they speak; he wished to know where the one commenced and the other ended? Will they say the one is truth, and the other falsehood! Gentlemen cannot believe for a moment that such a definition will satisfy the inquiry. The great difficulty, which has existed in all free Governments, would, long since, have been done away, if it could have been effected by a simple declaration of this kind. It has been the object of all regulations with respect to the press, to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government. If there could be safety in adopting the principle, that no man should publish what is false, there certainly could be no objection to it. But it was not the intention of the people of this country to place any power of this kind in the hands of the General Government—for this plain reason, the persons who would have to preside in trials of this sort, would themselves be parties, or at least they would be so far interested in the issue, that the trial of the truth or falsehood of a matter would not be safe in their hands. On this account, the General Government has been forbidden to touch the press. Gentlemen exclaim, what! can anyone be found to advocate the publication of lies and calumny? He would make no answer to inquiries of this sort, because he did not believe he could be suspected of being an advocate for either. But, in his opinion, this was a most serious subject; it is not lying that will be suppressed, but the truth. If this bill be passed into a law, the people will be deprived of that information on public measures, which they have a right to receive, and which is the life and support of a free Government; for, if printers are to be subject to prosecution for every paragraph which appears in their papers, that the eye of a jealous Government can torture into an offence against this law, and to the heavy penalties here provided, it cannot be expected that they will exercise that freedom and spirit which it is desirable should actuate them; especially when they would have to be tried by judges

appointed by the President, and by juries selected by the Marshal, who also receives his appointment from the President, all whose feelings would, of course, be inclined to commit the offender if possible. Under such circumstances, it must be seen that the printers of papers would be deterred from printing anything which should be in the least offensive to a power which might so greatly harass them. They would not only refrain from publishing anything of the least questionable nature, but they would be afraid of publishing the truth, as, though true, it might not always be in their power to establish the truth to the satisfaction of a court of justice. This bill would, therefore, go to the suppression of every printing press in the country, which is not obsequious to the will of Government.

### Albert Gallatin

*Republican of Pennsylvania—remarks of July 10, 1798*

*The Swiss-born Gallatin emerged as one of the Republicans' most articulate advocates of unfettered freedom of speech. Gallatin, who would serve as Treasury secretary under Presidents Jefferson and Madison, dismissed Robert Goodloe Harper's attempts to make a sedition bill more palatable by liberalizing the procedures of common-law prosecutions. For Gallatin, the provision for demonstrating the truth of statements as a defense was meaningless when the object of the Sedition Act was to punish political opinions that were not susceptible to factual proof. Far from advancing liberties, the entire effort to enact the sedition law, Gallatin charged, put the Federalists in a class with tyrants of the past.*

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2162, 2164.]

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It was true that, so far as related merely to facts, a man would be acquitted by proving that what he asserted was true. But the bill was intended to punish solely writings of a political nature, libels against the Government, the President, or either branch of the Legislature; and it was well known that writings, containing animadversions on public measures, almost always contained not only facts but opinions. And how could the truth of opinions be proven by evidence? If an individual thinking, as he himself did, that the present bill was unconstitutional, and that it had been intended, not for the public good, but solely for party purposes, should avow and publish his opinion, and if the Administration thought fit to prosecute him for that supposed individual offence, would a jury, composed of the friends of that Administration, hesitate much in declaring the opinion ungrounded, or, in other words, false and scandalous, and its publication malicious? And by what kind of argument or evidence, in the present temper of parties, could the accused convince them that his opinion was true?

... He would only observe that laws against writings of this kind had uniformly been one of the most powerful engines used by tyrants to prevent the diffusion of

knowledge, to throw a veil on their folly or their crimes, to satisfy those mean passions which always denote little minds, and to perpetuate their own tyranny. The principles of the law of political libels were to be found in the rescripts of the worst Emperors of Rome, in the decisions of the Star Chamber. Princes of elevated minds, Governments actuated by pure motives, had ever despised the slanders of malice, and listened to the animadversions made on their conduct. They knew that the proper weapon to combat error was truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures, was to confess that these could not be defended by any other means.

### *Justice William Paterson's charge to the Lyon grand jury*

U.S. Circuit Court for the District of Vermont, October 3, 1798

*In the 1790s, the presiding judge in a U.S. Circuit Court often delivered a broad-ranging instruction to a grand jury once it was impaneled to consider criminal indictments. In the style of English and American courts of the eighteenth century, these charges often included discussions of civic principles and were intended to educate the jury as well as the public about the functions of the court and the proper role of the government. Judges frequently offered comments on political issues as well, and as partisan conflict intensified in the late 1790s, the grand jury charges of openly Federalist judges became increasingly controversial.*

*Paterson told the Vermont grand jury that seditious libel was a grave threat to the federal government, and he lamented that many citizens of the young republic “delight in irregularity, sedition, and licentiousness as symptoms of freedom.” Paterson, like many Federalists, distrusted all organized political opposition and believed that citizens had a duty to support officials who were chosen by the people.*

*Paterson introduced the charge with general comments on the responsibilities of grand juries and then called attention to two types of crime. One was the forgery of bills from the Bank of the United States; the other category included the crimes of sedition and seditious libel as set out in the recent act of Congress. In a statement published in a local newspaper, the grand jury thanked Paterson for his remarks and asked him to publish the charge for “the general good of this District.” Although other justices frequently allowed publication of such charges, Paterson replied that he directed his solely at the jury and declined publication.*

*[Document Source: Documentary History of the Supreme Court of the United States, 1789–1800, vol. 3: The Justices on Circuit, 1795–1800, Eds. Maeva Marcus, et al. (New York: Columbia University Press, 1990), 292–94.]*

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The other class of offences, worthy of your notice, is unlawful combinations and conspiracies, seditious practices, and false, scandalous, and malicious writings, publications, and libels against the government of the United States. Transgressions of

this description became so frequent, dangerous, and alarming, as at length to attract the attention of Congress, who, at a late session, passed an act relative to them. The law is entitled, “An act in addition to the act, intituled, An act for the punishment of certain crimes against the United States,” and runs in the following words. Here read the act . . .

[text of act omitted]

Gentlemen,

The offences specified in this act are of a serious nature, and, when perpetrated, demand instant and full investigation. Unlawful combinations, conspiracies, riots, and insurrections strike at the being of our political establishment. They need no comment. Written or printed detraction, calumny, and lies are odious and destructive vices in private, and still more so, in public life. They are deliberate acts, perpetrated with a view to wound and do injury; and besides, their duration is longer, and their circulation more extensive than verbal obloquy and scandal. The man, who is guilty of publishing false, defamatory, and malicious writings or libels against the government of his country, its measures, and its constituted authorities, must, if not callous to the dictates of the moral sense, stand self-condemned. He sins against light; for he must be sensible, that such publications are contrary to clear and known duty. In such case, nothing short of idiocy can operate as an excuse. They destroy confidence, excite distrust, disseminate discord and the elements of disorganization, alienate the affections of the people from their government, disturb the peace of society, and endanger our political union and existence. No government, indeed, can long subsist, where offenders of this kind are suffered to spread their poison with impunity. An aggravating ingredient in the composition of the crimes described in this act is, that they are levelled against the people themselves. For the constitution, government, and constituted authorities of the United States are emphatically the creation and work of the people, emanating from their authority, and declarative of their will. To support them is our primary duty – to attempt their destruction is an offence of deep malignity. Observance of the laws and obedience to legal authority are the great bulwark of public liberty, which, however, free states find difficult to maintain; because their salutary restraint sits uneasy on turbulent spirits, and is mistaken for slavish subjection by the rude and ill informed part of the community, who delight in irregularity, sedition, and licentiousness as symptoms of freedom, and indications of republican spirit. Ah licentiousness! thou bane of republics, and more to be dreaded than hosts of external foes. The truth is, that libellous publications and seditious practices are inconsistent with genuine freedom, and subversive of good government. They tend to anarchy, and anarchy always terminates in despotism. May we avoid these evils by a cheerful and constant observance of the laws, and obedience to legal authority, in which civil liberty consists. The result will be order, union, peace, and happiness among ourselves, and the transmission of our constitution, government, and rights, pure and entire, to our posterity.

May the God of Heaven enable us all to discharge our official, relative, and social duties, with diligence, fidelity, and honest zeal!

## *Indictment of Matthew Lyon (excerpt)*

U.S. Circuit Court for the District of Vermont, October 5, 1798

*The indictment of Matthew Lyon was one of the first presented under the Sedition Act, and it drew on a distinctive and seemingly exaggerated language that was rooted in libel prosecutions under English common law. Like the Sedition Act itself, the indictment referred to statements that were “false, scandalous, and malicious,” the longstanding terminology for establishing the crime of seditious libel. This and the subsequent indictments under the Sedition Act were full of references to “depraved minds,” “diabolical persons,” and “evil and pernicious example.” The United States district attorneys, who generally wrote the texts, often described the indicted publication or speech as “wickedly,” “deceitfully,” and “knowingly” carried out by the accused. The repetition of this language with the presentation of each allegedly seditious statement heightened the impact when the indictments were read aloud to the courtroom.*

*Following the presiding judge’s general charge to a grand jury, the government’s attorney for the district informed the jurors about specific criminal charges for them to consider. The attorney for the federal government then gave the grand jury the text of an indictment, which, if the jurors agreed, was returned as a “true bill” of indictment authorizing the trial of the defendant. Each indictment under the Sedition Act sought to establish that the publication or speech of the defendant met the act’s requirements for conviction. The act required that the statements be false, malicious in intent, and aimed at inciting popular opposition to the government. This indictment, like all others under the Sedition Act, also included the text that was alleged to be seditious.*

[Document Source: *United States v. Matthew Lyon*, Case files, U.S. Circuit Court, District of Vermont, RG 21, National Archives and Records Administration – Northeast Region (Boston).]

To the Circuit Court of the United States now sitting at Rutland within and for the District of Vermont, the Grand [Inquest] within and for the body of the district of Vermont now here in court impannelled and Sworn on their oaths present that Matthew Lyon of Fairhaven in the said District of Vermont, being a malicious and seditious person and of a depraved mind and wicked and diabolical disposition and deceitfully wickedly & maliciously contriving to defame the government of the United States and with intent and design to defame the sd government of the United States and John Adams the President of the United States and to bring the said government and President into contempt and disrepute and with intent and



design to excite against the said Government and President the hatred of the good people of the United States and to stir up sedition in the United States - at Windsor in the said District of Vermont on the thirty first day of July last, did with force and arms wickedly knowingly maliciously write print utter and publish and did then and there cause and procure to be written uttered and published a certain scandalous and seditious writing or libel in form of a letter directed to Mr Spooner (meaning Alden Spooner printer and publisher of a certain weekly newspaper in Windsor aforesaid commonly called Spooner's Vermont Journal) - signed by the said Matthew Lyon, and dated at Philadelphia on the twentieth day of June last - in which said libel of and concerning the sd John Adams President of the United States and the executive government of the United States are contained, among other things, divers scurrilous, feigned false, scandalous, seditious and malicious matters according to the tenor following to wit -  
[text of Lyon's letters omitted]

And so the Jurors aforesaid upon their oaths aforesaid do say that the said Matthew Lyon at Windsor aforesaid on the thirty first day of July aforesaid did knowingly wickedly deceitfully and maliciously with intent and design to defame the said government of the United States, and to bring the said government of the United States and the said John Adams president of the United States into contempt & disrepute with the good people of the United States and to excite against the sd government and President of the United States the hatred of the good people of the United States and with intent and design to stir up sedition with the United States against the government thereof did write print utter and publish, and cause and procure to be written, printed, uttered and published for the purpose aforesaid the said false feigned scandalous seditious and malicious matter aforesaid, in contempt of the good and wholesome laws of the United States - to the evil and pernicious example of others in like case offending against the Statute of the United States in such case made and provided and against the peace and dignity of the United States.

### *Matthew Lyon statements cited in the indictment for seditious libel*

*Lyon's indictment for seditious libel cited one example of his own writings and two excerpts from a letter by Joel Barlow that Lyon recited at political rallies and allegedly helped to publish.*

*The first excerpt was from a letter that Lyon sent to Alden Spooner, publisher of Spooner's Vermont Journal, on June 20, 1798, in response to a bitter personal attack on Lyon that had been published in Spooner's newspaper. Lyon's defense of his own character included an explanation of why he opposed President Adams and his administration. Spooner published the letter on July 31, 1798, less than three weeks after passage of the Sedition Act.*

*The two following passages were from the letter that Joel Barlow, a prominent poet and ardent Republican, sent from France to his brother-in-law, Representative Abraham Baldwin of Georgia. Baldwin shared the letter with Lyon, who read from it as a regular part of his campaign appearances in Vermont during the summer and fall of 1798. Prosecution witnesses testified that Lyon's wife delivered a copy of the letter, in Lyon's handwriting, to the printer who published the letter in Fairhaven, Vermont, on September 1, 1798.*

*Lyon defended the passages as both true and innocent of any malicious intent. In his instructions to the jury, Justice Paterson asked the panel to decide if the language in the excerpts "could have been uttered with any other intent than that of making odious or contemptible the President and the government, and bringing them both into disrepute."*

[Document Sources: 1. *Spooner's Vermont Journal*, vol. 16, n. 784, July 31, 1798; 2. James Lyon, *A Republican Magazine: or, Repository of Political Truths* (Fairhaven, Vt.: 1798), 79–80.]

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1. As to the executive, when I shall see the efforts of that power bent on the promotion of the comfort, the happiness, and accommodation of the people, that executive shall have my zealous and uniform support: but whenever I shall, on the part of the Executive, see every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulations, and selfish avarice; when I shall behold men of real merit daily turned out of office for no other cause but independency of sentiment; when I shall see men of firmness, merit, years, abilities, and experience, discarded in their applications for office, for fear they possess that independence, and men of meanness preferred, for the ease with which they take up and advocate opinions, the consequence of which they know little of: when I shall see the sacred name of religion employed as a state engine, to make mankind hate and persecute one another, I shall not be their humble advocate.

2. "The misunderstanding between the two Governments," (France and the United States,) "has become extremely alarming; confidence is completely destroyed, mistrusts, jealousy, and a disposition to a wrong attribution of motives are so apparent, as to require the utmost caution in every word and action that are to come from your Executive; I mean, if your object is to avoid hostilities. Had this truth been understood with you, before the recall of *Munroe*, before the coming and the second coming of *Pinckney*; had it guided the pens that wrote the bullying speech of your President, and stupid answer of your Senate, at the opening of Congress in November last, I should probably have had no occasion to address you this letter.

. . . But when we found him borrowing the language of Edmund Burke, and telling the world, that although he should succeed in treating with the French, there



was no dependence to be placed on any of their engagements: that their religion and morality were at an end, that they had turned pirates and plunderers, and it would be necessary to be perpetually armed against them, though you were at peace: we wondered that the answer of both Houses had not been an order to send him to a mad house. Indeed of this, the Senate have echoed the speech with more servility than ever George the third experienced from either House of Parliament.”

### *“To the Public,” by Thomas Cooper*

A newspaper broadside printed at Northumberland, Pa., in November 1799, and submitted in *United States v. Thomas Cooper*

*Cooper’s indictment for seditious libel was based on a handbill that he wrote and printed in response to several newspaper articles attacking his character. Cooper acknowledged that his Federalist critics were correct in asserting that he had unsuccessfully applied to President Adams for an executive appointment. He insisted that his subsequent criticism of the President was neither hypocritical nor vengeful. As he explained in the passage below, which was the full text cited in the indictment, Cooper had applied for the position before Adams embarked on the preparations for war against France.*

*The expansion of the military and the associated borrowing by the federal government were among the most frequent Republican criticisms of the Adams administration. The reference to Adams’ interference in the courts of justice concerned the case of a sailor, Jonathan Robbins, whom the British claimed was a mutinous British sailor named Thomas Nash. When the British demanded his extradition in 1799, the federal judge in South Carolina, Thomas Bee, rejected Robbins’ claim of United States citizenship and agreed with Secretary of State Timothy Pickering’s request to transfer the sailor to British authorities. To the Republican press, Bee’s decision and the absence of any jury in the proceedings were alarming evidence of the administration’s overriding support for the British and their disregard for the Bill of Rights. During the trial of Thomas Cooper, Justice Chase told the jury that Cooper’s remark about the future notoriety of the Robbins incident was evidence of an intent to arouse seditious sentiment.*

[Document Source: *United States v. Thomas Cooper*, #21 April Session 1800, U.S. Circuit Court for the District of Pennsylvania, Record Group 21, National Archives and Records Administration, Mid Atlantic Region (Philadelphia).]

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Nor do I see any impropriety in making this request of Mr. Adams: *at that time* he had just entered into office: he was hardly in the infancy of political mistake: even those who doubted his capacity, thought well of his intentions.

... Nor were we yet saddled with the expense of a permanent navy, or threatened under his auspices with the existence of a standing army. Our credit was not yet

reduced so low as to borrow money at 8 per cent. in time of peace while the unnecessary violence of official expressions might justly have provoked a war.

. . . Mr. Adams had not yet projected his Embassies to Prussia, Russia and the Sublime Porte; nor had he yet interfered as President of the United States to influence the decisions of a Court of Justice. A stretch of authority which the Monarch of Great Britain would have shrunk from; an interference without Precedent, against Law and against Mercy! This melancholy case of *Jonathan Robbins*, a native citizen of America, forcibly impressed by the British, and delivered up with the advice of Mr. Adams to the mock trial of a British Court Martial, had not yet astonished the republican citizens of this free country. A case too little known, but of which the people ought to be fully apprized before the election; and they SHALL be.

### *Thomas Cooper's plea*

Submitted to the U.S. Circuit Court for the District of Pennsylvania

*Cooper, who served as his own counsel, submitted to the court a plea of not guilty with an attached list of twelve statements that he intended to demonstrate were true. Cooper's twelve statements, however, went beyond the text cited in the indictment to repeat the full censure of the Adams administration that appeared in the publication that formed the basis of the indictment.*

*Cooper accompanied his plea with requests for subpoenas of the President, the secretary of state, a State Department clerk, and several members of Congress, all of whom he claimed were material witnesses who could prove the truth of the twelve statements in the plea. Justice Chase refused a subpoena of the President as improper and "very indecent," and the State Department insisted that it had none of the documents Cooper wanted to introduce in his defense. After failing to win a longer postponement of the trial, Cooper relied on what public documents he could obtain to prove the truth of the statements cited in the indictment. Although the jury convicted him, Cooper enjoyed the political success of reiterating his criticisms of the Adams administration and establishing what he considered the reasonableness of his statements.*

[Document Source: *United States v. Thomas Cooper*, #21 April Session 1800, U.S. Circuit Court for the District of Pennsylvania, Record Group 21, National Archives and Records Administration, Mid Atlantic Region (Philadelphia).]

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Circuit Court of the United States for the district of Pennsylvania

Term of April 1800

The United States v. Thomas Cooper} Indictment for Libel under the Sedition Law.

The above named Defendant (protesting against the Insinuations and constructions in the said Indictment alleged against him) pleads not guilty; & by this he puts himself on his country and will give the following facts in evidence on the Trial in justification of the supposed Libel stated in the aforesaid Indictment.

- I. That Mr. Adams either by himself or by the Officers of State acting under his authority has given the Public to understand that he wd bestow no Office but on persons who conformed to his political Opinions.
- II. Mr. Adams has declared that a Republican Governmt may mean anything.
- III. Mr. Adams did sanction the Alien Law, and thereby the abolition of the Trial by Jury in the Cases that fall under that Law.
- IV. Mr. Adams did sanction the Sedition Law & thereby entrenched his public character behind the legal provisions of that Law.
- V. Under the auspices of Mr. Adams the expense of a permanent Navy is saddled on the People
- VI. Under the auspices of Mr. Adams we are threatened with the existence of a Standing Army.
- VII. The Government of the United States has borrowed Money at 8 percent in time of Peace.
- VIII. The unnecessary Violence of official Expressions used by Mr. Adams, and those in authority under him, & his adherents, might justly have provoked a War.
- IX. Political Acrimony has been fostered by those who call themselves his friends and adherents.
- X. Mr. Humphries after being convicted of an assault and Battery on Benjamin Franklin Bache the printer of the Aurora merely from political motives, was before his Sentence was expired, promoted by Mr. Adams to a public Office viz. to carry dispatches to France
- XI. Mr. Adams did project and put in execution embassies to Prussia Russia and the Sublime Porte.
- XII. Mr. Adams in the case of Jonathan Robbins alias Nash did interfere to influence the decision of a Court of Justice.

Thomas Cooper

[Docketed: Circ. Ct Apl 1800  
United States v. Thomas Cooper} Plea.  
15 April 1800]

## *Opening arguments of the U.S. district attorney, William Rawle, in the trial of Thomas Cooper*

U.S. Circuit Court for the District of Pennsylvania, April 19, 1800

*William Rawle argued that Thomas Cooper's great offense was to draw on his legal experience and superior education to mislead less sophisticated citizens in a remote part of the country. The opening statement of the government's attorney reflected widespread Federalist fears about the volatility of public opinion and the consequent dangers to elective government. The allegedly false and defamatory statements cited in the indictment undermined public confidence in duly elected officers of the government and thus threatened to reverse popular will or even to foster "insurrection." Rawle argued that the Sedition Act, like similar laws in "all civilized nations," was intended to protect the will of the people by punishing those who would seek to undermine public confidence in elected leaders.*

*Rawle, like many Federalists, believed that educated and privileged citizens had a special responsibility to respect public officials. If men of Cooper's position and background violated those civic duties by disseminating seditious ideas, the government needed to make an example of them.*

*[Document Source: Francis Wharton, *State trials of the United States during the administrations of Washington and Adams, with references, historical and professional, and preliminary notes on the politics of the times* (New York: B. Franklin, 1849), 662–63.]*

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The defendant stands charged with attempts which the practice and policy of all civilized nations have thought it right at all times to punish with severity, with having published a false, scandalous and malicious attack on the character of the President of the United States, with an intent to excite the hatred and contempt of the people of this country against the man of their choice.

It was much to be lamented that every person who had a tolerable facility at writing should think he had a right to attack and overset those authorities and officers whom the people of this country had thought fit to appoint. Nor was it to be endured that foul and infamous falsehoods should be uttered and published with impunity against the President of the United States, whom the people themselves had placed in that high office, and in which he has acted with so much credit to himself and benefit to them. Thomas Cooper stands charged in the indictment as follows – (here Mr. R. read the indictment:) – It was a sense of public duty that called for this prosecution. It was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications. There was a peculiarity in the manner also of this publication: we generally observe that persons who take these liberties endeavour to avoid punishment by sheltering themselves under fictitious signatures, or by concealing their names; but the defendant acted very

differently. Being of the profession of the law, a man of education and literature, he availed himself of those advantages for the purpose of disseminating his dangerous productions in a remote part of the country where he had gained influence. Such conduct must have arisen from the basest motives. It would be proved to the jury that, at the time of this publication, the defendant went to a magistrate and acknowledged it to be his production, in the same normal manner as if it had been a deed.

A conduct so grossly improper had occurred in no instance within his recollection, and the manner constituted no slight aggravation of the offence. Indeed, it was high time for the law to interfere and restrain the libellous spirit which had been so long permitted to extend itself against the highest and most deserving characters.

To abuse the men with whom the public has entrusted the management of their national concerns, to withdraw from them the confidence of the people, so necessary for conducting the public business, was in direct opposition to the duties of a good citizen. Mischiefs of this kind were to be dreaded in proportion as the country around is less informed, and a man of sense and education has it more in his power to extend the mischief which he is inclined to propagate. Government should not encourage the idea, that they would not prosecute such atrocious conduct; for if this conduct was allowed to pass over, the peace of the country would be endangered.

Error leads to discontent, discontent to a fancied idea of oppression, and that to insurrection, of which the two instances which had already happened were alarming proofs, and well known to the jury.

That the jury, as citizens, must determine whether, from publications of this kind, the prosperity of the country was not endangered; and whether it was not their duty, when a case of this nature was laid before them and the law was applicable, to bring in such a verdict as the law and the evidence would warrant; and show, that these kinds of attacks on the government of the country were not to be suffered with impunity.

### *James Callender's The Prospect Before Us (excerpts from the indictment)*

*James Callender was the author of some of the most extreme and provocative language penned by any of the Republican newspaper writers during the Adams administration. After gaining notoriety for newspaper editorials in Philadelphia and Richmond, Callender was indicted in the U.S. Circuit Court for the District of Virginia for writing a lengthy pamphlet in favor of Thomas Jefferson's election as President. The Prospect Before Us took the form of a political history of the 1790s, with special emphasis on the supposed corruption and monarchical principles of John Adams and his administration. Jefferson reviewed a draft of the pamphlet and predicted, in an intentionally unsigned letter to Callender, that "such papers cannot fail to produce the best effect." Callender made sure that his pamphlet was reprinted in several cities, and he brazenly sent a copy to President Adams.*

*Justice Chase received a copy of the pamphlet while presiding in the circuit court in Maryland and read it before he arrived to convene the circuit court in Richmond, Virginia, on May 22, 1800. The following day the grand jury returned an indictment of Callender. The pamphlet's 187 pages offered plenty to offend the Federalists, and the indictment cited 20 separate passages that were alleged to be libelous.*

[Document Source: *The Prospect Before Us* (Richmond, Va.: M. Jones, S. Pleasants, jun. and J. Lyon, 1800).]

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[T]he reign of Mr. Adams has, hitherto, been one continued tempest of *malignant* passions. As president, he has never opened his lips, or lifted his pen, without threatening and scolding. The grand object of his administration has been to exasperate the rage of contending parties, to calumniate and destroy every man who differs from his opinions. Mr. Adams has laboured, and with melancholy success, to break up the bonds of social affection, and, under the ruins of confidence and friendship, to extinguish the only beam of happiness that glimmers through the dark and despicable farce of life. (p. 30–31)

*The following passage concluded a lengthy discussion of a federal officeholder who allegedly lost his position when he refused to sign a public address in support of the president's preparations for war with France.*

The same system of persecution has been extended all over the continent. Every person holding an office must either quit it, or think and vote exactly with Mr. Adams. (p. 32)

*Callender was one of the few Republican writers willing to criticize George Washington in the same kind of language as that directed toward Adams. "Paper jobber" was a derisive eighteenth century term for someone who offered political support in return for a government job.*

Adams and Washington have since been shaping a series of these paper-jobbers into Judges and Ambassadors. As their whole courage lies in want of shame, these poltroons, without risking a manly and intelligible defence of their own measures, raise an affected yelp against the corruption of the French directory; as if any corruption could be more venal, more notorious, more execrated than their own. (p. 72)

The object with Mr. Adams was to recommend a French war, professedly for the sake of supporting American commerce, but, in reality, for the sake of yoking us into an alliance with the British tyrant. (p. 73)



*Here Callender offered his readers a list of what was at stake when voters chose between Jefferson and Adams in the presidential election. The indented and italicized passage is a quotation from Alexander Pope's "An Essay on Criticism." "Connecticut sailor" was a reference to Jonathan Robbins, the British sailor who claimed United States citizenship but was extradited to Great Britain for trial as a mutineer.*

You will then take your choice between innocence and guilt, between freedom and slavery, between paradise and perdition. You will choose between the man who has deserted and reversed ALL his principles, and that man,

*Whose own example strengthens all his laws,*  
that man, whose predictions, like those of Henry, have been converted into history. You will choose between that man whose life is unspotted by a crime, and *that* man whose hands are reeking with the blood of the poor friendless Connecticut sailor! I see the tear of indignation starting on our cheeks! You anticipate the name of JOHN ADAMS. (p. 84)

Every feature in the conduct of Mr. Adams forms a distinct and additional evidence that he was determined, at all events, to embroil this country with France. (p. 85)

He was a professed aristocrat. He had proved faithful and serviceable to the British interest. (p. 124)

## *Trial arguments of Thomas Nelson*

District attorney for the District of Virginia

*Thomas Nelson, the federal government's attorney for the district of Virginia, reviewed each of the twenty passages cited in the indictment of Callender and explained to the jury why he believed they met the criteria for conviction under the Sedition Act. The records of the Callender trial offer the most complete surviving account of the arguments used by a district attorney to establish that specific language published by the defendant constituted seditious libel. Nelson was primarily concerned with the intent of the language. He repeatedly asserted that Callender's language was so abusive, or as he phrased it "explicitly malignant," as to admit to no other interpretation but the author's intent to foment popular opposition to the government. Nelson acknowledged that citizens enjoyed the privilege of discussing the conduct of the government, but in practical terms he conceded little more than the right to announce plans to vote against incumbent officeholders.*

*Although the Sedition Act provided for the truth of a statement as a defense against conviction, Nelson initially argued that the truth was irrelevant if the statements clearly indicated a "malicious intention to defame." In other arguments excerpted*

here, he asserted that the burden of proving the truth fell on the defendant. As in other Sedition Act trials, the judges and the United States attorney in the Callender trial set a nearly impossible standard for proving the truth of political opinions.

[Document Source: [David Robertson, comp.], *Trial of James Thompson Callender, For Sedition On Tuesday, the third day of June, 1800, in the middle Circuit Court at Richmond, in the District of Virginia* (Richmond, 1804).]

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*“The contriver of this piece had been suddenly converted, as he said to the presidential system, that is, a French war, and American navy, a large standing army, an additional load of taxes and all the other symptoms and consequences of debt and despotism.”*

In a political point of view every person has a right to discuss, fully and fairly, the conduct of the government, and to state candidly, supposed grievances. If in this part of the paper, the terms were used, for these constitutional and just purposes, they could not be libellous. These terms admit of different constructions—they may or may not be libellous, but there is not [a] single sentence which is not libellous, as used here. Here the system of the president is represented to consist of the most odious and detestable measures, *“a French war, an American navy, a load of grievous taxes, and a large standing army.”* It is unnecessary to enquire into the general propriety or impropriety of such measures, because the book is evidently emitted with a malicious intention. If you were to think his words were true, but published with malicious intention to defame, you could not exculpate him; the conclusion of his climax renders a misconception of his meaning impossible: *“and all other consequences of debt and despotism.”* After such explicitly malignant terms, you cannot hesitate to say, that he is guilty—it is represented to you, that he will tax and oppress you, and exercise despotic, tyrannical powers over you.

Are these terms used with any other intention than what is stated in the indictment? (pp. 35–36)

... *“The object with Mr. Adams was, to recommend a French war professedly for the sake of supporting American Commerce; but in reality, for the sake of yoking us into an alliance with the British Tyrant.”* There is not a single charge that is not false. This twofold charge is doubly malicious. This is certainly a libel, unless he can prove the truth thereof. Can it be believed that your chief magistrate can act in a manner so hostile to his own country? It is not necessary for me to *disprove*, they must *prove* the fact: were it incumbent on me, to adduce proof I should tell you of the exertions of the president to make peace with France—I should tell you, —that he attempted negotiation after negotiation. For what purpose did he repeatedly endeavor to effect a reconciliation? Do acts like those mark an intention and design to make war with France? Can you believe that he was going to make war, not for the professed purpose, but for another? that your president says one thing and does another? that he would betray the interests of his own country, to promote those of another? Your



own minds must tell you, gentlemen, that this charge is false and malicious. (pp. 37–38)

... Here again is the height of defamation. *“That foremost in whatever is detestable, Mr. Adams feels anxiety to curb the frontier population. He was a professed aristocrat. He had proved faithful and serviceable to the British interest.”* The words “professed aristocrat” were mentioned and observed upon by the defendant’s counsel; but it is an expression which admits of nothing, being proved “aristocrat” is a term extremely vague, and as indefinite as any language can be. (pp. 40–41)

... To ascertain whether it be libellous or not, you must inquire into the intention of the author—if you could believe that it was used fairly as a mere term of candid description, you would say that he is not guilty of a libel; but when you see that it is here used with wicked intention, though vague in its meaning, you must think it false, scandalous and malicious, for as it is with a view to excite the contempt and hatred of the people towards the President, it must be libellous. If the truth were attempted to be proved that he was really an *aristocrat*, you might entertain a different opinion from him, and draw a different conclusion, when you come to read the following words, they shew his intention to be, to excite the contempt and hatred of the people: *“That he proved serviceable to the British interest,”* meaning that he had done every thing he could to injure the interest of his own country, to promote that of a foreign nation. His repetition of the charge shews malice: several charges go to his private character, but this goes to his public character only. Gentlemen may well say, that a difference of opinion exists among all the citizens of the United States; if they were fair arguments, deduction necessarily following just premises a candid discussion of principles, they could not be the subject of this indictment; but when it is not even attempted to shew any necessary deduction, any fair and candid conclusion from premises clearly established, can these terms be used with any other intent than to excite the indignation of the people towards the supreme magistrate, and to withdraw their confidence from him? It is therefore false and malicious. (pp. 41–42)

... *“For although Mr. Adams were to make a treaty with France, yet such is the grossness of his prejudice, and so great is the violence of his passion, that under his administration, America would be in constant danger of a second quarrel.”*

I confess, that when the period of a new election arrives, every citizen has a right to withdraw his vote from the existing chief magistrate, and to tell the world, *“I will give my confidence to another.”* But this right does not warrant him to traduce and defame the person now in office. Here the traverser by representing the President as a man of such gross prejudices, and violent passions, says to the citizens of the United States, “do not re-elect the present president, for he will involve you in war.” You cannot say that this is true, therefore it must be false, scandalous, and malicious. (p. 46)

## Justice Samuel Chase's charge to the petit jury, *United States v. Callender*, June 3, 1800

In his instructions to the jury in the Callender trial, Justice Chase addressed two of the most contested issues of the time about the federal courts: the role of the jury, and the authority to rule on the constitutionality of congressional statutes. Chase, who said little about the specifics of the charges against Callender, presented the jury with his forceful rejection of the defense attorneys' claim that juries had a right to consider the constitutionality of a law involved in the case before them. The Sedition Act provided that juries were to determine the law as well as the facts in cases brought under the statute, but Chase said that provision was strictly limited to the jury's responsibility to determine if the acts of the defendant met the statute's definition of criminal activity. Chase then announced that only the judicial branch of government had authority to determine the constitutionality of a federal or state law. Chase's statement came three years before the Supreme Court, in *Marbury v. Madison*, first declared an act of Congress to be unconstitutional.

In the years since Independence, many states had expanded the rights of the jury at the expense of judges' authority, and no state had expanded the rights of the jury as much as Virginia had. Republicans in the state saw the Sedition Act trials as an opportunity to claim greater authority for juries in the federal courts, which they feared were dominated by Federalist judges. The attorneys for Callender recognized that their arguments on the rights of a jury would reach a national audience, and Chase, despite his disclaimer of any partisan interests, was equally concerned to establish the federal courts' authority in this and other cases.

[Document Source: [David Robertson, comp.], *Trial of James Thompson Callender, For Sedition On Tuesday, the third day of June, 1800, in the middle Circuit Court at Richmond, in the District of Virginia* (Richmond, 1804), 62–72.]

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The petit jury to discharge their duty must first enquire, whether the traverser committed *all* or *any* of the facts alledged in the indictment to have been done by him, some time *before* the indictment. If they find that he did commit all or any of the said facts, their next enquiry is, whether the doing such facts have been made *criminal* and punishable by the *statute* of the United States, on which the traverser is indicted. For this purpose, they must pursue [peruse] the statute and carefully examine, whether the facts *charged and proved* are within the provisions of it. If the words that create the offence are plain and intelligible, they must then determine, whether the offence proved is of the species of criminality charged in the indictment; but if the words are ambiguous or doubtful, all construction should be rejected. The statute on which the traverser is indicted enacts "that the jury who shall try the cause shall have a right to determine *the law and the fact*, under the direction of the court, as in other cases." By this provision I understand, that a right is given to the jury to determine

what *the law is* in the case before them; and not to decide whether a statute of the United States produced to them, is a *law or not*, or whether it is *void*, under an opinion that it is unconstitutional – that is, *contrary to the constitution* of the United States. I admit that the jury are to compare the statute with the facts proved, and then to decide whether the acts done, are prohibited by the law; and whether they amount to the offence described in the indictment. This power the jury necessarily possess, in order to enable them to decide on the *guilt* or *innocence* of the person accused. It is one thing to decide *what the law is* on the facts, proved, and another, and a very different thing, to determine, that the statute produced *is no law*. To decide what the law is on the facts, is an admission that the law exists. If there be no law in the case, there can be no comparison between it and the facts; and it is unnecessary to establish facts, before it is ascertained that there is a law to punish the commission of them. . . .

. . . Was it ever intended, by the framers of the constitution, or by the people of America, that it should ever be submitted to the examination of a jury, to decide what restrictions are *expressly* or *impliedly* imposed by it on the national legislature? I cannot possibly believe, that congress intended by the statute to grant a right to a petit jury to declare a statute void. The man who maintains this position, must have a most contemptible opinion of the understanding of that body, but I believe the defect lies with himself.

If anyone can be so weak in intellect, as to entertain this opinion of congress, he must give up the exercise of the power, when he is informed *that congress had no authority* to vest it in any body whatsoever; because, by the constitution, (as I will hereafter show,) this right is expressly granted to the *judicial power* of the United States, and is recognized by congress by a perpetual statute. If the statute should be held void by a jury, it would seem that they could not claim a right to such decision under an act that they themselves consider as *mere waste paper*. Their right must, therefore, be derived from some other source.

It appears to me, that all the rights, powers, and duties of the petit jury, sworn in this cause, can only be derived from the Constitution, or statutes of the United States made agreeable to it; or from some statute of this commonwealth not contrary to the federal constitution or statutes of congress; or from the common law, which was adopted by the federal constitution in the case of trials by jury in *criminal* cases.

. . . From these considerations I draw this conclusion, that the judicial power of the United States is the only *proper and competent authority* to decide whether any statute made by congress (or any of the state legislatures) is contrary to, or in violation of, the federal constitution.

. . . I have consulted with my brother, judge Griffin, and I now deliver the opinion of the court, "That the petit jury have no right to decide on the constitutionality of

the statute on which the traverser is indicted; and that if the jury should exercise that power, they would thereby usurp the authority entrusted by the constitution of the United States to this court.” . . .

. . . Judge Chase concluded with observing, that, if he knew himself, the opinion he had delivered and the reasons offered in its support, flowed not from *political motives, or reasons of state*, with which he had no concern, and which he conceived never ought to enter courts of justice; but from a deliberate conviction of what the constitution and the law of the land required. “I hold myself equally bound,” said he, “to support the rights of the jury, as the rights of the court.” I consider it of the greatest consequence to the administration of justice, that the powers of the court, and the powers of the petit Jury, should be kept distinct and separate. I have uniformly delivered the opinion, “*that the petit jury have a right to decide the law as well as the fact, in criminal cases*,” but it never entered in my mind, that they, therefore, had a right to determine the constitutionality of any statute of the United States. It is my duty to execute the laws of the United States, with justice and impartiality - with firmness and decision - and I will endeavor to discharge this duty with the assistance of the fountain of wisdom, and the giver of all human reason and understanding.

### *James Madison’s report*

*In this excerpt from a commentary on the Alien and Sedition Acts, James Madison asserted that the First Amendment prohibited the Congress from making any law that restricted freedom of speech or freedom of the press. Defenders of the Sedition Act maintained that the law simply codified what had always been accepted in the common law of seditious libel, and that the First Amendment protection of a free press extended only to the traditional, common-law prohibition on laws that restrained the press prior to publication. Madison, who was a primary drafter of both the Constitution and the Bill of Rights, explained that the common law of seditious libel was peculiar to the British system of government and had no applicability under the U.S. Constitution. In Great Britain the law served as the legislature’s check on the potential tyranny of the monarch. In the United States, sovereignty rested with the people, who were protected by the Constitution against both abusive laws of the legislature and arbitrary power of the executive. The First Amendment was therefore intended to restrain any legislative restrictions on the press as well as any executive restraints. Madison recalled how important freedom of speech had been in recent history; without it U.S. citizens might be “languishing” under the Articles of Confederation or living as dependent colonials.*

*As a member of the Virginia House of Delegates, James Madison prepared a report defending the Virginia Assembly’s 1798 resolution protesting the Alien and Sedition Acts. The Virginia Resolution, also authored by Madison, and the Kentucky Resolutions written by Jefferson, declared that states had a right and a duty to withdraw the authority they granted to the federal government if that national government*

*violated the constitutional limits on its powers. When several state legislatures passed resolutions decrying the potential dangers of this position, Madison responded with this detailed explanation of the assembly's opposition to the congressional acts.*

[Document Source: *The Papers of James Madison*, v. 17, David B. Mattern, et al., eds. (Charlottesville: University Press of Virginia, 1991), 307–50.]

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II. The next point which the resolution requires to be proved, is, that the power over the press exercised by the sedition act, is positively forbidden by one of the amendments to the constitution.

... In the attempts to vindicate the “Sedition act,” it has been contended, 1. That the “freedom of the press” is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

... The freedom of the press under the common law, is, in the defences of the sedition act, made to consist in an exemption from all *previous* restraint on printed publications, by persons authorized to inspect and prohibit them. It appears to the committee, that this idea of the freedom of the press, can never be admitted to be the American idea of it: since a law inflicting penalties on printed publications, would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say, that no law should be passed, preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British government, and the American constitutions, will place this subject in the clearest light.

In the British government, the danger of encroachments on the rights of the people, is understood to be confined to the executive magistrate. The representatives of the people in the legislature, are not only exempt themselves, from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the executive. Hence it is a principle, that the parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people, such as their magna charta, their bill of rights, &c., are not reared against the parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint by licensers appointed by the king, is all the freedom that can be secured to it.

In the United States, the case is altogether different. The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one, as well as from the other. Hence in the United States, the great and essential rights of

the people are secured against legislative, as well as against executive ambition. They are secured, not by laws paramount to prerogative; but by constitutions paramount to laws. This security of the freedom of the press, requires that it should be exempt, not only from previous restraint by the executive, as in Great Britain; but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

... Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches, to their luxuriant growth, than by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect, that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression; who reflect that to the same beneficent source, the United States owe much of the lights which conducted them to the rank of a free and independent nation; and which have improved their political system, into a shape so auspicious to their happiness. Had "Sedition acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press; might not the United States have been languishing at this day, under the infirmities of a sickly confederation? Might they not possibly be miserable colonies, groaning under a foreign yoke?

... Is then the federal government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The constitution alone can answer this question. If no such power be expressly delegated, and it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden by a declaratory amendment to the constitution, the answer must be, that the federal government is destitute of all such authority.

And might it not be asked in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the constitution, than that it should be left to a vague and violent construction; whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

...

But the question does not turn either on the wisdom of the constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning



of the instrument; by which it has appeared, that a power over the press is clearly excluded, from the number of powers delegated to the federal government.

### *Alexander Addison, Liberty of Speech and of the Press*

*One of the most widely circulated defenses of the Sedition Act came from the pen of a state judge who had been commenting on the laws of seditious libel through much of the 1790s. Alexander Addison was president judge of the courts of common pleas of Pennsylvania's Fifth Circuit from 1791 to 1803. As a delegate to the state constitutional convention of 1790, he helped write the provision that guaranteed the truth as a defense in libel trials and granted juries in such trials the right to rule on the law as well as the facts. Once these reforms were in place, Addison supported frequent prosecutions for seditious libel. In his several published jury charges, he was especially critical of the new type of political newspaper printers and of new styles of electioneering.*

*Addison used this grand jury charge to answer critics of the Sedition Act who asserted that it was unconstitutional and unnecessary. He declared that the First Amendment, in accord with traditions of Anglo-American law, only prohibited prior restraints on publications. The Sedition Act did not interfere with publications or free thought; it only punished the public dissemination of statements that would undermine public confidence in the government. Furthermore, the Sedition Act was justified under the "necessary and proper" clause of the Constitution, since to allow seditious publications and the "corruption of public opinion" would be to threaten the government's ability to carry out its constitutional responsibilities.*

*In the following excerpts, Addison discussed the significance of public opinion as a foundation for all governments and warned that laws of seditious libel were necessary to protect public opinion from the French and their American supporters, who, he believed, were using the press to subvert the government.*

*[Document Source: Alexander Addison, *Liberty of Speech and of the Press: A Charge to the Grand Juries of the County Courts of the Fifth Circuit of the State of Pennsylvania* (Albany: Loring Andrews, 1798).]*

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Speech, writing, and printing are the great direction of public opinion, and the public opinion is the great director of human action. Of such force is public opinion, that, with it on its side, the worst government will support itself; and, with it, against it, the best government will fall. . . . Give to any set of men the command of the press, and you give them the command of the country; for you give them the command of public opinion, which commands every thing. . . .

One would have thought, that the United States of America, blest with the best practicable model of republican liberty, which human wisdom hath yet been able to suggest, would have escaped this greatest of all plagues, the corruption of public opinion; and that all men would have united in approbation of a system of govern-

ment, which must be acknowledged excellent, and of an administration, which must be acknowledged to have been wise, enlightened and honest. Yet, unfortunately, this plague hath reached us also; and our government has been assailed with the grossest slanders, by many who perhaps believed, and by many who surely could not believe, the slanders which they uttered. The tongue, the pen and the press; conversations, letters, essays, and pamphlets, have represented our truly republican and balanced constitution as a system of tyranny; and our upright and wise administration, as mischievous and corrupt. Our wisest and best public officers have had their lives embittered, and have been driven from their stations by unceasing and malignant slander. And thus has it been attempted to withdraw, from our excellent government, the only effectual support of any government, public opinion – and thus to withdraw all reverence from station and authority, deprive the constitution, the laws and the administration, of all respect and efficacy, and surrender the nation a prey to any invader.

*France saw our condition, and attacked us: for France attacks a nation only when she has rendered it defenceless, by dividing the people from the government, and withdrawing from the government the support of public opinion. . . . Many of our citizens, and of our men in public stations, seem to have favored those measures, on which France must have depended for success against us. And our government was threatened with the loss of its best support, the hearts of its citizens, by means of falsehood, misrepresentation, and the vile acts of foreign enemies, and discontented, factious and seditious men. . . .*

On these grounds, it appears evident to me, that this law [the Sedition Act] is not only expedient, but necessary. And it may be laid down as a general rule, that it will be impossible to prevent the corruption of the public opinion, or to preserve any government against it; unless there be laws to correct the licentiousness of speech and of the press. True liberty of speech and of the press consists in being free to speak, write and print, but being, as in the exercise of all other liberties, responsible for the abuse of this liberty. And whether we have abused this liberty or not, must, like all other questions of right, be left to the decision of a court and jury.

### George Hay, “Hortensius” essay on freedom of speech

*George Hay of Virginia was one of the Republican writers who responded to the Sedition Act by articulating a broad definition of the freedoms of speech and press. In this widely distributed pamphlet of 1799, Hay, writing as “Hortensius,” asserted that the First Amendment prohibited any laws restricting the freedom of the press. Federalists defended the Sedition Act by citing the common law of Great Britain, which defined freedom of the press as a freedom from prior restraint. Hay insisted that the British attempt to distinguish between free speech and licentious speech had no meaning or authority under the U.S. Constitution. Nor could Congress attempt to distinguish between true and false speech. Hay, like Albert Gallatin in the House of Representatives debate on the Sedition Act, said the greatest danger to the health*



*of a republican society was not the publication of false statements about the government but the restraint of any speech. It was the free exchange of ideas and opinions that guaranteed citizens access to the truth. Hay believed this interpretation of the First Amendment could be discerned from the state conventions calling for a Bill of Rights, but he was among the first to state in such unqualified language that the Constitution prohibited Congress from regulating public speech.*

*In 1800 Hay served as one of three lawyers defending James Callender in his trial for seditious libel. As President, Thomas Jefferson appointed Hay the U.S. district attorney for Virginia in 1803, and Hay led the government's prosecution of Aaron Burr on charges of treason in 1807. Hay was appointed judge of the U.S. District Court for the Eastern District of Virginia in 1826 and served until his death in 1830.*

[Document Source: Hortensius, *An Essay on the Liberty of the Press. Respectfully inscribed to the Republican Printers Throughout the United States* (Philadelphia, 1799), Reprint, 1803.]

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This uncertainty in the law is well adapted to the situation of the British government. It enables the minister to act and punish as times and circumstances require; without subjecting himself to the odium of having transgressed the law. But, however important this uncertainty may be in a country, where privilege and monopoly form the basis of the government, in the United States it is disgraceful. In a republican government the people ought to know, the people have a right to know, the exact, the precise extent of every law, by which any individual may be called before a court of justice.

Fortunately for the people of the United States, the question which has perplexed the politicians and lawyers of England, does not exist here. The Constitution having declared, that the freedom of the press shall not be abridged, has, in fact, pronounced that no line of discrimination shall be drawn. For, if the freedom of the press is not to be abridged, and if no man can tell where freedom stops, and licentiousness begins, it is obvious that no man can say, to what extent a law against licentiousness shall be carried. It follows, then, that *no law can* be made to restrain the licentiousness of the press.

The words, "freedom of the press," like most other words, have a meaning, a clear, precise, and definite meaning, which the times require, should be unequivocally ascertained. That this has not been done before, is a wonderful and melancholy evidence of the imbecility of the human mind, and of the slow progress which it makes, in acquiring knowledge even on subjects the most useful and interesting.

...

I contend therefore, that if the words freedom of the press, have any meaning at all, they mean a total exemption from any law making any publication whatever criminal. Whether the unequivocal avowal of this doctrine in the United States would produce mischief or not, is a question which perhaps I may have leisure to discuss.

I must be content here to observe, that the mischief if any, which might arise from this doctrine could not be remedied or prevented, but by means of a power fatal to the liberty of the people.

That the real meaning of the words “freedom of the press,” has been ascertained by the foregoing remarks, will appear still more clearly, if possible, from the absurdity of those constructions, which have been given by the advocates of the Sedition Bill.

The construction clearly held out in the bill itself, is, that it does not extend to the privilege of printing facts, that are false. This construction cannot be correct. It plainly supposes that “freedom,” extends only as far as the power of doing what is morally right. If, then, the freedom of the press can be restrained to the publication of facts that are true, it follows inevitably, that it may also be restrained to the publication of opinions which are correct. There is truth in opinion, as well as in fact. Error in opinion may do as much harm, as falsity in fact: it may be as morally wrong, and it may be propagated from motives as malicious. It may do more harm, because the refutation of an opinion which is erroneous, is more difficult than the contradiction of a fact which is false. But the power of controuling opinions has never yet been claimed; yet it is manifest that the same construction, which warrants a controul in matters of fact, does the same as to matters of opinion. In addition to this, it ought to be remarked, that the difficulty of distinguishing in many cases between fact and opinion, is extremely great, and that no kind of criterion is furnished by the law under consideration. Of this more, perhaps will be said hereafter.

Again, if the congressional construction be right, if the freedom of the press consists in the full enjoyment of the privilege of printing facts that are true, it will be fair to read the amendment, without the words really used, after substituting those said by Congress to have the same import. The clause will then stand thus: “Congress shall make no law abridging the right of the press, to publish facts that are true!” If this was the real meaning of Congress, and the several States, when they spoke in the state constitutions, and in the amendment of the “freedom of the press,” the very great solicitude on this subject displayed throughout the continent, was most irrational and absurd. If this was their meaning, the “palladium” of liberty is indeed a “wooden statue,” and the bulwark of freedom is indeed a despicable fortification of paper. The officers of the government would have a right to invade this fortification, and to make prisoners of the garrison, whenever they thought there was a failure in the duty of publishing only the truth, of which failure persons chosen by the government are to judge. This is too absurd even for ridicule. . . .

They knew that the licentiousness of the press, though an evil, was a less evil than that resulting from any law to restrain it, upon the same principle, that the most enlightened part of the world is at length convinced, that the evils arising from the toleration of heresy and atheism, are less, infinitely less, than the evils of persecution.

That the spirit of inquiry and discussion, was of the utmost importance in every free country, and could be preserved only by giving it absolute protection, even in its excesses.

That truth was always equal to the task of combating falsehood without the aid of government; because in most instances it has defeated falsehood, backed by all the power of government.

That truth cannot be impressed upon the human mind by power, with which therefore, it disdains an alliance, but by reason and evidence only.

They knew the sublime precept inculcated by the act establishing religious freedom, that “where discussion is free, error ceases to be dangerous:” and, therefore, they wisely aimed at the total exclusion of all congressional jurisdiction. . . .

The freedom of the press, therefore, means the total exemption of the press from any kind of legislative controul, and consequently the sedition bill, which is an act of legislative controul, is an abridgement of its liberty, and expressly forbidden by the constitution.

## *Charles Pinckney, “On the Election of the President of the United States”*

*The Sedition Act became an important issue in the presidential contest between John Adams and Thomas Jefferson in 1800. As South Carolina legislators prepared to choose the state’s presidential electors, one of the state’s United States senators, Charles Pinckney, published a series of editorials in favor of Jefferson’s election. Pinckney’s editorial on the Sedition Act offered an articulate summary of Republican opposition to the act and the prosecutions in the federal courts. The act, he alleged, was a partisan effort to prevent public examination of the policies of the Adams administration and to extend the reach of the federal courts at the expense of state courts. To Pinckney and many Republicans, the federal judiciary was a pliant arm of the Federalist President Adams, who appointed the judges who presided over the cases, the marshals who selected juries, and the district attorneys who brought the indictments before the juries.*

*When prosecutions for libel were justified, they were the exclusive jurisdiction of state courts, according to Pinckney and many other Republicans. Pinckney was convinced that state courts, with their greater accountability to the public, were less likely to compromise the rights of citizens. He dismissed the supposed benefits of the liberalizations in the libel law, such as the truth as defense. As many of the defense lawyers had said in the sedition trials, it was impossible to prove the truth of what were essentially political opinions, particularly before a partisan jury.*

[Document Source: *The Carolina Gazette*, Charleston, September 11, 1800.]

To make, therefore, their favorite object sure, and prevent an enquiry into the president's administration as it progressed, and to prohibit that investigation of its measures; that appeal to the wisdom and republicanism of the people on the approaching election, from which they were afraid Mr. Adams, or the supporters of his measures, had every thing to dread, and nothing to hope; for these reasons they determined to create a new crime, and to give to their courts a new jurisdiction; to take from the state courts and juries their undoubted right to decide every question of libels, and give it to courts formed by judges appointed by the president, whose administration this act is intended to screen; and what, if possible, is still more intolerable, to juries packed by marshals who have received and hold their offices at the will of the same president. These, my countrymen, are the true objects of the sedition law. They know your state judges are impartial and independent men; that they neither fear the frown of power, nor court the smile of office; that your juries are either impartially drawn by lot, or selected by sheriffs elected by the people, and that they would be likely, upon every occasion, to discountenance any attempt to enslave the press; that these state juries, so far from considering as a crime, would view as a duty the investigation of public measures; . . .

It has been said, in extenuation of this law, that the parties accused are allowed to plead the truth of their charge in their defence, in extenuation of their punishment. Holding, as I do, the fixed and unalterable opinion that congress have no right to legislate at all upon the subject; that they possess the same right to tell me what God I shall worship, or in what manner adore him, as to say under what limitations I shall be permitted to investigate the conduct of our public servants; it is with difficulty I can bring myself to condescend to examine any part of the law; . . . I will, however, for a moment consider the nature of the defence, which is, that a person accused may plead the truth of what is charged as a libel; and I will ask, what safety or success he can promise himself by such a defence, and before a court constituted as I have mentioned, that is composed of judges chosen by the President, and juries packed by marshals appointed by and dependent on the President? . . .

I think you will confess, that men of such opposite opinions as I have stated, could never easily be brought to agree upon any public measure, where there was room for difference in opinion; and that to commit a man who is known to be in what is called the *republican interest*, to be tried for any political writing, by a jury of men known to be in the federal interest, and packed by a federal marshal, is allowing him that sort of defence which may be considered as something very like a solemn mockery of justice.

## Select Bibliography and Resources

### *Secondary sources*

Austin, Aleine. *Matthew Lyon: "New Man" of the Democratic Revolution, 1749–1822*. University Park: Pennsylvania State University Press, 1981.

Brown, Richard D. "The Disenchantment of a Radical Whig: John Adams Reckons with Free Speech." In *John Adams and the Founding of the Republic*. Edited by Richard Alan Ryerson, 171–85. Boston: Massachusetts Historical Society, 2001.

Casto, William R. *The Supreme Court in the Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth*. Columbia: University of South Carolina Press, 1995.

Durey, Michael. *"With the Hammer of Truth": James Thomas Callender and America's Early National Heroes*. Charlottesville: University Press of Virginia, 1990.

Elkins, Stanley, and Eric McKittrick. *The Age of Federalism: The Early American Republic, 1788–1800*. New York: Oxford University Press, 1993.

Levy, Leonard W. *Emergence of a Free Press*. New York: Oxford University Press, 1985.

Pasley, Jeffrey L. *The Tyranny of Printers: Newspaper Politics in the Early American Republic*. Charlottesville: University Press of Virginia, 2001.

Preyer, Kathryn. "United States v. Callender: Judge and Jury in a Republican Society," in *Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789*. Edited by Maeva Marcus, 173–95. New York: Oxford University Press, 1992.

Rosenberg, Norman L. *Protecting the Best Men: An Interpretive History of the Law of Libel*. Chapel Hill: University of North Carolina Press, 1986.

Smith, James Morton. *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties*. Ithaca, NY: Cornell University Press, 1956.

## *Court records*

*United States v. Matthew Lyon*, Case files, U.S. Circuit Court, District of Vermont, RG 21, National Archives and Records Administration – Northeast Region (Boston).

*United States v. Thomas Cooper*, #21 April Session 1800, U.S. Circuit Court for the District of Pennsylvania, Record Group 21, National Archives and Records Administration, Mid Atlantic Region (Philadelphia).

## *Published primary sources*

Cooper, Thomas. *An Account of the Trial of Thomas Cooper of Northumberland; on a Charge of Libel against the President of the United States*. Philadelphia: John Bioren, 1800.

Lyon, James. *A Republican Magazine; or, Repository of Political Truths*. Fairhaven, Vt.: 1798.

[Robertson, David, comp.]. *Trial of James Thompson Callender, For Sedition On Tuesday, the third day of June, 1800, in the middle Circuit Court at Richmond, in the District of Virginia*. Richmond: 1804.

Wharton, Francis. *State trials of the United States during the administrations of Washington and Adams, with references, historical and professional, and preliminary notes on the politics of the times*. New York: B. Franklin, 1849.

*Documentary History of the Supreme Court of the United States, 1789–1800*. vol. 3: *The Justices on Circuit, 1795–1800*. Eds. Maeva Marcus, et al. New York: Columbia University Press, 1990.

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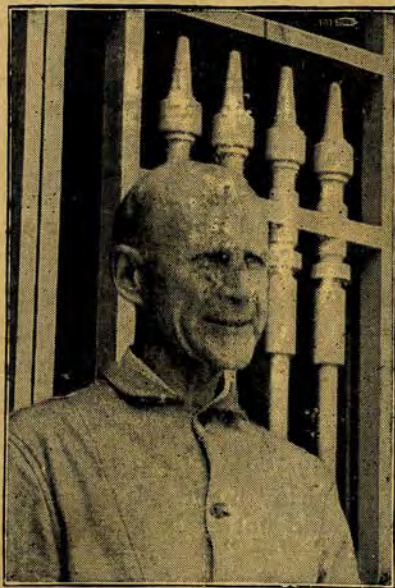
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The Canton Speech &  
The Trial of Debs



# Eugene V. Deb's



## Canton Speech



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PRICE TEN CENTS

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Published by the  
**Socialist Party of the United States**  
2653 Washington Blvd.  
**CHICAGO**

"I would rather a thousand times be a free soul in jail than to be a sycophant and coward in the streets."

\* \* \*

"They may put those boys in jail—and some of the rest of us in jail—but they can not put the Socialist Movement in jail."

\* \* \*

"I would be ashamed to admit that I had risen from the ranks. When I rise it will be with the ranks, and not from the ranks."

\* \* \*

"I hate; I loathe; I despise Junkerdom. I have no earthly use for the Junkers of Germany, and not one particle more for the Junkers in the United States.

\* \* \*

"If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary."

\* \* \*

"The little that I am, the little that I am hoping to be, is due wholly to the Socialist Movement. It gave me my ideas and my ideals; and I would not exchange them for all of Rockefeller's blood-stained dollars."

\* \* \*

"Do not worry over the charge of treason to your masters; but be concerned about the treason that concerns yourselves. Be true to yourself, and you can not be a traitor to any good cause on earth."

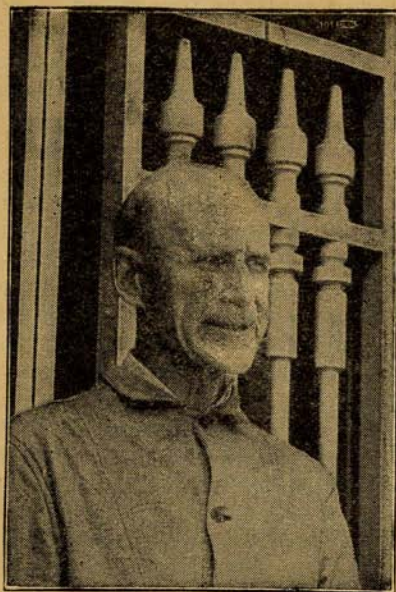
\* \* \*

"We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help, do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind."



*Samuel A. Portnoy*  
**Eugene V. Debs'**

# **CANTON SPEECH**



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Published by the

**Socialist Party of the United States**

**2653 Washington Boulevard**

**CHICAGO, ILL.**

# DEBS' CANTON SPEECH

## FOREWORD

On June 16th, 1918, Eugene V. Debs delivered a speech at Canton, Ohio, for which he served nearly three years of a sentence of ten years in the Federal Prison at Atlanta, Georgia. He was released from prison Christmas day, 1921.

The speech as published in this pamphlet is taken from the court records and is identical with the version submitted in evidence by the Government and upon which Comrade Debs' conviction and sentence was based.

Comrade Debs is a rapid speaker and it is evident that the reporter was unable to take his delivery and that many words, and in some instances whole sentences, have been omitted.

It is also evident to anyone familiar with Comrade Debs' wide knowledge, fluent style and perfect English, that he could not have committed the grammatical errors or made the incorrect quotations and historical references which this version of his speech contains.

We have thought it best, however, to publish exactly what the Government claims he said, and upon which they based the justice of his conviction and of his imprisonment long after the war was over, rather than a more complete and accurate version.

Comrade Debs has agreed to its publication in this form and states now, as he did at the time of the trial, that, barring the errors and inaccuracies mentioned, it is substantially what he said at Canton.

We submit it to the candid judgment of his fellow-citizens.

We do not believe they will find in it justification for either his conviction or his imprisonment.

On the contrary we believe a calm and dispassionate reading will convince even the most prejudiced, that a great injustice was done and that the present administration should remedy this injustice, so far as it is possible to do so, by the immediate restoration of his citizenship which was taken away by his imprisonment and has not been restored.

THE SOCIALIST PARTY,  
Otto Branstetter, Executive Secretary.



# SPEECH

DELIVERED BY EUGENE V. DEBS

At Nimisilla Park, Canton, Ohio

SUNDAY AFTERNOON, JUNE 16th, 1918

Chairman:—Introducing Mr. Debs — Comrades, I said that it is a great privilege to be a Socialist in this year 1918. We not only have the privilege of being a Socialist here this afternoon, but we are going to have the privilege of listening again to one of the ablest and most fearless orators that ever stepped on a public platform. (Applause.) A man that is best loved and most hated of any man in the United States today. (Applause.) A man whom the capitalist newspapers endeavored to represent as being a renegade in the Socialist movement over a headline: "Debs & Company desert the program of the Socialist Party." Others may desert, but Eugene V. Debs never deserts the Socialist party. (Applause.)

He needs no introduction to you, comrades and friends, this afternoon. But I have the very great privilege and the honor of presenting him to you once more at this very critical time in the Socialist movement, when we most need him. Eugene V. Debs. (Mr. Debs steps to the front of the platform amid great and prolonged applause and cheers.)

MR. DEBS: Comrades, friends and fellow-workers, for this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest of your devotion to the cause for which I am to speak to you this afternoon. (Applause.)

To speak for labor; to plead the cause of the men and women and children who toil to serve the working class, has always been to me a high privilege; (applause) a duty of love.

I have just returned from a visit over yonder (pointing to the workhouse) (laughter), where three of our most loyal comrades (applause) are paying the penalty for their

devotion to the cause of the working class. (Applause.) They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world. (Applause.)

I realize that, in speaking to you this afternoon, that there are certain limitations placed upon the right of free speech. I must be exceedingly careful, prudent, as to what I say, and even more careful and more prudent as to how I say it. (Laughter.) I may not be able to say all I think; (laughter and applause) but I am not going to say anything that I do not think. (Applause.) But, I would rather a thousand times be a free soul in jail than to be a sycophant and coward on the streets. (Applause and shouts.) They may put those boys in jail—and some of the rest of us in jail—but they can not put the Socialist movement in jail. (Applause and shouts.) Those prison bars separate their bodies from ours, but their souls are here this afternoon. (Applause and cheers.) They are simply paying the penalty that all men have paid in all of the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind. (Applause.)

If it had not been for the men and women, who, in the past, have had the moral courage to go to jail, we would still be in the jungles. (Applause.)

This assemblage is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. (Laughter.) What I say here amounts to but little; what I see here is exceedingly important. (Applause.) You workers in Ohio, enlisted in the greatest cause ever organized in the interest of your class, are making history today in the face of threatening trouble of all kinds—history that is going to be read with profound interest by coming generations. (Applause.)

There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement. (Applause.) It is only when you begin to compromise that trouble begins. (Applause.) So far as I am concerned, it does not matter what others may say, or think, or do, as long as I am sure that



I am right with myself and the cause. (Applause.) There are so many who seek refuge in the popular side of a great question. On account of that, I hope, as a Socialist, I have long since learned how to stand alone. (Applause.)

For the last month I have been traveling over the Hoosier State; and, let me say to you, that, in all my connection with the Socialist movement, I have never seen such meetings, such enthusiasm, such unity of purpose; never have I seen such a promising outlook as there is today, notwithstanding the statement they have published repeatedly that our leaders have deserted us. (Laughter.) Well, for myself, I never had much faith in leaders anyway. (Applause and laughter.) I am willing to be charged with almost anything, rather than to be charged with being a leader. I am suspicious of leaders, myself, and especially of the intellectual variety. (Applause.) Give me the rank and file every day in week. If you go to the City of Washington, and you examine the pages of the Congressional Directory, you will find that almost all of those corporation lawyers and cowardly politicians, members of Congress, and misrepresentatives of the masses—you will find that almost all of them claim, in glowing terms, that they have risen from the ranks to places of eminence and distinction. I am so glad that I can not make that claim for myself. (Laughter.) I would be ashamed to admit that I had risen from the ranks. When I rise it will be with the ranks, and not from the ranks. (Applause.)

When I came away from Indiana, the comrades said: "When you cross the line and get over into the Buckeye State, tell the comrades over there that we are on duty and doing duty. Give them for us, a hearty greeting, and tell them that we are going to make a record this fall that will be read all around the world." (Applause.)

The Socialists of Ohio, it appears, are very much alive this year. The party has been killed recently, (laughter) which, no doubt, accounts for its extraordinary activity. (Laughter.) There is nothing that helps the Socialist party so much as receiving an occasional death blow. (Laughter and cheers.) The oftener it is killed the more boundless, the more active, the more energetic, the more powerful it becomes.

They who have been reading the capitalist newspapers realize what a capacity they have for lying. We have been reading them lately. They know all about the Socialist party—the Socialist movement, except what is true. (Laughter.) Only the other day they took an article that I had written—and most of you have read it—most of you members of the party, at least—and they made it appear that I had undergone a marvelous transformation. (Laughter.) I had suddenly become changed—suddenly come to my senses; I had ceased to be a wicked Socialist, and had become a respectable Socialist, (laughter) a patriotic Socialist—as if I had ever been anything else. (Laughter.)

What was the purpose of this deliberate misrepresentation? It is so self-evident that it suggests itself. The purpose was to sow the seed of dissension in our ranks; to have it appear that we were divided among ourselves; that we were pitted against each other, to our mutual undoing. But Socialists were not born yesterday. (Applause.) They know how to read capitalist newspapers; (laughter and applause) and to believe exactly opposite of what they read. (Applause and laughter.)

Why should a Socialist be discouraged on the eve of the greatest triumph in all history of the Socialist movement? (Applause.) It is true that these are anxious trying days for us all—testing days for the women and men who are upholding the banner of the working class in the struggle of the working class of all the world against the exploiters of all the world; (applause) a time in which the weak and cowardly will falter and fail and desert. They lack the fiber to endure the revolutionary test; they fall away; they disappear as if they had never been. On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect and assert their convictions; stand by them; fight for them; go to jail or to hell for them, if need be—(applause and shouts) they are writing their names, in this crucial hour—they are writing their names in fadeless letters in the history of mankind. (Applause.)

Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers; (laugh-



ter and applause) their very names throb in my heart, and thrill in my veins, and surge in my soul. (Applause.) I am proud of them; they are there for us; (applause) and we are here for them. (Applause, shouts and cheers.) Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world. (Great applause.)

Are we opposed to Prussian militarism? (Laughter.) (Shouts from the crowd of "Yes. Yes.") Why, we have been fighting it since the day the Socialist movement was born; (applause) and we are going to continue to fight it, day and night, until it is wiped from the face of the earth. (Thunderous applause and cheers.) Between us there is no truce—no compromise.

But, before I proceed, along this line, let me recall a little history, in which I think we are all interested.

In 1869 that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sentenced to prison for three months, because of his war, as a Socialist, on the Kaiser and on the junkers that rule Germany. In the meantime the Franco-Prussian war broke out. Liebknecht and Bebel were the Socialist members in the Reichstag. They were the only two who had the courage to protest against taking Alsace-Lorraine from France and annexing it to Germany. And for this they were sent two years to a prison fortress charged with high treason; because, even in that early day, almost fifty years ago, these leaders, these forerunners of the international Socialist movement were fighting the Kaiser and fighting the junkers of Germany. (Great applause and cheers.) They have continued to fight them from that day to this. (Applause.) Multiplied thousands of them have languished in the jails of Germany because of their heroic warfare upon the ruling class of that country. (Applause.)

Let us come down the line a little further. You remember that, at the close of Theodore Roosevelt's second term as President, he went over to Africa (laughter) to make war on some of his ancestors. (Laughter) (continued shouts, cheers, laughter and applause.) You remember that, at the close of his expedition, he visited all of the capitals of Europe; and

he was wine and dined, dignified and glorified by all of the Kaisers and Czars and Emperors of the Old World. (Applause.) He visited Potsdam while the Kaiser was there; and, according to the accounts published in the American newspapers, he and the Kaiser were soon on the most familiar terms. (Laughter.) They were hilariously intimate with each other, and slapped each other on the back. (Laughter.) After Roosevelt had reviewed the Kaiser's troops, and, according to the same accounts, he became enthusiastic over the Kaiser's troops, and said: "If I had that kind of an army, I would conquer the world." (Laughter.) He knew the Kaiser then just as well as he knows him now. (Laughter.) He knew that he was the Kaiser, the Beast of Berlin. And yet, he permitted himself to be entertained by the Beast of Berlin; (applause) had his feet under the mahogany of the Beast of Berlin; was cheek by jowl with the Beast of Berlin. (Applause.) And, while Roosevelt was being entertained royally by the German Kaiser, that same Kaiser was putting the leaders of the Socialist party in jail for fighting the Kaiser and the junkers of Germany. (Applause.) Roosevelt was the guest of honor in the white house of the Kaiser, while the Socialists were in the jails of the Kaiser for fighting the Kaiser. (Applause.) Who was fighting for democracy? Roosevelt? (Shouts of "no.") Roosevelt, who was honored by the Kaiser, or the Socialists who were in jail by the order of the Kaiser? (Applause.)

"Birds of a feather flock together." (Laughter.)

When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore recognized each other at sight, were perfectly intimate with each other at the first touch, they made the admission that is fatal to the claims of Theodore Roosevelt, that he is a great friend of the people and the champion of Democracy; they admitted that they were kith and kin; that they were very much alike; that their ideas and ideals were about the same. If Theodore Roosevelt is now the great champion of Democracy, (laughter) the arch—the arch foe of autocracy, (laughter) what business had he as the guest of honor of the Kaiser? And when he met the Kaiser, and did honor to the Kaiser, under the terms imputed to him,



wasn't it pretty strong proof that he, himself, was a Kaiser at heart? (Applause.) Now, after being the guest of Emperor Wilhelm, the Beast of Berlin, he came back to this country, and he wants you to send ten million men over there to kill the Kaiser; (applause and laughter) to murder his former friend and pal. (Laughter.) Rather queer, isn't it? And yet, he is the patriot, and we are the traitors. (Applause.) And I challenge you to find a Socialist anywhere on the face of the earth who was ever the guest of the Beast of Berlin, (applause) except as an inmate of his prison—the elder Liebknecht and the younger Liebknecht, the heroic son of his immortal sire.

A little more history along the same line. In 1902 Prince Henry paid a visit to this country. Do you remember him? (Laughter.) I do, exceedingly well. Prince Henry is the brother of King Wilhelm. Prince Henry is another Beast of Berlin, an autocrat, an aristocrat, a junker of junkers—very much despised, very much despised, by our American patriots. He came over here in 1902 as the representative of Kaiser Wilhelm; he was received by Congress, by several State legislatures—among others, by the State legislature of Massachusetts, then in session. He was invited there by the capitalist captains of that so-called commonwealth. And when Prince Henry came there, there was one member of that body who kept his self-respect, put on his hat, and, as Henry, the Prince, walked in, that member of the body walked out. And that was James F. Carey, the Socialist member of that body. (Applause.) All of the rest—all of the rest of the representatives in the Massachusetts legislature—all, all of them—joined in doing honor, in the most servile spirit to the high representative of the autocracy of Europe. And the only man who left that body, was a Socialist. And yet, (applause) and yet they have the hardihood to claim that they are fighting autocracy and we are in the service of the German government. (Applause.)

A little more history along the same line. I have a distinct recollection of it. It occurred just fifteen years ago when Prince Henry came here. All of our plutocracy, all of the wealthy representatives living along Fifth avenue—all, all of them—threw their palace doors wide open and received

Prince Henry with open arms. They were not satisfied with this; they got down on their stomachs; they groveled in the dust at his feet; and our plutocracy—women and men alike—vied with each other to get down and lick the boots of the Prince Henry, the representative of the Beast of Berlin. (Applause.) And still our plutocracy, our junkers—don't think for a moment that the junkers are confined to Germany. (Applause.) It is precisely because we refuse to believe this they brand us as disloyalists. They want our eyes focused on the junkers in Berlin, so that we will not see those within our own borders.

I hate; I loathe; I despise junkerdom. I have no earthly use for the junkers of Germany, and not one particle more use for the junkers in the United States. (Thunderous applause and cheers.)

They tell us we live in a great Republic; our institutions are Democratic; we are a free people. (Laughter.) This is too much, even as a joke. (Laughter.) It is not a subject for levity; it is an exceedingly serious matter.

To whom do the Wall street junkers in our country—to whom do they marry their daughters? After they have wrung the countless hundreds of millions from your sweat, your agony, your life-blood, in a time of war as well as in a time of peace, they invest these billions and millions in the purchase of titles of broken-down aristocrats, and to buy counts of no-account. (Laughter.) Are they satisfied to wed bad daughters to honest working men? (Shouts from the crowd: "No.") To real Democrats? Oh, no. They scour the markets of Europe for fellows who have titles and nothing else. (Laughter.) And they swap their millions for the titles; so that matrimony, with them, becomes entirely a matter of money, (laughter) literally so.

These very gentry, who are today wrapped up in the American flag, who make the claim that they are the only patriots, who have their magnifying glasses in hand, who are scanning the country for some evidence of disloyalty, so eager, so ready to apply the brand to the men who dare to even whisper opposition to junker rule in the United States. No wonder Jackson said that "Patriotism is the last refuge of



scoundrels." He had the Wall street gentry in mind, or their prototypes, at least; for in every age it has been the tyrant who has wrapped himself in the cloak of patriotism, or religion, or both. (Shouts of "good, good," from the crowd.) (Applause.)

They would have you believe that the Socialist party consists in the main, of disloyalists, and traitors. It is true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation; (applause) to the gang, that, on the Pacific coast are trying to hang Tom Mooney, in spite of the protest of the whole civilized world. (Applause, shouts and cheers.)

I know Tom Mooney intimately—as if he were my own brother. He is an absolutely honest, innocent man. (Applause.) He had no more to do with the crime with which he is charged than I have. (Applause.) And, if he ought to go to the gallows, so ought I. If he is guilty, every man who belongs to a labor organization or to the Socialist party is, likewise, guilty.

What is he guilty of? I'll tell you. I am familiar with his record. For years he has been fighting the battles of the working class out on the Pacific coast. He refused to be bribed or to be brow beaten. He continued loyally in the service of the working class, and for this he was marked. They said: "He can't be bought; he refuses to be bribed, and he can not be intimidated. Therefore, he must be murdered." (Applause.)

Let us review another bit of history. Do you remember that Francis J. Heney, the special investigator of the National in this country was shot down in the court room in San Francisco? You remember it, don't you? The United Railways consisting of a lot of plutocrats, high-binders' organization in the Chamber of Commerce, absolutely own and control the City of San Francisco. It is their private reservation. Their will is the supreme law. Take your stand against them, you are doomed. They do not hesitate to plot murder to perpetuate their murderous regime. Tom Mooney was the only representative of the working class they could not control. (Applause.) They owned the railways; they controlled

the great industries; they were the industrial masters; they were the political rulers; from their decision there was no appeal—the real autocrats of the Pacific coast—as infamous as any that ever ruled in Germany or any other country. (Applause.) And when their rule became so corrupt, that, at last, a grand jury was found that indicted them, and they were placed on trial, and Francis J. Heney, who has just incriminated the packers, and found another gang—the packers of Chicago—Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang, represented by the Chamber of Commerce; this gang of plutocrats, autocrats and high-binders, hired a murderer to shoot Francis J. Heney down in the court room, and he did. Francis J. Heney happened to live thru it. But that wasn't their fault. The identically same gang that hired the murderer to kill Heney, that very same gang are also for the execution of Tom Mooney. (Applause.) Every solitary—every one of them claims to be an arch-patriot; every one insists thru his newspapers that he is fighting to make Democracy safe in the world. What humbug! What rot! What false pretense! These autocrats, these tyrants, these red-handed robbers and murderers, the patriots, while the men who have the courage to stand up face to face with them and fight in the interest of their exploited victims—they are the disloyalists and traitors. If this be true, I want to take my place side by side with the traitors in this fight. (Great applause.)

Why the other day they sent Kate Richard O'Hare to the penitentiary for ten years. Oh, just think of sentencing a woman to the penitentiary for talking. (Laughter.) The United States, under the rule of the plutocracy, is the only country that would send a woman to the penitentiary for ten years for exercising her constitutional right of free speech. (Applause.) If this be treason, let them make the most of it. (Applause.)

Let me review another bit of history in connection with this case. I have known Kate Richard O'Hare intimately for twenty years. I know her record by heart. Personally I know her as if she were my own younger sister. All who know her know she is a woman of absolute integrity. (Applause.) And



they know that she is a woman of unimpeachable loyalty to the Socialist movement. (Applause.) When she went out into Dakota and made her speech, followed by plain clothes men in the service of the Government intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when thirty farmers, men and women, who were in the audience she addressed—heard the speech, when they went to Bismarck to testify in her favor, to swear that she had never used the language she was charged with having used, the judge refused to allow them to go upon the stand. This would seem incredible to me, if I had not had some experience of my own with a Federal court. (Applause.)

Who appoints the Federal judges? The people? In all of the history of the country, the working class have never named a Federal judge. There are 121, and every solitary one of them holds his position, his tenure, thru the influence and power of corporate capital. The corporations and trusts dictate their appointment. And when they go to the bench, they go, not to serve the people, but to serve the interests that placed them where they are. (Applause.)

Why, the other day, by a vote of five to four—a kind of craps game—(laughter) come seven, come eleven—(laughter) they declared the child labor law unconstitutional, (laughter) a law secured after twenty years of education and agitation on the part of all kinds of people. And yet, by a majority of one, the Supreme Court, a body of corporation lawyers—with just one solitary exception—wiped it from the statute books, and this in a Democracy, so that we may still continue to grind the flesh and blood and bones of puny little children into profits for the junkers of Wall street. (Applause.) And this in a country that is fighting to make Democracy safe in the world. (Laughter.) The history of this country is being written in the blood of the childhood they have murdered.

These are not very palatable truths to them. They do not

like to hear them; and they do not want you to hear them. And that is why they brand us as undesirable citizens, (laughter and applause) and as disloyalists, and as traitors. If we were traitors—if we were traitors to the people, we would be eminently respectable citizens of the republic; we could hold high office, and we could ride in limousines; and could be pointed out as people who had succeeded in life, in honorable pursuits. It is precisely because we are disloyal to the traitors that we are loyal to the people of this country. (Applause.)

Scott Nearing. You have heard of Scott Nearing. (Applause.) He is the greatest teacher in the United States. (Applause.) He was in the University of Pennsylvania until the Board of Trustees, consisting of great capitalists, found that he was teaching true economics to the students of the university. Then they said: Just as the same usurers, the same money changers, the same Pharisees, the same hypocrites said of the Judean carpenter twenty centuries ago, they said of Jesus Christ, who was a working man, and an agitator, and an undesirable, they said: "He is preaching a false religion." And they crucified him. And their lineal descendants said: "He is preaching false economics. We can not crucify him, as we did his elder brother, so we will starve him to death. (Applause.) We will discharge him and blacklist him, and make it impossible for him to get a job. He is a dangerous man; he is teaching the truth. And the truth, oh, the truth has always been unpalatable to the class who live out of the sweat of the working class." (Applause.)

True, Max Eastman (applause) was indicted and his paper suppressed, just as papers with which I have been connected are all suppressed. What a wonderful compliment they paid us. (Laughter and applause.) They are afraid that we might contaminate you. You are their wards; they are your guardians. (Laughter.) They must see to it that our vicious doctrines don't reach your ears. And so, in our Democracy, under our free institutions, they flatter our press, and they imagine that they have silenced revolutionary propaganda. What a mistake they made. We ought to pass a resolution of thanks and gratitude to them. Thousands of people, who have never heard of our paper before, are now inquiring for



it, wanting to see it. They have started inquiry and curiosity in our propaganda. And woe to the man who reads our Socialist literature from curiosity. He is a goner. (Applause.) I have known of a thousand experiments, but I have never known of a single man or woman to escape it.

John M. Work. You know John, don't you, who is now on the Milwaukee Leader? When I first knew John he was a lawyer out in Wisconsin. The corporation capitalists became alarmed because of the rapid advancement of the Socialist movement. So they said: "We have to engage some bright fellow to fight this." They said: "Well, John, you are a bright young lawyer; and you have a great career before you. We want to engage you to find out all you can about Socialism, and then proceed to counteract its baneful effect."

John got some Socialist literature, and began to study it; and after he had read the second volume he was a full-fledged Socialist, and he has been fighting for Socialism ever since.

How short-sighted the ruling class is. Cupidity is stone blind. The exploiter can not see beyond the end of his nose. He can see a chance for an opening; he is just cunning enough to know what graft is and where it is, and how it can be secured, but he has not vision—not the slightest. He knows nothing of the great throbbing world that spreads out in all directions. That is the penalty that the exploiter pays. Rockefeller is blind. Every move he makes hastens the coming of his doom. Every time he and his class strike a blow at the Socialist movement it reacts upon them. Every time they strike us, they hit themselves. It never fails. (Applause.) Every time they strangle a Socialist newspaper, they add a thousand voices proclaiming the eternal truth of the principles and doctrines of Socialism. They help us in spite of themselves.

Socialism is a growing idea, an expanding philosophy. It is spreading over the face of the earth. It is as useless to resist it as it would be to try to arrest the sunrise on the morrow. It is coming, coming, coming, all along the line. Can't you see it? If you can't, consult an oculist; there is something the matter; you are lacking in vision, in common understanding. The greatest movement in history. What a

privilege it is to serve it. I have regretted a thousand times that I can do so little for the movement that has done so much for me. (Applause.) The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. (Applause.) It gave me my ideas and my ideals; and I wouldn't exchange all of them for all of Rockefeller's blood-stained dollars. (Cheers.) It taught me how to serve—a lesson to me of priceless value. It taught me the ecstasy of the hand-clasp of a comrade. It taught me to hold high communion with you; it made it possible for me to get in touch with you; to take my place side by side with you; to multiply myself over and over again; to make me thrill with a fresh-born manhood; to make life worth while; to open the avenues; to spread out the glorious vistas; to know that I am akin with all that throbs; to become class conscious; to realize that, regardless of nationality, race, creed, color or sex, every man, every woman who toils, every member of the working class—every one of them—are my comrades, my brothers, my sisters—to serve them is the highest duty of my life. (Great applause.) And, in their service, I can feel myself expand; I rise to the stature of a man; I feel that I have a right to a place on earth—a place where I can stand and help to uphold the banner of industrial freedom and of Socialistic righteousness. Yes, yes; my heart is attuned with yours. Aye, all of our hearts are melted into one great heart that throbs responsive to the Social revolution. Here, in this assemblage (applause) I hear our heart beat responsive to the Bolsheviki of Russia. (Deafening and prolonged applause.) Yes, those heroic men and women, those unconquerable comrades, who have, by their sacrifice, added fresh luster to the international movement. Those Russian comrades, who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like men or number of men and women anywhere else on earth, they have laid the foundation of the first real Democracy that ever drew—(great applause) the first real Democracy that ever drew the breath of life on God's footstool. (Applause.) And the very first act of that immortal revolution was to proclaim a state of peace with all the world, coupled with an appeal, not to the kings, not to the emperors,



not to the rulers, not to the diplomats, but an appeal to the people of all nations. (Applause.) There is the very birth of Democracy, the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central powers, to send representatives to a conference to lay down terms of peace that should be Democratic and lasting. Here was a fine—here was a fine opportunity to strike a blow to make Democracy safe in the world. (Applause.) Was there any response to that noble appeal? And here let me say that that appeal will be written in letters of gold in the history of the world. (Applause.) Was there any response to that appeal? (From the crowd "No.") Not the slightest.

Why, it has been charged that Leon Trotsky and the leaders of the revolution were treacherous, that they made a traitorous peace with Germany. Let us consider that proposition, briefly. At the time of the Revolution, Russia had been three years in the war. Under the Czar she had lost more than four millions for her soldiers, slain or mutilated on the field of battle. She was absolutely bankrupt. Her soldiers were mainly without arms. This was what the Revolution—what was bequeathed to the Revolution by the Czar and his regime; and, for this condition Leon Trotsky was not responsible, nor the Bolsheviki. For this frightful condition, the Czar was responsible. When Trotsky came into power and went thru the archives, they found the secret treaties—the treaties that were made between the Czar and the French government and the British government and the Italian government proposing, after the victory was achieved, to dismember and disperse and destroy the Central Powers. These treaties have never been repudiated. Very little has been said about them in the American press. I have a copy of these treaties showing that the purpose of the Allies is exactly the purpose of the Central Powers. (Applause.) And that is the purpose that has always been the purpose of war. Wars have been waged for conquest, for plunder. In the middle ages the feudal lords, who inhabited the castles whose towers may still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase

their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall street junkers go to war. (Applause.) The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought their battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and to cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them in contempt. And that is war in a nut-shell. The master class has always declared the war; the subject class has always fought the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose—including their lives. (Applause.) They have always taught you that it is your patriotic duty to go to war and to have yourselves slaughtered at a command. But in all of the history of the world you, the people, never had a voice in declaring war. You have never yet had. And here let me state a fact—and it cannot be repeated too often: the working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war. The working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

"Yours not to ask the question why;  
Yours but to do and die."

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary. (Applause.)

Rose Pastor Stokes. And when I mention her name (applause), I take off my hat—mentally at least. (He spoke without a hat on his head.) Here is another heroic and inspiring comrade. She had her millions of dollars. Did it restrain her an instant? Her devotion to the cause had arrested



all consideration of a financial or an economic nature. She went out to render her service to the cause in this day of crises, and they sent her to the penitentiary for ten years. Think of it! Ten years! What had she said? Not any more than I have said here this afternoon. (Laughter.) I want to admit—I want to admit, without argument, that if Rose Pastor Stokes is guilty, so am I. If she is guilty, I wouldn't be cowardly enough to plead my innocence. And if she ought to be sent to the penitentiary for ten years, so ought I.

What did she say? Why, she said that a Government—Government could not serve both the profiteers and the victims of the profiteers. Isn't that true? Certainly.

Roosevelt said a thousand times more in the same paper, The Kansas City Star. Roosevelt said, the other day, that he would be heard if he went to jail. He knows very well that he will not go to jail. He is laying his wires for the Republican nomination in 1920. And he would do everything possible to discredit Wilson in his administration. He would do that in order to give himself and his party all of the credit. That is your wonderful rivalry between the two patriotic parties—the Republican party and the Democratic party, the twins. They are not going to have any agitation between them this fall. They are all patriots this time, and they are going to combine to prevent the election of any disloyal Socialist. I haven't heard anybody anywhere tell me of any difference between them. Do you know of any? Not the slightest. One is in, the other is out. That is all the difference there is between them. (Laughter.)

Rose Pastor Stokes never uttered a word she did not have a legal, constitutional right to utter. But her message for the people, the message that opened the eyes of the people—that must be suppressed; her voice must be silenced. And so she was confronted with a mock trial, and sent to the penitentiary for ten years. Her sentence was a foregone conclusion. A trial in a capitalist court usually ends farcial—very farcial. What ghost of a chance had she in a court with a packed jury and a corporation tool on the bench? Not the least in the world. So she goes to the penitentiary for ten years, if they carry out the program. I do not think they will. In fact, I

am sure they will not. If the war was over tomorrow, all of the prison doors would open. They just want to silence this voice during the war. The cases will be appealed, and they will remain pending in court many a month, perhaps years. What a compliment it is to the Socialist movement for telling the truth. The truth will make the people free. (Applause.) And the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, the exploiter, the robber. So the truth must be suppressed. That is why they are trying to drive out the Socialist movement; and every time they make the attempt, they add ten thousand voices proclaiming that Socialism has come to stay. (Applause.)

(Here Mr. Debs is handed a drink of water.)

How good the touch of the hand of a comrade is, and a sip of water furnished by a comrade; as refreshing as if it were out on the desert of life. And how good it is to look into your faces this afternoon. (Applause.) You are really good looking (laughter) to me, I assure you. And, I am glad there is so many of you. Your tribe has increased wonderfully since I first came here. (Laughter.) You used to be so few and so far between. And when you struck a place, the first thing you had to do was to see if you could locate a Socialist; and you were pretty lucky if you struck his trail before you left town. If he happened to be the only one in town, and he is still living, he is now regarded as practical, and he holds the place of honor, and he has lodgment in the heart of all those who come after him. Now here you can't throw a stone in the dark without hitting a Socialist. (Laughter.) They are everywhere in increasing numbers; and what marvelous changes are taking place.

I went to Warren some years ago. It happened to be at the time that President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist, who would have been guilty of that crime. We do not attack individuals. We don't wreak our vengeance upon any individual opposed to our faith. We have no fight with individuals. We are capable of teaching those who hate us. (Applause.) We do not hate them; we know better; we would



hand them a cup of water, if they needed it. (Applause.) There is not any room in our heart for hate, except for a system—a system in which it is possible for one man to achieve a tremendous fortune doing nothing, while millions upon millions suffer and struggle and agonize and die for the bare necessities of life. (Applause.)

McKinley had been assassinated. I was booked to speak at Portsmouth. All of the ministers of Portsmouth met in a special session, and they passed a resolution that Debs, more than any other person, was responsible for the assassination of our beloved President. (Laughter.) And it is due to what he was preaching that was responsible for this crime. And so all of these pious gentry, the followers of the meek and lowly, as they believed, met and said I must not be permitted to enter the city. And they had the mayor to issue an order not permitting me to speak. I was all tired out. And they wanted me to call the meeting off. I went there soon after, however. Soon after I was booked to speak at Warren, where President McKinley's double cousin was postmaster. I went there and registered. I was only registered when I was ordered to leave the hotel. I was exceedingly undesirable that day. I was served with notice that the hall would not be open, and that I would not be permitted to speak. I sent back word to the mayor, by the only Socialist who was permitted to remain in town—and he only remained because they did not know he was there—I sent word to the mayor that I would speak in Warren that night, according to the schedule, or I would leave Warren in a box. (Applause.)

I went to the hall, and the Grand Army of the Republic had a special meeting, and in full uniform they all went to the hall and occupied the front seats, in order to pounce upon me and take good care of me if my speech did not suit them. I went to the hall and made my speech. I told them who was responsible for the assassination. I said: "As long as there is misery caused by robbery at the bottom, there will be assassination at the top." (Applause.) I showed them that it was their capitalist system that was responsible; that impoverished and brutalized the ancestors of the poor, witless boy who murdered the President. Yes, I made the speech that night. When I left there I was still very undesirable.

I returned some years thereafter. It seemed that the whole population of Warren was out. I was received with open arms. (Applause.) I was no longer a demagogue; I was no longer a fanatic; I was no longer an undesirable. I had become exceedingly honorable simply because the Socialists had increased in numbers and in power. Consequently, I had become something respectable—what a change, to poor respectability! If ever I become anything more respectable, I will be quite sure that I have outlived myself. (Laughter.)

Oh, it is the minorities who have made the histories of this world! They who have had the courage to take their places at the front; they who have been true enough to themselves to speak the truth that is in them; they who have opposed the established order of things; who have espoused the cause of the suffering, struggling poor; who have upheld, without regard to personal consequences—who have upheld the cause of righteousness; they have made the history; they have paved the way of civilization. Oh, there are so many who remain upon the popular side. They lack the courage to join a despised minority; they lack the fiber that endures. They are to be pitied, and not treated with contempt, they can not help it. But, thank God, in every age and every nation there have been that few, and they have been sufficient; and they have lived; they have endured; and we, who are on earth today, are under obligation to them, because they suffered, they sacrificed, they went to jail; they had their bones broken upon the wheel; they were burned at the stake, and had their ashes scattered to the four winds by the hands of fate. We are under obligation to them, because of what they suffered for us; and the only way we can cancel that obligation is by doing or seeking to do in the interest of those who are to come after us. (Applause.) And this is the high purpose of every Socialist on the face of the earth. Everywhere they are animated by the same lofty principle; everywhere they have the same noble ideal; everywhere they are clasping hands across the boundary lines; everywhere they are calling one another comrades, the blessed word that springs from the heart and soul of unity; that bursts into blossom upon the lips; eye, the word "comrade"—getting in closer touch all along the battle line; and they are waging the war—the war of the working class of the



world against the ruling class, the exploiting class of the world. They make mistakes; they profit with them all; we encounter defeats; they grow—they grow stronger through them all. They never take a backward step; the heart of the international Socialist never beats retreat; they are pushing forward. (Applause.) They are pressing forward, here, there, everywhere, in all of the zones that girdle this globe; everywhere these awakening workers, these class-conscious proletarians, these horny-fisted children of honest toil, everywhere wiping out the boundary lines; everywhere facing the larger and nobler patriotism; everywhere proclaiming the glad tidings of the coming emancipation; everywhere having their hearts attuned to the most sacred cause that ever challenged men and women to action in all the history of the world. Everywhere moving toward Democracy; everywhere marching toward the sunrise, their faces all aglow with the light of the coming day. These are the Socialists; these are the most zealous, the most enthusiastic crusaders the world has ever known. (Applause.) They are making history; that will light the horizon in the coming generations; they are bound upon emancipating the human race. They have been reviled; they have been persecuted; but they have been sufficient to themselves, pressing forward toward the height—aye, their triumph is now already begun.

Do you wish to hasten it? Join the Socialist party. Don't wait for the morrow. Come now. (Applause.) Enroll your name; take your place where you belong. You can not do your duty by proxy. You have got to do something yourself, and do it squarely, and look yourself in the face while you are doing it; and you will have no occasion to blush; you will know what it is to be a man or woman. You will lose nothing; you gain everything. (Applause.) Not only do you lose **nothing**, but you are very apt to find something, and that something will be yourself. And you need to find yourself—to know yourself. (Applause.) You need to know that you are fit for something better than slavery and cannon fodder. (Applause.) You need to know that you were not created to work and to produce to impoverish yourself and to enrich an idle loiter. You need to know that you have a soul to

develop, a manhood to sustain. You need to know that it is your duty to rise above the animal plane. You need to know that it is for you to know something about literature, and about science, and about art. You need to know that you are on the edge of a great new world. You need to get in touch with your comrades; you need to become conscious of your interest and your power as a class. You need to know that you belong to the great majority. You need to know as long as you are ignorant, as long as you are indifferent, as long as you are content, as long as you are unorganized, you will remain exactly where you are. (Applause.) You will be exploited; you will have to beg for a job; you will get just enough to keep you in working order; and you will be looked down upon with contempt by the very parasite that lives out of your sweat and unpaid labor. If you would be respected, you have got to begin by respecting yourself. (Applause.) Stand up, and look yourself in the face, and see a man for the first time. See how he looks, please.

Do not be in the predicament of that poor fellow that, after he had heard a Socialist speak, he concluded that he ought to be a Socialist. The argument was unanswerable. He said: "Yes. All he said is true. I ought to join the party." But, after a while, he concluded that he might possibly anger his boss, and lose his job. He said: "I guess I can't afford to take the chance." That night he slept alone. He was in conflict with his conscience, as he went to bed; and he dreamed a very terrible dream. Men always do when they are untrue to themselves. Socialists always go to bed with a clear conscience. He goes to sleep with his manhood, and he awakes and goes forth in the morning with his self-respect; and he looks the whole world in the face (applause and laughter), without a tremor, without a flicker. But this poor fellow, who lacked the courage to do what his reason and his conscience commanded he should do—this poor fellow had a terrible dream. He awoke, and at midnight he bounded from his bed in a state of terror, for he said: "My God, there is nobody in this room." (Laughter.) And he was absolutely right. (Laughter and applause.) No one! He was terror-stricken. How would you like to sleep in a room w     obody



in it? (Laughter.) It is an awful thing to be nobody. That is a state of mind to get out of—the sooner, the better.

There is a great deal of hope for Baker, Ruthenberg and Wagenknecht, but for the fellow that is nobody, there is no pardoning power. He is "in" for life. Anybody can be nobody, but it takes a man to be somebody.

To turn your back on that corrupt Republican party, and that still more corrupt Democratic party—the gold-dust boys of the ruling class (laughter), yes it counts for something. To step out of those great, popular, subsidized capitalist parties, and get into a minority party that stands for a principle, and fight for a cause. (Applause.) Make that change; it will be the most important change you have ever made in your life; and you will thank me to your dying day,—or living day—a Socialist never dies—you will thank me for having made the suggestion. It was a day of days for me. I remember it so well. I passed from darkness to light. It came like a flash, just as great, seething, throbbing Russia, in a flash, was transformed from the land of supreme darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself, especially so in a crisis.

You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent no one knows. If you are weak-fibred, that weakness will be sought out, and located. And if through that weakness, you are conquered, you may be driven out of the Socialist movement. We will have to bid good-bye to you. You are not the stuff of which Revolutionists are made. We are sorry for you (applause) unless you happen to be an intellectual. The intellectuals, a good many of them, are already gone. No—no loss on our side, nor any gain on theirs.

But, when discussing the intellectual phase of this question, I am always amused by it. It is the same old standard under which the rank and file are judged. I fail to depend upon leaders of men—of others, because they haven't got a thing of their own. What would become of the men that are sheep unless they had shepherds to lead them out of the wilderness into the land flowing with milk and honey? Oh, yes, "Ye are my sheep." In other words, "Ye are my mutton."



(Laughter.) And, if you had no intellectuals you could have no movement. They rule through their intellectuals in the capitalistic party. They have their so-called leaders. In the Republican and Democratic party you are not called upon to think. That is wholly unnecessary. The leaders do the thinking. You simply do the voting. They ride in the carriages, and you tramp in the mud, bringing up the rear, showing themselves cowards. They tend to the rest of the intellectuals in the capitalist party. The capitalist system affects to have great regard for intellect. They give themselves credit for having superior brains. We used to tell them sometime ago that the time would come when the working class would rule. They said: "Never in the world will they rule. It requires brains to rule." Implying that the workers have none.

We used to say that the people ought to own the railroads and operate them for the benefit of the people. We advocated that twenty years ago. They said: "You have got to have brains to run the trains." And the other day McAdoo fired all the brains. (Laughter.) So, haven't all the trains been coming and going exactly on time? Have you noticed any change since the brains are gone? It is a brainless system now. It is operated by hand. (Laughter.) But a good deal more efficiently than it was operated by brains before. (Laughter.) And this determines infallibly the quality of capitalist brains. It is the kind of brains you can get at a very reasonable figure at the market houses. There is not very much question about it. They have always given themselves credit with having superior brains. Aye, they have the brains of the fox; they have the brains of the wolf; they have had the shrewdness, the cunning of the coyote; but as for brains—brains, as representing intelligence and intellectual capacity, they are the most woefully ignorant people on the face of the earth. Give me a hundred capitalists, just as you find them here in Ohio—give me my pick of this plutocracy, and let me ask them a dozen simple questions about the history of their country, and I will show you that they are as ignorant as unlettered school boys. (Applause.) They know nothing of history; they are ignorant of sociology; they are strangers to science; but they know how to gouge; how to rob, and do it legally. And they

always do it legally, for the reason that the class which has the power to rob, upon a large scale, has the power to control the government and legalize their robbery. I haven't time to discuss this great question as extensively as I would like.

They are talking about your patriotic duty. Among other things, they are advising you to cultivate war gardens—cultivate a war garden. While they are doing this, a Government war report shows that practically fifty-two per cent of the arable, tillable soil is held out of use by the profiteers, by the land manipulators—held out of use. They, themselves, do not cultivate it. They could not if they would. They don't allow others to cultivate it; they keep it idle to enrich themselves; to pocket the hundreds of dollars of unearned increment. Who is it that makes their land valuable while it is fenced in and kept out of use? It is the people. Who pockets this tremendous value? The landlords. The landlords. Who is the patriot? And while we are upon the subject, I want you to think upon the term "landlord." Landlord. Lord of the land? This lord of the land is a great patriot. This lord, who professionally owns the earth, tells you that he is fighting to make the world safe for Democracy—he, who shuts all humanity out; and he who profiteers at the expense of the people who have been slain by multiplied thousands, under the pretense of being the great patriot he is—he, who is your arch-enemy; he it is that you need to wipe from power. (Applause.) It is he, it is he that is a menace to your loyalty and your liberty far more than the Prussian junker on the other side of the Atlantic Ocean. (Applause.) Fifty-two per cent, according to their own figures. They tell you that there is a shortage of flour, and that you need to produce. We have got to save wheat that we can export more wheat for the soldiers who fight on the other side, while half of your tillable soil is held out of use by the profiteers. What do you think of that?

Again, they tell you there is a coal famine, now in the State of Ohio. The State of Indiana, where I live, is largely underlaid with coal. There is an inexhaustible supply of it. The coal is beneath our feet. It is within touch—all that we can possibly use. And here are the miners; they are ready to enter the mines. There is the machinery ready to be put into



operation to increase the output to any desired capacity. And yet, only three weeks ago a national officer of the United Mine Workers issued and published an appeal to the Labor Department of the United States Government to the effect that if the six hundred thousand coal miners in the United States at this time, when they tell us of a coal famine—the six hundred thousand coal miners in this country are not permitted to work more than half time. I have been around over Indiana. I have been in the coal fields; I have seen the miners idle. In the meantime, scarcity of coal. They tell you that you ought to buy your coal right away. You may freeze to death next winter if you do not; and they charge you three prices for coal. Oh, yes, I think you ought to do this if you vote the Republican or Democratic ticket. (Applause.) Now we have private ownership of the coal mines. And this is the result of private ownership of this great social utility. The coal mines are privately owned, and the operators want a scarcity of coal. Why? So they can boost the prices indefinitely. If there was an abundance of coal, there would be too much coal. They make more money out of the scarcity of coal. So there is collusion between the operators and the railroads. The operators say there are no cars, and the railroad men say no coal. And between them they simply humbug, delude, defraud the people. There is coal. Here are the miners. The coal has accumulated; the miners are idle and hungry. We Socialists say: "Take possession of the mines in the name of the people." (Applause.) Set the miners at work; give every miner that works all the coal he produces. In this system the miner goes down in a pit three hundred feet. He goes to work and mines a ton of coal. He doesn't own one solitary bit of it. That ton of coal belongs to some plutocrat who lives in New York, Vienna or Paris. There is where the owners are before the war is declared. Then when they get together on their book accounts, he gets a share as if he did the work. The owner who lives in Europe, New York or Patagonia—that doesn't make any difference where he is. He doesn't have to keep at the work. He owns the tools, and he might as well own the miner. That is what you do for them as long as you vote the Republican ticket or the Democratic ticket. You vote to have these miners without a job—corporation vassals and also

paupers. But I'll tell you we Socialist say, "Take possession of the mines; call the miners to the coal mines. Let the miners mine the coal—every ounce." He himself is entitled to the full value of his toil. Then he can build himself a comfortable home; live in it; enjoy it; he can provide himself and his wife and children with clothes—good clothes—not shoddy; wholesome food in abundance, and the people will get coal at just what it cost to mine it.

Oh, that is Socialism as far as it goes. But you are not in favor of that program. It is too visionary. So continue to pay three prices for coal, and get your coal when winter comes, because you prefer to vote the capitalist ticket. You are still in the capitalist state of mind. It is a good deal like the Executive Lincoln said: "If you want that thing, that is what you will get to your heart's content." You will waken up; you will be raised up. A change is needed. Yes. Yes. Not of party, but change of system; a change from despotism to Democracy, wide as the world. (Applause.) A change from slavery to freedom; a change from brutehood to brotherhood; and to accomplish this you have got to organize; and you have got to organize industrially. Not along the zig-zag curved lines laid down by Sam Gompers, who, through all of his career, has been on the side of the master class. You never hear the capitalist press speak of him except in praise and adulation. He has become a great patriot. Oh, yes. Gompers, who was never on the unpopular side of any question or of any proposition; always conservative, satisfied to leave the labor problem be settled at the banquet board with Elihu Root, Andy Carnegie and the rest of the plutocrats. When they drank wine together and smoked scab cigars, then the labor question was settled. (Laughter.)

Oh, yes, while they are praising Gompers, there is the I. W. W. You find very few men who have the courage to say a word in behalf of the I. W. W. (Applause.) I have. (Applause.) Let me say here, that I have very great respect for the I. W. W. More than I have for their infamous detractors. (Applause.)

Listen. There has just been issued a pamphlet called "The Truth About the I. W. W." It has been issued, after long



investigation by five men, all of whom are known to the Socialists; all of whom are men of unquestioned standing in the capitalist world. At the head of this is Prof. John Graham Brooks of Harvard University; John A. Fish of the Survey of the Religious Organization of Pittsburgh; and Mr. Bruer, the Government investigator. Five of them conducted an impartial examination of the I. W. W. To use their own words, they have followed its trail; they have examined into its doings beginning at Bisbee, where the patriots, the rotten business men, the arch-criminals, deported twelve hundred men, working men, charging them with being I. W. W., when they were nothing of the kind. It is only necessary to label a man "I. W. W." to have him lynched, just as they lynched Praeger, an absolutely innocent man—innocent as we are. Just simply started the rumor because he bore a German name. He was a Socialist, but he had never uttered one disloyal word, only the rumor was started he was disloyal, which was made up. Just think of the crime for which the poor capitalist party is responsible. But, when the war press says war, you may rest assured that every pulpit in the land will say war. And when Wall street says peace, they will all say peace, because they are simply the instruments of Wall street. The pulpits in every age have been on the side of every ruling, exploiting class—of the ruling class, and not on the side of the people. That is why the I. W. W. is infamous.

Look into this pamphlet. Don't take the word of the Wall street press for that. Get this pamphlet of truth about the I. W. W. by five men who are incorruptible, uncontaminated—five men who dared to want to know the truth and tell the truth to the American people with the truth in this pamphlet. They say the I. W. W. in all of its career never committed as much violence against the ruling class as the ruling class has committed against the I. W. W. (Applause.)

You are not reading any reports about the trial at Chicago, are you? They used to publish extensive reports when the trials first began, and they told the people about what they proposed to prove about that gigantic conspiracy against the Government. And the trial has gone on now until they have exhausted all their testimony, and they have not proven violence in a single, solitary instance. Not one. They are



utterly lacking in testimony; and yet, one hundred and twelve men are now on trial, after lying in jail for months and months, without the shadow of a crime on them,—simply charged with belonging to the I. W. W. This is enough to take a man and send his soul to hell for. Just speak about the I. W. W. That is all; with no reason for it, they object to the I. W. W. The I. W. W. are fighting the fight of the bottom dog. (Applause.) And for the reason that Gompers is loved and glorified by Wall street, Bill Haywood is despised and denounced by the same gang.

What you need is to organize, not along curved lines, but along revolutionary industrial lines. (Applause.) You will never vote in the Socialist republic. You are needed to organize it; and you have got to organize it in the industries—unite in the industries. The industrial union is the forerunner of industrial Democracy. In the shop is where the industrial Democracy has its beginning. Organize according to the industries, and minimize all the Gompers. Get together. United, very often your power becomes invincible. Organize to get up to your fullest capacity. Organize. Act together. And when you organize industrially, you will soon learn that you can manage industry as well as operate industry. You can soon find that you don't need the idle for your masters. They are simply parasites. They don't give you work. You give them jobs taking what you produce, and that is all. Their function is to take what you produce. You can dispose of them. You don't need them to depend upon for your jobs. You ought to own your own tools; you ought to control your own jobs; you ought to be industrial free men instead of industrial slaves. Organize industrially. Make the organization complete. Then unite in the Socialist party. Make your organization economically complete. Vote as you strive; get into the party; stand with the party all of the days in the year. See—see that your party embraces the working class. It is the only working class party, the party that expresses the interest, the hope, the aspirations of the toilers of the world. Get into the party. Get your fellow workers into the party, too. Yes, especially this year—this historic year; this year in which the forces will clash as they never clashed before. This is the year that calls for men and women who have the fiber; who

have the courage, the manhood and the womanhood. Get into the party. Take your place in the ranks. Help to inspire the weak and to strengthen the faltering; and do your share to speed the coming of that brighter and better day for us all. (Applause.) Then, when we vote together and act together on the industrial pledge, we will develop the supreme power of the one class that can bring permanent peace to the world. We will have the courage. Industry will be organized. We will conquer the public power. We will transfer the title deeds of the railroads, the telegraph lines, the mills, the great industries—we will transfer them to the people; we will take possession in the name of the people. We will have industrial Democracy. We will have Socialist Democracy; we will have political Democracy. We will be the first free nation, whose government belongs to the people. Oh, this change will be universal; it will be permanent; it looks towards the light; it paves the way to emancipation.

And now for all of us to do our duty. The call is ringing in our ears. If you do, it is your duty to respond; and you can not falter without being convicted of treason to yourselves. Do not worry, please; don't worry over the charge of treason to your masters; but be concerned about the treason that involves yourselves. (Applause.) Be true to yourself, and you can not be a traitor to any good cause on earth.

Yes, we are going to sweep into power in this nation and in every other nation on earth. We are going to destroy the capitalist institutions; we are going to recreate them as legally free institutions. Before your very eyes the world is being destroyed. The world of capitalism is collapsing; the world of Socialism is rising.

It is your duty to help to build. We need builders of industry. Builders are necessary. We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind. (Thunderous and prolonged applause.)



# The Crying Need of the Day

By EUGENE V. DEBS

Need I say to my comrades that the crying need of the day is **ORGANIZATION**?

The war almost destroyed the Socialist party in the United States. That is one of the chief aims and inevitable effects of modern wars.

The party survived, but it was shaken to its foundations and stripped clean of everything that could not resist the shock. The test was a crucial one and the membership, though shattered, was purified and strengthened. The real revolutionary comrades stood true and saved the party, and now they have to rebuild it on a secure foundation and more powerfully and staunchly than before.

And this is now the crying duty of the hour!

Will you take hold **now**, and stick to the job, and do your part?

I appeal to you!

Attend the meeting of your local and plead the urgency of **Organization**!

If your local is weak, build it up and thereby help build the needed **Organization**!

If your local went down in the cyclone, rebuild it as another unit in the party **Organization**!

Build up the local, build up the state, build up the national party organization!

We should have a hundred thousand members again soon after the sun of the new year lights the world.

Take hold, comrades; I appeal to you, in the name of our beloved cause!

Take hold because you are a socialist, and know your duty, and have the will and energy to perform it.

Do it and do it **now**!

Ours is the liberating movement of the ages.

It is consecrated to the cause of the oppressed.

**It bears the scars of a thousand defeats but it grows stronger and braver and more invincible through them all, and it will never lay down the weapons of its peace-loving crusade, never cease its holy war until its triumph is complete and sets the whole world free!**

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The important phases of the struggle of the workers throughout the world for supremacy will be covered by this Department through leaflets and pamphlets. The literature of the National office is selected for the prime purpose of educating and organizing the workers of America to the point where they will intelligently end the vicious system of exploitation that keeps seventy-five per cent of the American people engaged in a bitter struggle for mere existence.

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OHIO

HISTORICAL  
MARKER

## NIMISILLA PARK

Nimisilla Park was established in 1894. Prior to its founding, the site was the location of the county fair from 1859 to 1893. Throughout its history, Nimisilla Park hosted horse races, live music, soldier reunions, and a zoo, among other events. Prominent political figures, such as Rutherford B. Hayes, James A. Garfield, William McKinley, and Eugene V. Debs, made speeches at the park. In 1918, Debs delivered a famous anti-war speech for which he was arrested and jailed. As of 2016, the park continues to serve as a gathering place for the community.

2016

CITY OF CANTON  
THE OHIO HISTORY CONNECTION

25-76



## Materials from the Trial Record

UNITED STATES OF AMERICA

Northern District of Ohio  
Eastern Division, ss.

April Term, A.D. 1918

THE UNITED STATES

PLAINTIFF

vs.

Eugene V. Debs

DEFENDANT

In the District Court of the United States.

No. 4057

VERDICT

We, the Jury in this case, being duly impanelled and sworn, do find

as to the 3rd Count of the Indictment, the Defendant is *guilty*  
as to the 4th Count of the Indictment, the Defendant is *guilty*  
as to the 6th Count of the Indictment, the Defendant is *not guilty*  
as to the 7th Count of the Indictment, the Defendant is *guilty*  
as to the 8th Count of the Indictment, the Defendant is *not guilty*  
as to the 10th Count of the Indictment, the defendant is *not guilty*

*Cyrus Stoner* Foreman

EUGENE V. DEBS VS. THE UNITED STATES OF AMERICA.

1 Supreme Court of United States.

No. —.

EUGENE V. DEBS, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Criminal. No. 4057.

Error from United States District Court, Northern District of Ohio,  
Eastern Division.

TRANSCRIPT OF RECORD.

Seymour Stedman, Chicago, Illinois;  
William A. Cunnea, Chicago, Illinois;  
Joseph W. Sharts, Dayton, Ohio;  
Morris H. Wolf, American Trust Bldg., Cleveland, O., Attorneys  
for Plaintiff in Error.

E. S. Wertz, U. S. Attorney, Federal Bldg., Cleveland, Ohio, At-  
torney for Defendant in Error.

2 THE UNITED STATES OF AMERICA,  
*Northern District of Ohio, ss:*

At a Stated Term of the District Court of the United States, within  
and for the Northern District of Ohio, begun and held at the City  
of Cleveland, in said District, on the first Tuesday in April, being  
the 2nd day of said month, in the year of our Lord one thousand  
nine hundred and eighteen and of the Independence of the United  
States of America the 142nd.

Present: Honorable D. C. Westenhaver, United States District  
Judge.

Among the proceedings then and there had were the following  
to wit:

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

Be it remembered that heretofore, to-wit: on the 29th day of June,  
A. D. 1918, came a Grand Jury of the United States, to wit: David



Arnold, John Cutter, H. E. Darling, William E. Diehm, Matt Dluznski, Joseph Durr, Henry A. Gerrow, U. R. Henry, William G. Hornsby, Otto C. Juergens, Daniel D. Kirby, W. F. Kirk, Geo. V. Kline, Max Kramer, Henry Mackenzie, Peter Mengert, Robert T. Morrison, Charles Osborn, H. P. Paisley, Harry C. Rowe, Wesley Stillwagon, W. H. Worst which said Grand Jury returned an Indictment, endorsed "A True Bill W. H. Worst, Foreman of Grand Jury", which Indictment is in the words and figures following, to-wit:

3 THE UNITED STATES OF AMERICA:

No. 4057.

NORTHERN DISTRICT OF OHIO,  
*Eastern Division, ss:*

In the District Court of the United States, Within and for the Division and District aforesaid, at the April Term of said Court, in the Year of Our Lord One Thousand Nine Hundred and Eighteen.

The Grand Jurors of the United States of America, duly impanelled, sworn and charged to inquire of crimes and offenses within and for the body of the Eastern Division of the Northern District of Ohio, upon their oaths present and find  
Sec. 3, Title 1, Act of June 15, 1917, as amended by Act of May 16, 1918, (Espionage). that Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, to-wit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and

District aforesaid, and within the jurisdiction of this court; the United States of America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States on the 6th day of April, A. D., 1917, did then and there unlawfully, wilfully and feloniously make and convey certain false reports and false statements, with intent on his part, the said defendant, to promote the success of the enemy of the United States so at war as aforesaid, that is to say, the Imperial German Government, to-wit, that he the said defendant, did then and there wilfully, unlawfully and feloniously make and utter certain false reports and false statements in a public speech and address to a certain assembly of people, among whom were Clyde R. Miller, Dennis R. Smith, A. P. Owen, and Virgil Steiner, citizens of the United States of America, and divers other persons whose names are to the Grand Jurors unknown,  
4 and if known, are too numerous to mention herein, and for that reason are omitted.

The said false reports and false statements were made and conveyed with the intent to promote the success of the enemy so at war



with the United States of America as aforesaid, and were in the words and substance as follows:

5 "Comrades, Friends and Fellow-Workers:—

"For this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest in your devotion to the cause of which I am to speak to you this afternoon. To speak for labor, to plead the cause of the men and women and children who toil, to serve the working class, has always been to me a high privilege, a duty of love.

"I have just returned from a visit from yonder (pointing to work-house) where three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think. And I would rather a thousand times be a free soul in jail than a sycophant or coward on the streets. They may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect and seeking to pave the way for better conditions for mankind.

"If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles.

"This assembly is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. What I say here amounts to but little. What I see here is exceedingly important. You workers here in Ohio, enlisted in the greatest cause ever organized in the interests of your class, are making history today in the face of threatening trouble of all kinds, history that is going to be read with profound interest by the coming generation. There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement. It is only when you begin to compromise that trouble begins. So far as I am concerned, it does not matter what others may say or think or do, as long as I am sure that I am right with myself and the cause.

"There are so many who seek refuge in the popular side of a great question. I am not of that number. As a Socialist I have long since learned how to stand alone.

"For the last month I have been traveling over the Hoosier state, and let me say that in all my connections with the Socialist movement, I have never seen such enthusiasm, such unity of movement,

such a promising outlook as there is today. Notwithstanding the statement published by the capitalist press that our leaders had deserted, I wish to say for myself I never had very much faith in leaders anyway. I am willing to be charged with almost anything rather than be charged with being a leader. I am suspicious of leaders, especially all the intellectual file. Give me the rank and file every day in the week. Go to the City of Washington and consult the files there and you will find that the corporation lawyers, members of congress and misrepresentatives of the masses—all of them claim that they have risen from the ranks. I am so glad that I cannot make that claim for myself. When I rise, it will be  
6 with the ranks and not from the ranks.

"When I came away from Indiana, the comrades said, 'When you cross the line, tell those comrades that we are on duty and doing duty and are going to make a record this fall that will be heard around the world.'

"The Socialists of Ohio are very much alive this year. The party has been 'killed' this year, which accounts for its extraordinary activity. This naturally helps a party. The oftener it is killed, the more energetic and more powerful they become. We have been reading capitalist newspapers lately, and what a capacity they have for lying. They know all about the Socialist party except what is true. Only the other day, they took an article that I had written and most of you have read, and made it appear that I had undergone a marvelous transformation. I had suddenly come to my senses, had ceased to be a wicked Socialist and had become a respectable Socialist, a patriotic Socialist—as if I had ever been anything else. What was the purpose of this deliberate misrepresentation? It is so self-evident that it was against itself. It was to sow dissatisfaction among our ranks, so that we would pit ourselves against each other to our mutual undoing. But Socialists were not born yesterday. They know how to read capitalists' newspapers, and to believe exactly the opposite of what they read.

"Why should a Socialist be discouraged on the eve of the greatest triumph of all the history of the Socialist movement? It is true that these are anxious, trying days for us all, testing those who are upholding the banner of the working class in the greatest struggle the world has ever known against the exploiters of the world; a time in which the weak, the cowardly, will falter and fail and desert. They lack the fibre to endure the revolutionary test. They fall away. They disappear as if they had never been.

"On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect, to assert their convictions, to stand by them, to go to jail or to hell for them—they are writing their names in this crucial hour, they are writing their names in fadeless letters in the history of mankind. Those boys over yonder, those comrades of ours—and how I love them—aye, they are our younger brothers, their names are seared in our souls.

"I am proud of them. They are there for us and we are for them. Their lips, though temporarily mute, are more eloquent than ever



before, and their voices, though silent, are heard around the world.

"Are we opposed to Prussian militarism? Why, we have been fighting it since the day the Socialist movement was born and we are going to continue to fight it today and until it is wiped from the face of the earth. Between us there is no truce, no compromise, but before I proceed along this line, let me recall a little history in which we are all interested.

"In 1869, that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sent to prison for three months because of his war as a Socialist on the Kaiser and the Junkers that ruled Germany. In the meantime, the Franco-Prussian war broke out. Liebknecht and Badel were the Socialist members of the Reichstag. They were the only two to protest against the taking of Alsace-Lorraine from France and giving it to Germany. They were taken from the Reichstag and sent to prison for two years. For four years previous to this, they had been fighting the Kaiser and the Junkers of Germany. They have fought them from that day to this. Thousands of them have languished in the prisons for war on the ruling classes of that country.

"Let us come down the line. At the close of Roosevelt's second term as President, he went over to Africa to make war on some of his ancestors. You remember at the close of his expedition, he visited all of the capitals of Europe and he was wine, dined, dignified and glorified by the Kaiser, kings and czars of the old world. He visited Potsdam while the Kaiser was there and, according to the account published in the American newspapers, he and the Kaiser were soon on the most intimate terms. They were hilariously intimate with each other. They slapped each other on the back. After Roosevelt had effused over the German troops, he remarked to the Kaiser, 'If I had that kind of an army, I would conquer the world.' He knew the Kaiser as well as he knows him now and yet he permitted himself to be entertained by the Beast of Berlin. He was cheek by jowl with the Beast of Berlin. And while he was being entertained by the Beast of Berlin, that same Kaiser was putting Socialist leaders in jail for fighting Kaiserism. Roosevelt was a guest of honor of the Kaiser while the Socialists were in the jail for fighting the Kaiser. Who was fighting against the Kaiser? Roosevelt? No. It was the Socialists.

"When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore Roosevelt recognized each other at sight, at the first touch, they make admission that they are fatal to the champions of democracy. They admitted that their ideas and ideals were about the same. While Theodore Roosevelt, who is now the great champion of democracy, the arch foe of autocracy, what business had he as the guest of honor of the Kaiser and was it not pretty strong proof that he was a Kaiser at heart? After being the guest of the Kaiser, he wants us to send 10,000,000 men to murder the Kaiser, to murder his former friend and pal. And yet he is the patriot and we are the traitors. I challenge you to find any Socialist who was ever the guest of the Kaiser, except as one of his prison wards.

"In 1902, Prince Henry paid a visit to this country. Do you remember him? I do. Exceedingly well. Prince Henry is the brother of King Wilhelm. He is an autocrat; an aristocrat; a Junker of Junkers. He came over in 1902 as the representative of Kaiser Wilhelm. He was received by Congress, by several State legislatures, among others the State legislature of Massachusetts, then in session. He was invited there by the members of the legislature. And when Prince Henry came there, there was one member who kept his self-respect, put on his hat, and as Prince Henry walked in, he walked out, and that man was James F. Carey, and all the rest of the representatives joined in doing honor in the most servile spirit to that high representative of autocracy, and Carey was the only one who left that meeting.

"You will remember history along the same line. I have a distinct recollection. It occurred just 15 years ago. When Prince Henry came here, all of our plutocracy, living along Fifth Avenue, threw their places' doors wide open and received him with open arms. They got down on their stomachs and vied with each other to lick the boots of Prince Henry, the representative of the Beast of Berlin.

"Do not imagine for one moment that all the plutocrats and Junkers are all in Germany; we have them here in our own country, and these want to keep our eyes focused upon the Junkers in Germany so we won't see those within our own border. I have no earthly use for the Junkers of Germany and not one particle more use for the Junkers in the United States.

8 "They tell us that we live in a great republic. Our institutions are democratic. We are a free people. This is too much, even as a joke. It is not a subject for levity; it is an exceedingly serious matter.

"To whom do the Wall Street Junkers in our country, to whom do they marry their daughters? After they have wrung the hundreds of millions from your sweat and from your life blood, in times of war as well as peace, they invest these millions in the titles of broken-down aristocrats, and to buy counts of no-account. Are they satisfied to wed their daughters to honest workmen? To real democrats? They scour the markets of Europe for those who have titles and nothing else, and they swap their titles for money. And they swap their matrimony for more money, while the plutocrats in this country scan the country with their magnifying glasses for evidence of disloyalty. Patriotism is the last refuge of scoundrels. It has been the tyrant who wrapped himself in a cloak of religion or patriotism, or both. They would have you believe that the Socialist party consists in the main of disloyalists and traitors. It is true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation. And the gang on the Pacific coast are trying to hang Tom Mooney in spite of the protests of the civilized world.

"I know Tom Mooney. He is an absolutely honest, innocent man. He had no more to do with the crime with which he was charged than I have and if he ought to go to the gallows, so ought I. What is he guilty of? I will tell you. For years he has been fighting the battles of the working class out on the Pacific coast. He continued



loyally in the service of the working class. They said, 'He cannot be bought; he refuses to be bribed. Therefore, he must be murdered.'

"Let us review another bit of history. Do you remember when Francis J. Heney was shot down in the court-rooms of San Francisco? A committee of high-binders, composed largely of members of the Chamber of Commerce, absolutely controlled the courts of San Francisco. They did not hesitate to commit murder to further their murderous regime. Tom Mooney was the only representative of the working class that they could not control. They owned the railways; they controlled the industries; they were the rulers and from them there was no appeal. And they were as infamous as any rulers that ruled in Germany or any other country. At last a grand jury was found that would indict them, and Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang controlled by the Chamber of Commerce, this gang hired a murderer to shoot Francis J. Heney down in the court-room and he did. Francis J. Heney happened to live, but that was no fault of theirs. The same gang are also for the execution of Tom Mooney. Every solitary one of them claims to be an arch-patriot. Everyone of them claims he is trying to make democracy safe in this world. What humbug! What rot! What false pretence! The patriots are the men who have the courage to stand face to face and fight them, and they call them disloyalists and traitors, and if this be true, I want to take my place side by side with the traitors in this country.

"Why, the other day they sent a woman to Wichita penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States under the rule of the plutocrats is the only country which would send a woman to the penitentiary for ten years for exercising the right to free speech. If this be treason, let them make the most of it. Let me review another bit of history. I have known this woman for ten years. Personally I know her as if she were my own younger sister. She is a woman of absolute integrity. She is a woman of courage. She is a woman of unimpeachable loyalty to the Socialist movement. She went out  
9 into Dakota and made her speech, followed by plain-clothes men in the service of the government, intent upon encompassing her arrest, prosecution and conviction. She made a certain speech and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony was that of a hired witness. And thirty farmers who went to Bismarck to testify in her favor, the judge refused to allow to testify. This would seem incredible to me if I had not some experience of my own with a Federal court. Who appoints the Federal courts? The people? Every solitary one of them holds his position through influence and power of corporation capital. And when they go to the bench, they go there not to serve the people, but to serve the interests who sent them. The other day, by a vote of five to four, they declared the Child Labor Law unconstitutional; a law secured after twenty years of education and agitation by all kinds of people, and yet by a ma-

majority of one, the Supreme Court, a body of corporation lawyers, with just one solitary exception, wiped it from the Statute books, so that we may still continue to grind the blood of little children into profit for the Junkers of Wall Street, and this in a country that is now fighting to make democracy safe for the world. These are not palatable truths to them. And they do not want you to hear them and that is why they brand us as traitors and disloyalists. If we were not traitors to the people, we would be eminently respectable citizens and ride in limousines. It is precisely because we are disloyal to the traitors that we are not disloyal to the people of this country.

"You have heard of Scott Nearing. He is the greatest teacher in the United States. He was in the University of Pennsylvania until the Board of Trustees, composed of great capitalists, found he was teaching true economics to the students of that university, as the same forces said of a Judean carpenter nineteen centuries ago. They said of Jesus Christ, who was a workman and teacher, they said, 'He is preaching a false religion,' and his lineal descendants said, 'He is preaching economics.' 'We cannot crucify him so we will starve him to death. We will make it impossible for him to get a job. He is a dangerous man. He is teaching the truth.' The truth is always unpalatable to these plutocrats, who make their living by the sweat of the working class.

"They are afraid that we might contaminate you. You are their wards. They are their own guardians. They must see that our vicious doctrines do not reach your ears. What a mistake they make. We ought to pass a resolution of thanks and send it to them. Those are the people who want to seize our paper. And woe to the man who reads Socialist literature. He is a goner. I have known of a thousand experiments but I have never known of a single experiment to escape it. Let me tell you about John Werk, of Milwaukee. The capitalists of Milwaukee said, 'John, we have got to find out about Socialism. John, you are a bright, young lawyer; we want you to find out all about Socialist literature.' After reading the Socialist volume, John was a full-fledged Socialist and has been fighting for us ever since.

"How short-sighted the ruling class is. The exploiter cannot see beyond the end of his nose. He has just cunning enough to know what graft is and where it is but he has no vision. You know this is a great throbbing world that spreads out in all directions. Look at Rockefeller. Every move he makes hastenes the coming of his doom. Every time the capitalist class tries to hinder the cause of Socialism they hurt themselves. Every time they strangle a Socialist newspaper they add a thousand voices to those which are aiding Socialism. The Socialist has a great idea. An expanding philosophy.

It is spreading over the face of the earth. It is useless to resist it as it is to resist the rising sunrise. Can you see it?

If you cannot you are lacking in vision, in understanding. What a privilege it is to serve it. I have regretted a thousand times I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and



I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value: It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviki of Russia. (Applause.) Yes, those heroic men and women, those unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was what was bequeathed to the revolution by the Czar. For this condition, Leon Trotsky was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotsky came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers.

"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic

duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to loose, and the subject class  
 11 has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
 Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farci-al. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogne, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon. I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town,



he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed a resolution that Debs was responsible for the death of McKinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.

"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who remain on the popular level. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war of the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.

"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines every-

where. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause; everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have got to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to impoverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

13 You will be exploited. You will have to beg for a job and you will get just enough to keep you in working order. And you will be looked down upon in contempt. If you would be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.



"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason that the class which can rob on a large scale has the power to control courts.

"Among other things they tell you to cultivate war gardens. Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle, to enrich themselves. Thus, it makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

"They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine Workers issued a bulletin to the Labor Department of the United States that the 600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more

than one-half time. I have seen the miners idle.' In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, 'Take possession of the mines. Set the miners at work. Give the miner all he produces.' The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the miner. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to charge three prices for coal. If that is the thing you want, you will get it to your heart's content.

"A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brute-hood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. It is only necessary to label a man, 'I. W. W.' to lynch him. Just think of the state of mind for which the capitalist press is responsible.

15 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For



the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together. And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders. We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

16 And the Grand Jurors further present and find that at the time and place aforesaid, when the said defendant so made and conveyed the said false reports and false statements as aforesaid, he did so wilfully, and that said false reports and false statements aforesaid, were so made and conveyed by the said defendant with the intent on his part to promote the success of the enemy of the United States so at war as aforesaid, that is to say, to promote the success of the Imperial German Government in said war; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

17 *Second Count.*

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and find that the said Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, to-wit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and District aforesaid, and within the jurisdiction of this court; the United States of

Sec. 3, Title 1, Act of June 15, 1917, as amended by Act of May 16, 1918, (Espionage.)

America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States on the 6th day of April, A. D., 1917, did then and there unlawfully, wilfully and feloniously make and convey certain false reports and false statements, with intent on his part, the said defendant, to interfere with the operation and success of the military and naval forces of the United States, to wit, that he the said defendant, did then and there wilfully, unlawfully and feloniously make and utter certain false reports and false statements in a public speech and address, at the time and place aforesaid, to a certain assembly of people, among whom were Clyde R. Miller and Dennis R. Smith, citizens of the United States of America, and between the ages of twenty-one and thirty, inclusive, and divers other persons, part of whom were citizens of the United States, between the ages of twenty-one and thirty, inclusive, whose names are to the Grand jurors unknown, and if known, are too numerous to mention herein, and for that reason are omitted, which said false reports and false statements made and conveyed as aforesaid, at the time and place aforesaid, to the persons aforesaid, were in words and substance as follows:

18 "Comrades, Friends and Fellow-Workers:—

"For this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest in and your devotion to the cause of which I am to speak to you this afternoon. To speak for labor, to plead the cause of the men and women and children who toil, to serve the working class, has always been to me a high privilege, a duty of love.

"I have just returned from a visit from yonder (pointing to work-house) where three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think. And I would rather a thousand times be a free soul in jail than a sycophant or coward on the streets. They may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect and seeking to pave the way for better conditions for mankind.

"If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles.

"This assembly is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. What



I say here amounts to but little. What I see here is exceedingly important. You workers here in Ohio, enlisted in the greatest cause ever organized in the interests of your class, are making history today in the face of threatening trouble of all kinds, history that is going to be read with profound interest by the coming generation. There is but one thing that you have to be concerned about and that is that you keep four-square with the principles of the international Socialist movement. It is only when you begin to compromise that trouble begins. So far as I am concerned, it does not matter what others may say or think or do, as long as I am sure that I am right with myself and the cause.

"There are so many who seek refuge in the popular side of a great question. I am not of that number. As a Socialist I have long since learned how to stand alone.

"For the last month I have been traveling over the Hoosier state, and let me say that in all my connections with the Socialist movement, I have never seen such enthusiasm, such unity of movement, such a promising outlook as there is today. Notwithstanding the statement published by the capitalist press that our leaders had deserted, I wish to say for myself I never had very much faith in leaders anyway. I am willing to be charged with almost anything rather than be charged with being a leader. I am suspicious of leaders, especially all the intellectual file. Give me the rank and file every day in the week. Go to the City of Washington and consult the files there and you will find that the corporation lawyers, members of congress and misrepresentatives of the masses—all of them claim that they have risen from the ranks. I am so glad that I cannot make that claim for myself. When I rise, it will be  
19 with the ranks and not from the ranks.

"When I came away from Indiana, the comrades said, 'When you cross the line, tell those comrades that we are on duty and doing duty and are going to make a record this fall that will be heard around the world.'

"The Socialists of Ohio are very much alive this year. The party has been 'killed' this year, which accounts for its extraordinary activity. This naturally helps a party. The oftener it is killed, the more energetic and more powerful they become. We have been reading capitalist newspapers lately, and what a capacity they have for lying. They know all about the Socialist party except what is true. Only the other day, they took an article that I had written and most of you have read, and made it appear that I had undergone a marvelous transformation. I had suddenly come to my senses, had ceased to be a wicked Socialist and had become a respectable Socialist, a patriotic Socialist—as if I had ever been anything else. What was the purpose of this deliberate misrepresentation? It is so self-evident that it was against itself. It was to sow dissatisfaction among our ranks, so that we would pit ourselves against each other to our mutual undoing. But Socialists were not born yesterday. They know how to read capitalists' newspapers, and to believe exactly the opposite of what they read.



"Why should a Socialist be discouraged on the eve of the greatest triumph of all the history of the Socialist movement? It is true that these are anxious, trying days for us all, testing those who are upholding the banner of the working class in the greatest struggle the world has ever known against the exploiters of the world; a time in which the weak, the cowardly, will falter and fail and desert. They lack the fibre to endure the revolutionary test. They fall away. They disappear as if they had never been.

"On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect, to assert their convictions, to stand by them, to go to jail or to hell for them—they are writing their names in this crucial hour, they are writing their names in fadeless letters in the history of mankind. Those boys over yonder, those comrades of ours—and how I love them—aye, they are our younger brothers, their names are seared in our souls.

"I am proud of them. They are there for us and we are for them. Their lips, though temporarily mute, are more eloquent than ever before, and their voices, though silent, are heard around the world.

"Are we opposed to Prussian militarism? Why, we have been fighting it since the day the Socialist movement was born and we are going to continue to fight it today and until it is wiped from the face of the earth. Between us there is no truce, no compromise, but before I proceed along this line, let me recall a little history in which we are all interested.

"In 1869, that grand old warrior of the Socialist revolution, the older Liebknecht, was arrested and sent to prison for three months because of his war as a Socialist on the Kaiser and the Junkers that ruled Germany. In the meantime, the Franco-Prussian war broke out. Liebknecht and Badel were the Socialist members of the Reichstag. They were the only two to protest against the taking of Alsace-Lorraine from France and giving it to Germany. They were taken from the Reichstag and sent to prison for two years. For four years previous to this, they had been fighting the Kaiser and the Junkers of Germany. They have fought them from that  
20 day to this. Thousands of them have languished in the prisons for war on the ruling classes of that country.

"Let us come down the line. At the close of Roosevelt's second term as President, he went over to Africa to make war on some of his ancestors. You remember at the close of his expedition, he visited all of the capitals of Europe and he was wined, dined, dignified and glorified by the Kaiser, kings and czars of the old world. He visited Potsdam while the Kaiser was there and, according to the account published in the American newspapers, he and the Kaiser were soon on the most intimate terms. They were hilariously intimate with each other. They slapped each other on the back. After Roosevelt had effused over the German troops, he remarked to the Kaiser, 'If I had that kind of an army, I would conquer the world.' He knew the Kaiser as well as he knows him now and yet he permitted himself to be entertained by the Beast of Berlin. He was cheek by jowl with the Beast of Berlin. And while he was being entertained by



the Beast of Berlin, that same Kaiser was putting Socialist leaders in jail for fighting Kaiserism. Roosevelt was a guest of honor of the Kaiser while the Socialists were in the jail for fighting the Kaiser. Who was fighting against the Kaiser? Roosevelt? No. It was the Socialists.

"When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore Roosevelt recognized each other at sight, at the first touch, they make admission that they are fatal to the champions of democracy. They admitted that their ideas and ideals were about the same. While Theodore Roosevelt, who is now the great champion of democracy, the arch foe of autocracy, what business had he as the guest of honor of the Kaiser and was it not pretty strong proof that he was a Kaiser at heart? After being the guest of the Kaiser, he wants us to send 10,000,000 men to murder the Kaiser, to murder his former friend and pal. And yet he is the patriot and we are the traitors. I challenge you to find any Socialist who was ever the guest of the Kaiser, except as one of his prison wards.

"In 1902, Prince Henry paid a visit to this country. Do you remember him? I do. Exceedingly well. Prince Henry is the brother of King Wilhelm. He is an autocrat; an aristocrat; a Junker of Junkers. He came over in 1902 as the representative of Kaiser Wilhelm. He was received by Congress, by several State legislatures, among others the State legislature of Massachusetts, then in session. He was invited there by the members of the legislature. And when Prince Henry came there, there was one member who kept his self-respect, put on his hat, and as Prince Henry walked in, he walked out, and that man was James F. Carey, and all the rest of the representatives joined in doing honor in the most servile spirit to that high representative of autocracy, and Carey was the only one who left that meeting.

"You will remember history along the same line. I have a distinct recollection. It occurred just 15 years ago. When Prince Henry came here, all of our plutocracy, living along Fifth Avenue, threw their places' doors wide open and received him with open arms. They got down on their stomachs and vied with each other to lick the boots of Prince Henry, the representative of the Beast of Berlin.

"Do not imagine for one moment that all the plutocrats and Junkers are all in Germany; we have them here in our own country, and these want to keep our eyes focused upon the Junkers in Germany so we won't see those within our own border. I have no earthly use for the Junkers of Germany and not one particle more use for the Junkers in the United States.

21 "They tell us that we live in a great republic. Our institutions are democratic. We are a free people. This is too much, even as a joke. It is not a subject for levity; it is an exceedingly serious matter.

"To whom do the Wall Street Junkers in our country, to whom do they marry their daughters? After they have wrung the hundreds of millions from your sweat and from your life blood, in times of war as well as peace, they invest these millions in the titles of broken-down aristocrats, and to buy counts of no-account. Are they

satisfied to wed their daughters to honest workmen? To real democrats? They scour the markets of Europe for those who have titles and nothing else, and they swap their titles for money. And they swap their matrimony for more money, while the plutocrats in this country scan the country with their magnifying glasses for evidence of disloyalty. Patriotism is the last refuge of scoundrels. It has been the tyrant who wrapped himself in a cloak of religion or patriotism, or both. They would have you believe that the Socialist party consists in the main of disloyalists and traitors. It is true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation. And the gang on the Pacific coast are trying to hang Tom Mooney in spite of the protests of the civilized world.

"I know Tom Mooney. He is an absolutely honest, innocent man. He had no more to do with the crime with which he was charged than I have and if he ought to go to the gallows, so ought I. What is he guilty of? I will tell you. For years he has been fighting the battles of the working class out on the Pacific coast. He continued loyally in the service of the working class. They said, 'He cannot be bought; he refuses to be bribed. Therefore, he must be murdered.'

"Let us review another bit of history. Do you remember when Francis J. Heney was shot down in the court-rooms of San Francisco? A committee of high-binders, composed largely of members of the Chamber of Commerce, absolutely controlled the courts of San Francisco. They did not hesitate to commit murder to further their murderous regime. Tom Mooney was the only representative of the working class that they could not control. They owned the railways; they controlled the industries: they were the rulers and from them there was no appeal. And they were as infamous as any rulers that ruled in Germany or any other country. At last a grand jury was found that would indict them, and Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang controlled by the Chamber of Commerce, this gang hired a murderer to shoot Francis J. Heney down in the court-room and he did. Francis J. Heney happened to live, but that was no fault of theirs. The same gang are also for the execution of Tom Mooney. Every solitary one of them claims to be an arch-patriot. Everyone of them claims he is trying to make democracy safe in this world. What humbug! What rot! What false pretence! The patriots are the men who have the courage to stand face to face and fight them, and they call them disloyalists and traitors, and if this be true, I want to take my place side by side with the traitors in this country.

"Why, the other day they sent a woman to Wichita penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States under the rule of the plutocrats is the only country which would send a woman to the penitentiary for ten years for exercising the right to free speech. If this be treason, let them make the most of it. Let me review another bit of history. I have known this woman for ten years. Personally I know her as if she were my own younger sister. She is a woman of absolute



integrity. She is a woman of courage. She is a woman of unimpeachable loyalty to the Socialist movement. She went out  
22 into Dakota and made her speech, followed by plain-clothes men in the service of the government, intent upon encompassing her arrest, prosecution and conviction. She made a certain speech and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony was that of a hired witness. And thirty farmers who went to Bismarck to testify in her favor, the judge refused to allow to testify. This would seem incredible to me if I had not some experience of my own with a Federal court. Who appoints the Federal courts? The people? Every solitary one of them holds his position through influence and power of corporation capital. And when they go to the bench, they go there not to serve the people, but to serve the interests who sent them. The other day, by a vote of five to four, they declared the Child Labor Law unconstitutional; a law secured after twenty years of education and agitation by all kinds of people, and yet by a majority of one, the Supreme Court, a body of corporation lawyers, with just one solitary exception, wiped it from the Statute books, so that we may still continue to grind the blood of little children into profit for the Junkers of Wall Street, and this in a country that is now fighting to make democracy safe for the world. These are not palatable truths to them. And they do not want you to hear them and that is why they brand us as traitors and disloyalists. If we were not traitors to the people, we would be eminently respectable citizens and ride in limousines. It is precisely because we are disloyal to the traitors that we are not disloyal to the people of this country.

"You have heard of Scott Nearing. He is the greatest teacher in the United States. He was in the University of Pennsylvania until the Board of Trustees, composed of great capitalists, found he was teaching true economics to the students of that university, as the same forces said of a Judean carpenter nineteen centuries ago. They said of Jesus Christ, who was a workman and teacher, they said, 'He is preaching a false religion.' and his lineal descendants said, 'He is preaching economics.' 'We cannot crucify him so we will starve him to death. We will make it impossible for him to get a job. He is a dangerous man. He is teaching the truth.' The truth is always unpalatable to these plutocrats, who make their living by the sweat of the working class.

"They are afraid that we might contaminate you. You are their wards. They are their own guardians. They must see that our vicious doctrines do not reach your ears. What a mistake they make. We ought to pass a resolution of thanks and send it to them. Those are the people who want to seize our paper. And woe to the man who reads Socialist literature. He is a goner. I have known of a thousand experiments but I have never known of a single experiment to escape it. Let me tell you about John Werk, of Milwaukee. The capitalists of Milwaukee said. 'John, we have got to find out about Socialism. John, you are a bright, young lawyer; we want you to find out all about Socialist literature.' After reading the Socialist

volume, John was a full-fledged Socialist and has been fighting for us ever since.

"How short-sighted the ruling class is. The exploiter cannot see beyond the end of his nose. He has just cunning enough to know what graft is and where it is but he has no vision. You know this is a great throbbing world that spreads out in all directions. Look at Rockefeller. Every move he makes hastenes the coming of his doom. Every time the capitalist class tries to hinder the cause of Socialism they hurt themselves. Every time they strangle a Socialist newspaper they add a thousand voices to those which are aiding Socialism. The Socialist has a great idea. An expanding philosophy.

23 It is spreading over the face of the earth. It is useless to resist it as it is to resist the rising sunrise. Can you see it?

If you cannot you are lacking in vision, in understanding. What a privilege it is to serve it. I have regretted a thousand times I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value. It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviks of Russia. (Applause.) Yes, those heroic men and women, those unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was



what was bequeathed to the revolution by the Czar. For this condition, Leon Trotsky was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotsky came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers.

"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class

24 has had all to gain and nothing to lose, and the subject class has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farcical. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town, he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed a resolution that Debs was responsible for the death of McKinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.

"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who



remain on the popular side. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war of the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.

"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines everywhere. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause; everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have got to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to impoverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

You will be exploited. You will have to beg for a job and  
 26 you will get just enough to keep you in working order. And you will be looked down upon in contempt. If you would be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.

"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason that the class which can rob on a large scale has the power to control courts.

"Among other things they tell you to cultivate war gardens. Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle to enrich themselves. Thus, it makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the



subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

"They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine Workers issued a bulletin to the Labor Department of the United States that the 600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more than one-half time. I have seen the miners idle. In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, 'Take possession of the mines. Set the miners at work. Give the miner all he produces.' The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the miner. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to charge three prices for coal. If that is the thing you want, you will get it to your heart's content.

"A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brute-hood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. It is only necessary to label a man, 'I. W. W.' to lynch him. Just think of the state of mind for which the capitalist press is responsible.

28 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together. And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders. We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

29 And the Grand Jurors further present and find that at the time and place aforesaid, when he, the said defendant so made and conveyed the said false reports and false statements as



aforesaid, he did so wilfully, and that said false reports and false statements aforesaid, were so made and conveyed by the said defendant with the intent on his part to interfere with the operation and success of the military and naval forces of the United States; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

30

*Third Count.*

And the Grand Jurors aforesaid, upon their oaths, aforesaid, do further present and find that the said Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, to wit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and District aforesaid, and within the jurisdiction of this court; the United States of America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States on the 6th day of April, A. D., 1917, did then and there unlawfully, wilfully and feloniously cause and attempt to cause and incite and attempt to incite, insubordination, disloyalty, mutiny and refusal of duty, in the military and naval forces of the United States, that is to say, that he, the said defendant, did then and there, state, utter, publish and say in a public speech and address, at the time and place aforesaid, to a certain assembly of people, among whom were Clyde R. Miller and Dennis R. Smith, both of whom then and there being citizens of the United States, and then and there being between the ages of twenty-one and thirty, both inclusive, and divers others persons, part of whom were citizens of the United States, between the ages of twenty-one and thirty, both inclusive, whose names are to the Grand Jurors unknown, and if known, are too numerous to mention herein, and for that reason are omitted, which said public speech and address so stated, uttered, published and said as aforesaid, at the time and place aforesaid, and in the manner and under the circumstances aforesaid, in words and substance, is as follows:

31 "Comrades, Friends and Fellow-Workers:—

"For this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest in your devotion to the cause of which I am to speak to you this afternoon. To speak for labor, to plead the cause of the men and women and children who toil, to serve the working class, has always been to me a high privilege, a duty of love.

"I have just returned from a visit from yonder (pointing to work-house) where three of our most loyal comrades are paying the pen-

alty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think. And I would rather a thousand times be a free soul in jail than a sycophant or coward on the streets. They may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect and seeking to pave the way for better conditions for mankind.

"If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles.

"This assembly is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. What I say here amounts to but little. What I see here is exceedingly important. You workers here in Ohio, enlisted in the greatest cause ever organized in the interests of your class, are making history today in the face of threatening trouble of all kinds, history that is going to be read with profound interest by the coming generation. There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement. It is only when you begin to compromise that trouble begins. So far as I am concerned, it does not matter what others may say or think or do, as long as I am sure that I am right with myself and the cause.

"There are so many who seek refuge in the popular side of a great question. I am not of that number. As a Socialist I have long since learned how to stand alone.

"For the last month I have been traveling over the Hoosier state, and let me say that in all my connections with the Socialist movement, I have never seen such enthusiasm, such unity of movement, such a promising outlook as there is today. Notwithstanding the statement published by the capitalist press that our leaders had deserted, I wish to say for myself I never had very much faith in leaders anyway. I am willing to be charged with almost anything rather than be charged with being a leader. I am suspicious of leaders, especially all the intellectual file. Give me the rank and file every day in the week. Go to the City of Washington and consult the files there and you will find that the corporation lawyers, members of congress and misrepresentatives of the masses—all of them claim that they have risen from the ranks. I am so glad that I cannot make that claim for myself. When I rise, it will be with the ranks and not from the ranks.

"When I came away from Indiana, the comrades said,



'When you cross the line, tell those comrades that we are on duty and doing duty and are going to make a record this fall that will be heard around the world.'

"The Socialists of Ohio are very much alive this year. The party has been 'killed' this year, which accounts for its extraordinary activity. This naturally helps a party. The oftener it is killed, the more energetic and more powerful they become. We have been reading capitalist newspapers lately, and what a capacity they have for lying. They know all about the Socialist party except what is true. Only the other day, they took an article that I had written and most of you have read, and made it appear that I had undergone a marvelous transformation. I had suddenly come to my senses, had ceased to be a wicked Socialist and had become a respectable Socialist, a patriotic Socialist—as if I had ever been anything else. What was the purpose of this deliberate misrepresentation? It is so self-evident that it was against itself. It was to sow dissatisfaction among our ranks, so that we would pit ourselves against each other to our mutual undoing. But Socialists were not born yesterday. They know how to read capitalists' newspapers, and to believe exactly the opposite of what they read.

"Why should a Socialist be discouraged on the eve of the greatest triumph of all the history of the Socialist movement? It is true that these are anxious, trying days for us all, testing those who are upholding the banner of the working class in the greatest struggle the world has ever known against the exploiters of the world; a time in which the weak, the cowardly, will falter and fail and desert. They lack the fibre to endure the revolutionary test. They fall away. They disappear as if they had never been.

"On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect, to assert their convictions, to stand by them, to go to jail or to hell for them—they are writing their names in this crucial hour, they are writing their names in fadeless letters in the history of mankind. Those boys over yonder, those comrades of ours—and how I love them—aye, they are our younger brothers, their names are seared in our souls.

"I am proud of them. They are there for us and we are for them. Their lips, though temporarily mute, are more eloquent than ever before, and their voices, though silent, are heard around the world.

"Are we opposed to Prussian militarism? Why, we have been fighting it since the day the Socialist movement was born and we are going to continue to fight it today and until it is wiped from the face of the earth. Between us there is no truce, no compromise, but before I proceed along this line, let me recall a little history in which we are all interested.

"In 1869, that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sent to prison for three months because of his war as a Socialist on the Kaiser and the Junkers that ruled Germany. In the meantime, the Franco-Prussian war broke out. Liebknecht and Badel were the Socialist members of the Reichstag. They were the only two to protest against the taking of

Alsace-Lorraine from France and giving it to Germany. They were taken from the Reichstag and sent to prison for two years. For four years previous to this, they had been fighting the Kaiser and the Junkers of Germany. They have fought them from that day to this. Thousands of them have languished in the prisons for war on the ruling classes of that country.

"Let us come down the line. At the close of Roosevelt's second term as President, he went over to Africa to make war on some of his ancestors. You remember at the close of his expedition, he visited all of the capitals of Europe and he was wined, dined, dignified and glorified by the Kaiser, kings and czars of the old world. He visited Potsdam while the Kaiser was there and, according to the account published in the American newspapers, he and the Kaiser were soon on the most intimate terms. They were hilariously intimate with each other. They slapped each other on the back. After Roosevelt had effused over the German troops, he remarked to the Kaiser, 'If I had that kind of an army, I would conquer the world.' He knew the Kaiser as well as he knows him now and yet he permitted himself to be entertained by the Beast of Berlin. He was cheek by jowl with the Beast of Berlin. And while he was being entertained by the Beast of Berlin, that same Kaiser was putting Socialist leaders in jail for fighting Kaiserism. Roosevelt was a guest of honor of the Kaiser while the Socialists were in the jail for fighting the Kaiser. Who was fighting against the Kaiser? Roosevelt? No. It was the Socialists.

"When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore Roosevelt recognized each other at sight, at the first touch, they make admission that they are fatal to the champions of democracy. They admitted that their ideas and ideals were about the same. While Theodore Roosevelt, who is now the great champion of democracy, the arch foe of autocracy, what business had he as the guest of honor of the Kaiser and was it not pretty strong proof that he was a Kaiser at heart? After being the guest of the Kaiser, he wants us to send 10,000,000 men to murder the Kaiser, to murder his former friend and pal. And yet he is the patriot and we are the traitors. I challenge you to find any Socialist who was ever the guest of the Kaiser, except as one of his prison wards.

"In 1902, Prince Henry paid a visit to this country. Do you remember him? I do. Exceedingly well. Prince Henry is the brother of King Wilhelm. He is an autocrat; an aristocrat; a Junker of Junkers. He came over in 1902 as the representative of Kaiser Wilhelm. He was received by Congress, by several State legislatures, among others the State legislature of Massachusetts, then in session. He was invited there by the members of the legislature. And when Prince Henry came there, there was one member who kept his self-respect, put on his hat, and as Prince Henry walked in, he walked out, and that man was James F. Carey, and all the rest of the representatives joined in doing honor in the most servile spirit to that high representative of autocracy, and Carey was the only one who left that meeting.



"You will remember history along the same line. I have a distinct recollection. It occurred just 15 years ago. When Prince Henry came here, all of our plutocracy, living along Fifth Avenue, threw their places' doors wide open and received him with open arms. They got down on their stomachs and vied with each other to lick the boots of Prince Henry, the representative of the Beast of Berlin.

"Do not imagine for one moment that all the plutocrats and Junkers are all in Germany; we have them here in our own country, and these want to keep our eyes focused upon the Junkers in Germany so we won't see those within our own border. I have no earthly use for the Junkers of Germany and not one particle more use for the Junkers in the United States.

34 "They tell us that we live in a great republic. Our institutions are democratic. We are a free people. This is too much, even as a joke. It is not a subject for levity; it is an exceedingly serious matter.

"To whom do the Wall Street Junkers in our country, to whom do they marry their daughters? After they have wrung the hundreds of millions from your sweat and from your life blood, in times of war as well as peace, they invest these millions in the titles of broken-down aristocrats, and to buy counts of no-account. Are they satisfied to wed their daughters to honest workmen? To real democrats? They scour the markets of Europe for those who have titles and nothing else, and they swap their titles for money. And they swap their matrimony for more money, while the plutocrats in this country scan the country with their magnifying glasses for evidence of disloyalty. Patriotism is the last refuge of scoundrels. It has been the tyrant who wrapped himself in a cloak of religion or patriotism, or both. They would have you believe that the Socialist party consists in the main of disloyalists and traitors. It is true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation. And the gang on the Pacific coast are trying to hang Tom Mooney in spite of the protests of the civilized world.

"I know Tom Mooney. He is an absolutely honest, innocent man. He had no more to do with the crime with which he was charged than I have and if he ought to go to the gallows, so ought I. What is he guilty of? I will tell you. For years he has been fighting the battles of the working class out on the Pacific coast. He continued loyally in the service of the working class. They said, 'He cannot be bought; he refuses to be bribed. Therefore, he must be murdered.'

"Let us review another bit of history. Do you remember when Francis J. Heney was shot down in the court-rooms of San Francisco? A committee of high-binders, composed largely of members of the Chamber of Commerce, absolutely controlled the courts of San Francisco. They did not hesitate to commit murder to further their murderous regime. Tom Mooney was the only representative of the working class that they could not control. They owned the railways; they controlled the industries; they were the rulers and from them there was no appeal. And they were as infamous as any rulers that ruled in Germany or any other country. At last a grand jury was

found that would indict them, and Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang controlled by the Chamber of Commerce, this gang hired a murderer to shoot Francis J. Heney down in the court-room and he did. Francis J. Heney happened to live, but that was no fault of theirs. The same gang are also for the execution of Tom Mooney. Every solitary one of them claims to be an arch-patriot. Everyone of them claims he is trying to make democracy safe in this world. What humbug! What rot! What false pretence! The patriots are the men who have the courage to stand face to face and fight them, and they call them disloyalists and traitors, and if this be true, I want to take my place side by side with the traitors in this country.

“Why, the other day they sent a woman to Wichita penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States under the rule of the plutocrats is the only country which would send a woman to the penitentiary for ten years for exercising the right to free speech. If this be treason, let them make the most of it. Let me review another bit of history. I have known this woman for ten years. Personally I know her as if she were my own younger sister. She is a woman of absolute integrity. She is a woman of courage. She is a woman of unimpeachable loyalty to the Socialist movement. She went out  
35 into Dakota and made her speech, followed by plain-clothes men in the service of the government, intent upon encompassing her arrest, prosecution and conviction. She made a certain speech and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony was that of a hired witness. And thirty farmers who went to Bismarck to testify in her favor, the judge refused to allow to testify. This would seem incredible to me if I had not some experience of my own with a Federal court. Who appoints the Federal courts? The people? Every solitary one of them holds his position through influence and power of corporation capital. And when they go to the bench, they go there not to serve the people, but to serve the interests who sent them. The other day, by a vote of five to four, they declared the Child Labor Law unconstitutional; a law secured after twenty years of education and agitation by all kinds of people, and yet by a majority of one, the Supreme Court, a body of corporation lawyers, with just one solitary exception, wiped it from the Statute books, so that we may still continue to grind the blood of little children into profit for the Junkers of Wall Street, and this in a country that is now fighting to make democracy safe for the world. These are not palatable truths to them. And they do not want you to hear them and that is why they brand us as traitors and disloyalists. If we were not traitors to the people, we would be eminently respectable citizens and ride in limousines. It is precisely because we are disloyal to the traitors that we are not disloyal to the people of this country.

“You have heard of Scott Nearing. He is the greatest teacher in the United States. He was in the University of Pennsylvania until the Board of Trustees, composed of great capitalists, found he was



teaching true economics to the students of that university, as the same forces said of a Judean carpenter nineteen centuries ago. They said of Jesus Christ, who was a workman and teacher, they said, 'He is preaching a false religion,' and his lineal descendants said, 'He is preaching economics.' 'We cannot crucify him so we will starve him to death. We will make it impossible for him to get a job. He is a dangerous man. He is teaching the truth.' The truth is always unpalatable to these plutocrats, who make their living by the sweat of the working class.

"They are afraid that we might contaminate you. You are their wards. They are their own guardians. They must see that our vicious doctrines do not reach your ears. What a mistake they make. We ought to pass a resolution of thanks and send it to them. Those are the people who want to seize our paper. And woe to the man who reads Socialist literature. He is a goner. I have known of a thousand experiments but I have never known of a single experiment to escape it. Let me tell you about John Werk, of Milwaukee. The capitalists of Milwaukee said, 'John, we have got to find out about Socialism. John, you are a bright, young lawyer; we want you to find out all about Socialist literature.' After reading the Socialist volume, John was a full-fledged Socialist and has been fighting for us ever since.

"How short-sighted the ruling class is. The exploiter cannot see beyond the end of his nose. He has just cunning enough to know what graft is and where it is but he has no vision. You know this is a great throbbing world that spreads out in all directions. Look at Rockefeller. Every move he makes hastenes the coming of his doom. Every time the capitalist class tries to hinder the cause of Socialism they hurt themselves. Every time they strangle a Socialist newspaper they add a thousand voices to those which are aiding Socialism. The Socialist has a great idea. An expanding philosophy.

It is spreading over the face of the earth. It is useless to  
36 resist it as it is to resist the rising sunrise. Can you see it?

If you cannot you are lacking in vision, in understanding. What a privilege it is to serve it. I have regretted a thousand times I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value. It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviki of Russia. (Applause.) Yes, those heroic men and women, those

unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was what was bequeathed to the revolution by the Czar. For this condition, Leon Trotski was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotski came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers.

"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to lose, and the subject class  
37 has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dol-



lars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farci-al. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town, he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed

a resolution that Debs was responsible for the death of McKinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.



"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who remain on the popular side. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war of the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.

"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines everywhere. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause; everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have got to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to im-

poverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

39 You will be exploited. You will have to beg for a job and you will get just enough to keep you in working order. And you will be looked down upon in contempt. If you would be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.

"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own



the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason that the class which can rob on a large scale has the power to control courts.

"Among other things they tell you to cultivate war gardens. Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle, to enrich themselves. Thus, it  
40 makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

"They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine Workers issued a bulletin to the Labor Department of the United States that the 600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more than one-half time. I have seen the miners idle. In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, 'Take possession of the mines. Set the miners at work. Give the miner all he produces.' The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the miner. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to



charge three prices for coal. If that is the thing you want, you will get it to your heart's content.

"A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brute-hood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. It is only necessary to label a man, 'I. W. W.' to lynch him. Just think of the state of mind for which the capitalist press is responsible.

41 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together. And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will

transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders. We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

42 And the Grand Jurors further present and find that at the time and place aforesaid, and in the manner and under the circumstances aforesaid, when he, the said defendant, so stated, uttered, published and said the aforesaid words, speech and address, set out in substance as aforesaid, to the persons aforesaid, he, the said defendant did so wilfully, and with the intent on his part to cause and attempt to cause and incite and attempt to incite, insubordination, disloyalty, mutiny and refusal of duty, in the military and naval forces of the United States; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

#### *Fourth Count.*

And the Grand Jurors aforesaid, upon their oaths, aforesaid, do further present and find that the said Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, to wit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and District aforesaid, and within the jurisdiction of this court; the United States of America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States on the 6th day of April, A. D., 1917, did then and there unlawfully, wilfully and feloniously obstruct and attempt to obstruct the recruiting and enlistment service of the United States, that is to say, he the said defendant, did state, utter, publish and say, in a public speech and address, at the time and place aforesaid, to a certain assembly of people, among whom were Clyde R. Miller, Dennis R. Smith, Virgil Steiner, and divers other persons, whose names are to the Grand Jurors unknown, and if known, are too numerous to mention herein, and for that reason are omitted, part of whom then and there being citizens of the

Sec. 3, Title 1, Act of June 15, 1917, as amended by Act of May 16, 1918 (Espionage).



I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value. It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviki of Russia. (Applause.) Yes, those heroic men and women, those unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was what was bequeathed to the revolution by the Czar. For this condition, Leon Trotsky was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotsky came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers:

"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers



go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to lose, and the subject class has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farcical. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and

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(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town, he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed a resolution that Debs was responsible for the death of Mc-  
104 Kinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.

"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the



speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who remain on the popular side. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war on the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.

"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines everywhere. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause: everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have not to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to impoverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

You will be exploited. You will have to beg for a job and  
105 you will get just enough to keep you in working order. And  
you will be looked down upon in contempt. If you would



be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.

"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason

that the class which can rob on a large scale has the power to control courts.

“Among other things they tell you to cultivate war gardens. Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle, to enrich themselves. Thus, it makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

“They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine Workers issued a bulletin to the Labor Department of the United States that the 6,600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more than one-half time. I have seen the miners idle. In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, ‘Take possession of the mines. Set the miners at work. Give the miner all he produces.’ The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the *nuber*. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to charge three prices for coal. If that is the thing you want, you will get it to your heart’s content.

“A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brute-hood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by



solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. Just think of the state of mind for which the capitalist press is responsible.

107 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together: And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders.



We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

108 And the Grand Jurors further present and find that at the time and place aforesaid, before the assembly and persons aforesaid, in the manner and under the circumstances aforesaid, he, the said defendant, did wilfully by utterance and language spoken as herein heretofore in words and substance set forth, urge, incite and advocate the curtailment of production in the United States, of arms, armaments, ammunition and munitions, necessary and essential to the prosecution of the war, in which the United States is engaged as aforesaid, with the intent by such curtailment to cripple and hinder the United States in the prosecution of the war aforesaid; contrary to the form of the Statute of The United States, in such case made and provided, and against the peace and dignity of the United States.

109 *Ninth Count.*

And the Grand Jurors aforesaid, upon their oaths, aforesaid, do further present and find that the said Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, towit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and District aforesaid, and within the jurisdiction of this court; the United States of America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States on the 6th day of April, A. D. 1917, did then and there unlawfully, wilfully and feloniously advocate, teach, defend and suggest the wilful making and conveying of false reports and false statements with intent to promote the success of the enemy of the United States, towit, The Imperial German Government, and the things alleged and set forth in the first count of this indictment, to which reference is hereby made and which are incorporated herein by reference, the same as if fully set forth and written herein; and the wilful making and conveying of false reports and false statements with intent to interfere with the operation and success of the military and naval forces of the United States, the same as alleged and set forth in the second count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; the wilful causing and attempting to cause, and inciting and attempting to incite, insubordination, disloyalty, mutiny, and refusal of duty, in the military and naval forces of the United States, the same as alleged and set forth in the third count of this

indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and the wilful obstructing and attempting to obstruct the recruiting and enlistment service of the United States, the same as alleged and set forth in the fourth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and the wilful uttering and publishing of disloyal language about the form of Government of the United States and the Constitution of the United States, and the military and naval forces of the United States, the same as alleged and set forth in the fifth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference the same as if fully set forth and written herein; and the wilful uttering and publishing of language intended to bring the form of Government of the United States, and the Constitution of the United States, and the military and naval forces of the United States, and the Flag of the United States, and the uniform of the Army and Navy of the United States into contempt, scorn, contumely and disrepute, the same as alleged and set forth in the sixth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference; the same as if fully set forth and written herein; and the wilful uttering and publishing of language intended to incite, provoke and encourage resistance to the United States and to promote the cause of its enemy, the same as alleged in the seventh count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set out and written herein; and wilfully, by utterance and language spoken, urge, incite and advocate the curtailment of production in the United States of Arms, armament, ammunition and munitions, necessary and essential to the prosecution of the war in which the United States is engaged, with intent by such curtailment to cripple and hinder the United States in the prosecution of the war, the same as alleged and set forth in the eighth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and wilfully by words and language spoken oppose the cause of the United States in the war with the Imperial German Government, as alleged and set forth in the tenth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; that is to say, he, the said defendant, did state, utter, publish and say, advocating, teaching, depending and suggesting the doing of all the acts and things hereinbefore set forth, in a public speech and address, at the time and place aforesaid, to a certain assembly of people, among whom were Clyde R. Miller, and Dennis R. Smith, then and there being citizens of the United States, and then and there being persons between the ages to twenty-one and thirty, both inclusive, and then and there being persons liable to military duty under the provisions of the Act of Congress, approved May 18, 1917, and divers other persons,



part of whom then and there being citizens of the United States, and part of whom then and there being persons between the ages of twenty-one and thirty, both inclusive, and then and there being persons liable to military duty under the provisions of the Act of Congress approved May 18, 1917, whose names are to the Grand Jurors unknown, and if known, are too numerous to mention herein, and for that reason are omitted, which said public speech and address so stated, uttered, published and said, as aforesaid, at the time and place aforesaid, to the persons aforesaid, and in the manner and under the circumstances aforesaid, in words and substances, is as follows, that is to say:

112 "Comrades, Friends and Fellow-Workers:—

"For this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest in your devotion to the cause for which I am to speak to you this afternoon. To speak for labor, to plead the cause of the men and women and children who toil, to serve the working class, has always been to me a high privilege, a duty of love.

"I have just returned from a visit from yonder (pointing to work-house) where three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think. And I would rather a thousand times be a free soul in jail than a sycophant or coward on the streets. They may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect and seeking to pave the way for better conditions for mankind.

"If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles.

"This assembly is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. What I say here amounts to but little. What I see here is exceedingly important. You workers here in Ohio, enlisted in the greatest cause ever organized in the interests of your class, are making history today in the face of threatening trouble of all kinds, history that is going to be read with profound interest by the coming generation. There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement. It is only when you begin to compromise that trouble begins. So far as I am concerned, it does not matter what



others may say or think or do, as long as I am sure that I am right with myself and the cause.

"There are so many who seek refuge in the popular side of a great question. I am not of that number. As a Socialist I have long since learned how to stand alone.

"For the last month I have been traveling over the Hoosier state, and let me say that in all my connections with the Socialist movement, I have never seen such enthusiasm, such unity of movement, such a promising outlook as there is today. Notwithstanding the statement published by the capitalist press that our leaders had deserted, I wish to say for myself I never had very much faith in leaders anyway. I am willing to be charged with almost anything rather than be charged with being a leader. I am suspicious of leaders, especially all the intellectual file. Give me the rank and file every day in the week. Go to the City of Washington and consult the files there and you will find that the corporation lawyers, members of congress and misrepresentatives of the masses—all of them claim that they have risen from the ranks. I am so glad that I cannot make that claim for myself. When I rise, it will be  
113 with the ranks and not from the ranks.

"When I came away from Indiana, the comrades said, 'When you cross the line, tell those comrades that we are on duty and doing duty and are going to make a record this fall that will be heard around the world.'

"The Socialists of Ohio are very much alive this year. The party has been 'killed' this year, which accounts for its extraordinary activity. This naturally helps a party. The oftener it is killed, the more energetic and more powerful they become. We have been reading capitalist newspapers lately, and what a capacity they have for lying. They know all about the Socialist party except what is true. Only the other day, they took an article that I had written and most of you have read, and made it appear that I had undergone a marvelous transformation. I had suddenly come to my senses, had ceased to be a wicked Socialist and had become a respectable Socialist, a patriotic Socialist—as if I had ever been anything else. What was the purpose of this deliberate misrepresentation? It is so self-evident that it was against itself. It was to sow dissatisfaction among our ranks, so that we would pit ourselves against each other to our mutual undoing. But Socialists were not born yesterday. They know how to read capitalists' newspapers, and to believe exactly the opposite of what they read.

"Why should a Socialist be discouraged on the eve of the greatest triumph of all the history of the Socialist movement? It is true that these are anxious, trying days for us all, testing those who are upholding the banner of the working class in the greatest struggle the world has ever known against the exploiters of the world; a time in which the weak, the cowardly, will falter and fail and desert. They lack the fibre to endure the revolutionary test. They fall away. They disappear as if they had never been.

"On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage

to stand erect, to assert their convictions, to stand by them, to go to jail or to hell for them—they are writing their names in this crucial hour, they are writing their names in fadeless letters in the history of mankind. Those boys over yonder, those comrades of ours—and how I love them—aye, they are our younger brothers, their names are seared in our souls.

“I am proud of them. They are there for us and we are here for them. Their lips, though temporarily mute, are more eloquent than ever before, and their voices, though silent, are heard around the world.

“Are we opposed to Prussian militarism? Why, we have been fighting it since the day the Socialist movement was born and we are going to continue to fight it today and until it is wiped from the face of the earth. Between us there is no truce, no compromise, but before I proceed along this line, let me recall a little history in which we are all interested.

“In 1869, that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sent to prison for three months because of his war as a Socialist on the Kaiser and the Junkers that ruled Germany. In the meantime, the Franco-Prussian war broke out. Liebknecht and Badel were the Socialist members of the Reichstag. They were the only two to protest against the taking of Alsace-Lorraine from France and giving it to Germany. They were taken from the Reichstag and sent to prison for two years. For four years previous to this, they had been fighting the Kaiser and the Junkers of Germany. They have fought them from that  
114 day to this. Thousands of them have languished in the prisons for war on the ruling classes of that country.

“Let us come down the line. At the close of Roosevelt's second term as President, he went over to Africa to make war on some of his ancestors. You remember at the close of his expedition, he visited all of the capitals of Europe and he was wined, dined, dignified and glorified by the Kaiser, kings and czars of the old world. He visited Potsdam while the Kaiser was there and, according to the account published in the American newspapers, he and the Kaiser were soon on the most intimate terms. They were hilariously intimate with each other. They slapped each other on the back. After Roosevelt had effused over the German troops, he remarked to the Kaiser, ‘If I had that kind of an army, I would conquer the world.’ He knew the Kaiser as well as he knows him now and yet he permitted himself to be entertained by the Beast of Berlin. He was cheek by jowl with the Beast of Berlin. And while he was being entertained by the Beast of Berlin, that same Kaiser was putting Socialist leaders in jail for fighting Kaiserism. Roosevelt was a guest of honor of the Kaiser while the Socialists were in the jail for fighting the Kaiser. Who was fighting against the Kaiser? Roosevelt? No. It was the Socialists.

“When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore Roosevelt recognized each other at sight, at the first touch, they made admission that they are fatal to the champions of democracy. They admitted that their ideas and ideals were about



the same. While Theodore Roosevelt, who is now the great champion of democracy, the arch foe of autocracy, what business had he as the guest of honor of the Kaiser and was it not pretty strong proof that he was a Kaiser at heart? After being the guest of the Kaiser, he wants us to send 10,000,000 men to murder the Kaiser, to murder his former friend and pal. And yet he is the patriot and we are the traitors. I challenge you to find any Socialist who was ever the guest of the Kaiser, except as one of his prison wards.

"In 1902, Prince Henry paid a visit to this country. Do you remember him? I do. Exceedingly well. Prince Henry is the brother of King Wilhelm. He is an autocrat; an aristocrat; a Junker of Junkers. He came over in 1902 as the representative of Kaiser Wilhelm. He was received by Congress, by several State legislatures, among others the State legislature of Massachusetts, then in session. He was invited there by the members of the legislature. And when Prince Henry came there, there was one member who kept his self-respect, put on his hat, and as Prince Henry walked in, he walked out, and that man was James F. Carey, and all the rest of the representatives joined in doing honor in the most servile spirit to that high representative of autocracy, and Carey was the only one who left that meeting.

"You will remember history along the same line. I have a distinct recollection. It occurred just 15 years ago. When Prince Henry came here, all of our plutocracy, living along Fifth Avenue, threw their palace doors wide open and received him with open arms. They got down on their stomachs and vied with each other to lick the boots of Prince Henry, the representative of the Beast of Berlin.

"Do not imagine for one moment that all the plutocrats and Junkers are all in Germany; we have them here in our own country, and these want to keep our eyes focused upon the Junkers in Germany so we won't see those within our own border. I have no earthly use for the Junkers of Germany and not one particle more use for the Junkers in the United States.

115 "They tell us that we live in a great republic. Our institutions are democratic. We are a free people. This is too much, even as a joke. It is not a subject for levity; it is an exceedingly serious matter.

"To whom do the Wall Street Junkers in our country, to whom do they marry their daughters? After they have wrung the hundreds of millions from your sweat and from your life blood in times of war as well as peace, they invest these millions in the titles of broken-down aristocrats, and to buy counts of no-account. Are they satisfied to wed their daughters to honest workmen? To real democrats? They scour the markets of Europe for those who have titles and nothing else, and they swap their titles for money. And they swap their matrimony for more money, while the plutocrats in this country scan the country with their magnifying glasses for evidence of disloyalty. Patriotism is the last refuge of scoundrels. It has been the tyrant who wrapped himself in a cloak of religion or patriotism, or both. They would have you believe that the Socialist party consists in the main of disloyalists and traitors. It is true, in a cer-



tain sense. We are disloyalists and traitors to the real traitors of this nation. And the gang on the Pacific coast are trying to hang Tom Mooney in spite of the protests of the civilized world.

"I know Tom Mooney. He is an absolutely honest, innocent man. He had no more to do with the crime with which he was charged than I have and if he ought to go to the gallows, so ought I. What is he guilty of? I will tell you. For years he has been fighting the battles of the working class out on the Pacific coast. He continued loyally in the service of the working class. They said, 'He cannot be bought; he refuses to be bribed.' Therefore, he must be murdered.'

"Let us review another bit of history. Do you remember when Francis J. Heney was shot down in the court-rooms of San Francisco? A committee of high-binders, composed largely of members of the Chamber of Commerce, absolutely controlled the courts of San Francisco. They did not hesitate to commit murder to further their murderous regime. Tom Mooney was the only representative of the working class that they could not control. They owned the railways; they controlled the industries; they were the rulers and from them there was no appeal. And they were as infamous as any rulers that ruled in Germany or any other country. At last a grand jury was found that would indict them, and Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang controlled by the Chamber of Commerce, this gang hired a murderer to shoot Francis J. Heney down in the court-room and he did. Francis J. Heney happened to live, but that was no fault of theirs. The same gang are also for the execution of Tom Mooney. Every solitary one of them claims to be an arch-patriot. Everyone of them claims he is trying to make democracy safe in this world. What humbug! What rot! What false pretence! The patriots are the men who have the courage to stand face to face and fight them, and they call them disloyalists and traitors, and if this be true, I want to take my place side by side with the traitors in this country.

"Why, the other day they sent a woman to Wichita penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States under the rule of the plutocrats is the only country which would send a woman to the penitentiary for ten years for exercising the right to free speech. If this be treason, let them make the most of it. Let me review another bit of history. I have known this woman for ten years. Personally I know her as if she were my own younger sister. She is a woman of absolute integrity. She is a woman of courage. She is a woman of unimpeachable loyalty to the Socialist movement. She went out  
116 into Dakota and made her speech, followed by plain-clothes men in the service of the government, intent upon encompassing her arrest, prosecution and conviction. She made a certain speech and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony was that of a hired witness. And thirty farmers who went to Bismarek to testify in her favor, the judge refused to allow to testify. This would seem

incredible to me if I had not some experience of my own with a Federal court. Who appoints the Federal courts? The people? Every solitary one of them holds his position through influence and power of corporation capital. And when they go to the bench, they go there not to serve the people, but to serve the interests who sent them. The other day, by a vote of five to four, they declared the Child Labor Law unconstitutional; a law secured after twenty years of education and agitation by all kinds of people; and yet by a majority of one, the Supreme Court, a body of corporation lawyers, with just one solitary exception, wiped it from the Statute books, so that we may still continue to grind the blood of little children into profit for the Junkers of Wall Street, and this in a country that is now fighting to make democracy safe for the world. These are not palatable truths to them. And they do not want you to hear them and that is why they brand us as traitors and disloyalists. If we were not traitors to the people, we would be eminently respectable citizens and ride in limousines. It is precisely because we are disloyal to the traitors that we are not disloyal to the people of this country.

"You have heard of Scott Nearing. He is the greatest teacher in the United States. He was in the University of Pennsylvania until the Board of Trustees, composed of great capitalists, found he was teaching true economics to the students of that university, as the same forces said of a Judean carpenter nineteen centuries ago. They said of Jesus Christ, who was a workman and teacher, they said, 'He is preaching a false religion,' and his lineal descendants said, 'He is preaching false economics.' 'We cannot crucify him so we will starve him to death. We will make it impossible for him to get a job. He is a dangerous man. He is teaching the truth.' The truth is always unpalatable to these plutocrats, who make their living by the sweat of the working class.

"They are afraid that we might contaminate you. You are their wards. They are their own guardians. They must see that our vicious doctrines do not reach your ears. What a mistake they make. We ought to pass a resolution of thanks and send it to them. Those are the people who want to seize our paper. And woe to the man who reads Socialist literature. He is a goner. I have known of a thousand experiments but I have never known of a single experiment to escape it. Let me tell you about John Werk, of Milwaukee. The capitalists of Milwaukee said to John, 'We have got to find out about Socialism. John, you are a bright, young lawyer; we want you to find out all about Socialist literature.' After reading the Socialist volume, John was a full-fledged Socialist and has been fighting for us ever since.

"How short-sighted the ruling class is. The exploiter cannot see beyond the end of his nose. He has just cunning enough to know what graft is and where it is but he has no vision. You know this is a great throbbing world that spreads out in all directions. Look at Rockefeller. Every move he makes hastens the coming of his doom. Every time the capitalist class tries to hinder the cause of Socialism they hurt themselves. Every time they strangle a Socialist newspaper they add a thousand voices to those which are aiding So-



cialism. The Socialist has a great idea. An expanding philosophy.

It is spreading over the face of the earth. It is useless to  
117 resist it as it is to resist the rising sunrise. Can you see it?

If you cannot you are lacking in vision, in understanding. What a privilege it is to serve it. I have regretted a thousand times I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value. It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviki of Russia. (Applause.) Yes, those heroic men and women, those unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of a peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was what was bequeathed to the revolution by the Czar. For this condition, Leon Trotsky was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotsky came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers.



"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to lose, and the subject class  
118 has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farci-al. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how

good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town, he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed a resolution that Debs was responsible for the death of McKinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.

"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who remain on the popular side. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war on the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.



"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines everywhere. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause; everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have got to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to impoverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

120 You will be exploited. You will have to beg for a job and you will get just enough to keep you in working order. And you will be looked down upon in contempt. If you would be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change



you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.

"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason that the class which can rob on a large scale has the power to control courts.

"Among other things they tell you to cultivate war gardens: Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle, to enrich themselves. Thus, it  
121 makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

"They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine

Workers issued a bulletin to the Labor Department of the United States that the 600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more than one-half time. I have seen the miners idle. In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, 'Take possession of the mines. Set the miners at work. Give the miner all he produces.' The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the *nuber*. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to charge three prices for coal. If that is the thing you want, you will get it to your heart's content.

"A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brutehood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. Just think of the state of mind for which the capitalist press is responsible.

122 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve



have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together. And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders. We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

123 And the Grand Jurors aforesaid, further present and find that at the time and place aforesaid, and in the manner and under the circumstances aforesaid, and to the assembly and persons aforesaid, he, the said defendant did wilfully teach, advocate, defend and suggest the wilful making and conveying of false reports and false statements with intent to promote the success of the enemy of the United States, to wit, The Imperial German Government, and the things alleged and set forth in the first count of this indictment, to which reference is hereby made and which are incorporated herein by reference, the same as if fully set forth and written herein; and the wilful making and conveying of false reports and false statements with intent to interfere with the operation and success of the military and naval forces of the United States, the same as alleged and set forth in the second count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; the wilful



causing and attempting to cause and inciting and attempting to incite, insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, the same as alleged and set forth in the third count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and the wilful obstructing and attempting to obstruct the recruiting and enlistment service of the United States, the same as alleged and set forth in the fourth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and the wilful uttering and publishing of disloyal language about the form of Government of the United States and the Constitution of the United States, and the military and naval forces of the United States, the same as alleged

and set forth in the fifth count of this indictment, to which

124 reference is hereby made and which is hereby incorporated

herein by reference the same as if fully set forth and written herein; and the wilful uttering and publishing of language intended to bring the form of Government of the United States, and the Constitution of the United States, and the military and naval forces of the United States, and the Flag of the United States, and the uniform of the Army and Navy of the United States into contempt, scorn, contumely and disrepute, the same as alleged and set forth in the sixth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and the wilful uttering and publishing of language intended to incite, provoke and encourage resistance to the United States, and to promote the cause of its enemy, the same as alleged in the seventh count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set out and written herein; and wilfully, by utterance and language spoken, urge, incite and advocate the curtailment of production in the United States, of arms, armament, ammunition and munitions necessary and essential to the prosecution of the war in which the United States is engaged, with intent by such curtailment to cripple and hinder the United States in the prosecution of the war, the same as alleged and set forth in the eighth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same as if fully set forth and written herein; and wilfully by words and language spoken oppose the cause of the United States in the war with the Imperial German Government, as alleged and set forth in the tenth count of this indictment, to which reference is hereby made and which is hereby incorporated herein by reference, the same

as if fully set forth and written herein; contrary to the form

125 of the Statute of the United States in such case made and provided, and against the peace and dignity of the United

States.

126

*Tenth Count.*

And the Grand Jurors aforesaid, upon their oaths, aforesaid, do further present and find that the said Eugene V. Debs, hereinafter designated the defendant, late of the Division and District aforesaid, heretofore, to wit, on or about the 16th day of June, 1918, at the City of Canton, County of Stark, in the State of Ohio, in the Division and District aforesaid, and within the jurisdiction of this court; the United States of America being then and there at war with the Imperial German Government pursuant to a joint resolution of the Congress of the United States, theretofore adopted, and which resolution was approved by the President of the United States, on the 6th day of April, A. D. 1917, did then and there unlawfully, wilfully and feloniously by words and language spoken, oppose the cause of the United States in the war with the Imperial German Government as aforesaid, that is to say, the said defendant at the time and place aforesaid, in a public speech and address, to a certain assembly of people, among whom were Clyde R. Miller, and Dennis R. Smith, then and there being citizens of the United States, and then and there being persons between the ages of twenty-one and thirty, both inclusive, and then and there being persons liable to military duty under the provisions of the Act of Congress approved May 18, 1917 and divers other persons, part of whom then and there being citizens of the United States, and part of whom then and there being persons between the ages of twenty-one and thirty, both inclusive, and then and there being persons liable to military duty under the provisions of the Act of Congress approved May 18, 1917, whose names are to the Grand Jurors unknown, and if known, are too numerous to mention herein, and for that reason are omitted, which said public speech and address so stated, uttered, published and said as aforesaid, at the time

127 and place aforesaid; to the persons aforesaid, and in the manner and under the circumstances aforesaid, in words and substance is as follows, that is to say:

128 "Comrades, Friends and Fellow-Workers:—

"For this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of your interest in and your devotion to the cause of which I am to speak to you this afternoon. To speak for labor, to plead the cause of the men and women and children who toil, to serve the working class, has always been to me a high privilege, a duty of love.

"I have just returned from a visit from yonder (pointing to workhouse) where three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking



to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think. And I would rather a thousand times be a free soul in jail than a sycophant or coward on the streets. They may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect and seeking to pave the way for better conditions for mankind.

"If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles.

"This assembly is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon. What I say here amounts to but little. What I see here is exceedingly important. You workers here in Ohio, enlisted in the greatest cause ever organized in the interests of your class, are making history today in the face of threatening trouble of all kinds, history that is going to be read with profound interest by the coming generation. There is but one thing that you have to be concerned about and that is that you keep four-square with the principles of the international Socialist movement. It is only when you begin to compromise that trouble begins. So far as I am concerned, it does not matter what others may say or think or do, as long as I am sure that I am right with myself and the cause.

"There are so many who seek refuge in the popular side of a great question. I am not of that number. As a Socialist I have long since learned how to stand alone.

"For the last month I have been traveling over the Hoosier state, and let me say that in all my connections with the Socialist movement, I have never seen such enthusiasm, such unity of movement, such a promising outlook as there is today. Notwithstanding the statement published by the capitalist press that our leaders had deserted, I wish to say for myself I never had very much faith in leaders anyway. I am willing to be charged with almost anything rather than be charged with being a leader. I am suspicious of leaders, especially all the intellectual file. Give me the rank and file every day in the week. Go to the City of Washington and consult the files there and you will find that the corporation lawyers, members of congress and misrepresentatives of the masses—all of them claim that they have risen from the ranks. I am glad that I cannot make that claim for myself. When I rise, it will be  
129 with the ranks and not from the ranks.

"When I came away from Indiana, the comrades said, 'When you cross the line, tell those comrades that we are on duty and doing duty and are going to make a record this fall that will be heard around the world.'



"The Socialists of Ohio are very much alive this year. The party has been 'killed' this year, which accounts for its extraordinary activity. This naturally helps a party. The oftener it is killed, the more energetic and more powerful they become. We have been reading capitalist newspapers lately, and what a capacity they have for lying. They know all about the Socialist party except what is true. Only the other day, they took an article that I had written and most of you have read, and made it appear that I had undergone a marvelous transformation. I had suddenly come to my senses, had ceased to be a wicked Socialist and had become a respectable Socialist, a patriotic Socialist—as if I had ever been anything else. What was the purpose of this deliberate misrepresentation? It is so self-evident that it was against itself. It was to sow dissatisfaction among our ranks, so that we would pit ourselves against each other to our mutual undoing. But Socialists were not born yesterday. They know how to read capitalists' newspapers, and to believe exactly the opposite of what they read.

"Why should a Socialist be discouraged on the eve of the greatest triumph of all the history of the Socialist movement? It is true that these are anxious, trying days for us all, testing those who are upholding the banner of the working class in the greatest struggle the world has ever known against the exploiters of the world; a time in which the weak, the cowardly, will falter and fail and desert. They lack the fibre to endure the revolutionary test. They fall away. They disappear as if they had never been.

"On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect, to assert their convictions, to stand by them, to go to jail or to hell for them—they are writing their names in this crucial hour, they are writing their names in fadeless letters in the history of mankind. Those boys over yonder, those comrades of ours—and how I love them—aye, they are our younger brothers, their names are seared in our souls.

"I am proud of them. They are there for us and we are for them. Their lips, though temporarily mute, are more eloquent than ever before, and their voices, though silent, are heard around the world.

"Are we opposed to Prussian militarism? Why, we have been fighting it since the day the Socialist movement was born and we are going to continue to fight it today and until it is wiped from the face of the earth. Between us there is no truce, no compromise, but before I proceed along this line, let me recall a little history in which we are all interested.

"In 1869, that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sent to prison for three months because of his war as a Socialist on the Kaiser and the Junkers that ruled Germany. In the meantime, the Franco-Prussian war broke out. Liebknecht and Badel were the Socialist members of the Reichstag. They were the only two to protest against the taking of Alsace-Lorraine from France and giving it to Germany. They were taken from the Reichstag and sent to prison for two years. For four

years previous to this, they had been fighting the Kaiser and the Junkers of Germany. They have fought them from that  
130 day to this. Thousands of them have languished in the prisons for war on the ruling classes of that country.

"Let us come down the line. At the close of Roosevelt's second term as President, he went over to Africa to make war on some of his ancestors. You remember at the close of his expedition, he visited all of the capitals of Europe and he was wine, dine, dignified and glorified by the Kaiser, kings and czars of the old world. He visited Potsdam while the Kaiser was there and, according to the account published in the American newspapers, he and the Kaiser were soon on the most intimate terms. They were hilariously intimate with each other. They slapped each other on the back. After Roosevelt had effused over the German troops, he remarked to the Kaiser, 'If I had that kind of an army, I would conquer the world.' He knew the Kaiser as well as he knows him now and yet he permitted himself to be entertained by the Beast of Berlin. He was cheek by jowl with the Beast of Berlin. And while he was being entertained by the Beast of Berlin, that same Kaiser was putting Socialist leaders in jail for fighting Kaiserism. Roosevelt was a guest of honor of the Kaiser while the Socialists were in the jail for fighting the Kaiser. Who was fighting against the Kaiser? Roosevelt? No. It was the Socialists.

"When the newspapers reported that Kaiser Wilhelm and Ex-President Theodore Roosevelt recognized each other at sight, at the first touch, they made admission that they are fatal to the champions of democracy. They admitted that their ideas and ideals were about the same. While Theodore Roosevelt, who is now the great champion of democracy, the arch foe of autoeracy, what business had he as the guest of honor of the Kaiser and was it not pretty strong proof that he was a Kaiser at heart? After being the guest of the Kaiser, he wants us to send 10,000,000 men to murder the Kaiser, to murder his former friend and pal. And yet he is the patriot and we are the traitors. I challenge you to find any Socialist who was ever the guest of the Kaiser, except as one of his prison wards.

"In 1902, Prince Henry paid a visit to this country. Do you remember him? I do. Exceedingly well. Prince Henry is the brother of King Wilhelm. He is an autocrat; an aristocrat; a Junker of Junkers. He came over in 1902 as the representative of Kaiser Wilhelm. He was received by Congress, by several State legislatures, among others the State legislature of Massachusetts, then in session. He was invited there by the members of the legislature. And when Prince Henry came there, there was one member who kept his self-respect, put on his hat, and as Prince Henry walked in, he walked out, and that man was James F. Carey, and all the rest of the representatives joined in doing honor in the most servile spirit to that high representative of autoeracy, and Carey was the only one who left that meeting.

"You will remember history along the same line. I have a distinct recollection. It occurred just 15 years ago. When Prince Henry came here, all of our plutocracy, living along Fifth Avenue,



threw their palace doors wide open and received him with open arms. They got down on their stomachs and vied with each other to lick the boots of Prince Henry, the representative of the Beast of Berlin.

"Do not imagine for one moment that all the plutocrats and Junkers are all in Germany; we have them here in our own country, and these want to keep our eyes focused upon the Junkers in Germany so we won't see those within our own border. I have no earthly use for the Junkers of Germany and not one particle more use for the Junkers in the United States.

131 "They tell us that we live in a great republic. Our institutions are democratic. We are a free people. This is too much, even as a joke. It is not a subject for levity; it is an exceedingly serious matter.

"To whom do the Wall Street Junkers in our country, to whom do they marry their daughters? After they have wrung the hundreds of millions from your sweat and from your life blood, in times of war as well as peace, they invest these millions in the titles of broken-down aristocrats, and to buy counts of no-account. Are they satisfied to wed their daughters to honest workmen? To real democrats? They scour the markets of Europe for those who have titles and nothing else, and they swap their titles for money. And they swap their matrimony for more money, while the plutocrats in this country scan the country with their magnifying glasses for evidence of disloyalty. Patriotism is the last refuge of scoundrels. It has been the tyrant who wrapped himself in a cloak of religion or patriotism, or both. They would have you believe that the Socialist party consists in the main of disloyalists and traitors. It is true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation. And the gang on the Pacific coast are trying to hang Tom Mooney in spite of the protests of the civilized world.

"I know Tom Mooney. He is an absolutely honest, innocent man. He had no more to do with the crime with which he was charged than I have and if he ought to go to the gallows, so ought I. What is he guilty of? I will tell you. For years he has been fighting the battles of the working class out on the Pacific coast. He continued loyally in the service of the working class. They said, 'He cannot be bought; he refuses to be bribed. Therefore, he must be murdered.'

"Let us review another bit of history. Do you remember when Francis J. Heney was shot down in the court-rooms of San Francisco? A committee of high-binders, composed largely of members of the Chamber of Commerce, absolutely controlled the courts of San Francisco. They did not hesitate to commit murder to further their murderous regime. Tom Mooney was the only representative of the working class that they could not control. They owned the railways; they controlled the industries; they were the rulers and from them there was no appeal. And they were as infamous as any rulers that ruled in Germany or any other country. At last a grand jury was found that would indict them, and Francis J. Heney, who had been selected by the National Administration to assist in the prosecution, this same gang controlled by the Chamber of Commerce, this gang



hired a murderer to shoot Francis J. Heney down in the court-room and he did. Francis J. Heney happened to live, but that was no fault of theirs. The same gang are also for the execution of Tom Mooney. Every solitary one of them claims to be an arch-patriot. Everyone of them claims he is trying to make democracy safe in this world. What humbug! What rot! What false pretence! The patriots are the men who have the courage to stand face to face and fight them, and they call them disloyalists and traitors, and if this be true, I want to take my place side by side with the traitors in this country.

“Why, the other day they sent a woman to Wichita penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States under the rule of the plutocrats is the only country which would send a woman to the penitentiary for ten years for exercising the right to free speech. If this be treason, let them make the most of it. Let me review another bit of history: I have known this woman for ten years. Personally I know her as if she were my own younger sister. She is a woman of absolute integrity. She is a woman of courage. She is a woman of unimpeachable loyalty to the Socialist movement. She went out  
132 into Dakota and made her speech, followed by plain-clothes men in the service of the government, intent upon encompassing her arrest, prosecuted and convicted. She made a certain speech and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony was that of a hired witness. And thirty farmers who went to Bismarck to testify in her favor, the judge refused to allow to testify. This would seem incredible to me if I had not some experience of my own with a Federal court. Who appoints the Federal courts? The people? Every solitary one of them holds his position through influence and power of corporation capital. And when they go to the bench, they go there not to serve the people, but to serve the interests who sent them. The other day, by a vote of five to four, they declared the Child Labor Law unconstitutional; a law secured after twenty years of education and agitation by all kinds of people, and yet by a majority of one, the Supreme Court, a body of corporation lawyers, with just one solitary exception, wiped it from the Statute books, so that we may still continue to grind the blood of little children into profit from the Junkers of Wall Street, and this in a country that is now fighting to make democracy safe for the world. These are not palatable truths to them. And they do not want you to hear them and that is why they brand us as traitors and disloyalists. If we were not traitors to the people, we would be eminently respectable citizens and ride in limousines. It is precisely because we are disloyal to the traitors that we are not disloyal to the people of this country.

“You have heard of Scott Nearing. He is the greatest teacher in the United States. He was in the University of Pennsylvania until the Board of Trustees, composed of great capitalists, found he was teaching true economics to the students of that university, as the same forces said of a Judean carpenter nineteen centuries ago. They said of Jesus Christ, who was a workman and teacher, they said,

'He is preaching a false religion,' and his lineal descendants said, 'He is preaching economics.' 'We cannot crucify him so we will starve him to death. We will make it impossible for him to get a job. He is a dangerous man. He is teaching the truth.' The truth is always unpalatable to these plutocrats, who make their living by the sweat of the working class.

"They are afraid that we might contaminate you. You are their wards. They are their own guardians. They must see that our vicious doctrines do not reach your ears. What a mistake they make. We ought to pass a resolution of thanks and send it to them. Those are the people who want to seize our paper. And woe to the man who reads Socialist literature. He is a goner. I have known of a thousand experiments but I have never known of a single experiment to escape it. Let me tell you about John Werk, of Milwaukee. The capitalists of Milwaukee said to John, 'We have got to find out about Socialism. John, you are a bright, young lawyer; we want you to find out all about Socialist literature.' After reading the Socialist volume, John was a full-fledged Socialist and has been fighting for us ever since.

"How short-sighted the ruling class is. The exploiter cannot see beyond the end of his nose. He has just cunning enough to know what graft is and where it is but he has no vision. You know this is a great throbbing world that spreads out in all directions. Look at Rockefeller. Every move he makes hastens the coming of his doom. Every time the capitalist class tries to hinder the cause of Socialism they hurt themselves. Every time they strangle a Socialist newspaper they add a thousand voices to those which are aiding Socialism. The Socialist has a great idea. An expanding philosophy. It is spreading over the face of the earth. It is useless

133 to resist it as it is to resist the rising sunrise. Can you see it?

If you cannot you are lacking in vision, in understanding. What a privilege it is to serve it. I have regretted a thousand times I can do so little for the movement that has done so much for me. The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement. It gave me my ideas and my ideals, and I would not exchange one of them for all the Rockefeller blood-stained dollars. It taught me how to serve; a lesson to me of priceless value. It taught the ecstasy of the hand-clasp of the comrade. It made it possible for me to get in touch with you, to multiply myself over and over again; to open the avenue to spread out the glorious vistas; to know that I am kin with all that throbs, that becomes class conscious. Every man who toils, everyone of them, is my comrade. To serve them is the highest duty of my life. And in their service I can feel myself expanding. I rise to the stature of a man. Yes, my heart is attuned to yours. All of our hearts are melted into one great heart which throbs to the response of the people.

"Here I hear your heart beats responsive to the Bolsheviks of Russia. (Applause.) Yes, those heroic men and women, those unconquerable comrades, who have by their sacrifice added fresh lustre to the international movement. Those Russian comrades who



have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like number of men and women anywhere else on earth. They have led the first real convention of any democracy that ever drew breath. The first act of that memorable revolution was to proclaim a state of peace with an appeal not to the kings, not to the rulers, but an appeal to the people of all nations. They are the very breath of democracy; the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central Powers, to send representatives to lay down terms of a peace that should be lasting. Here was a fine opportunity to strike a blow to make democracy safe to the world. Was there any response to that noble appeal? And here let me say that appeal will be written in letters of gold in the history of the world. While it has been charged that the leader made a traitorous peace with Germany, let us consider this proposition briefly. At the time of the revolution, Russia had lost 4,000,000 of her soldiers. She was absolutely bankrupt. Her soldiers were without arms. This was what was bequeathed to the revolution by the Czar. For this condition, Leon Trotsky was not responsible nor was the Bolshevik movement, but the czar was.

"When Leon Trotsky came into power, he found the secret treaties made between the French government and the British government and the Italian government which was to divide the territory of the Central Powers if the Allies were victorious, and these secret treaties have not been repudiated up to this time. Very little has been said about them in the American newspapers. This shows that the purpose of the Allies is exactly the purpose of the Central Powers.

"Wars have been waged for conquests, for plunder, and since the feudal ages along the Rhine, the feudal lords made war upon each other. They wanted to enlarge their domains, to increase their power and their wealth and so they declared war upon each other. But they did not go to war any more than the Wall Street Junkers go to war. Their predecessors declared the wars, but their miserable serfs fought the wars. The serfs believed that it was their patriotic duty to fall upon one another, to wage war upon one another. And that is war in a nutshell. The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to lose, and the subject class  
134 has all to lose and nothing to gain. They have always taught you that it is your patriotic duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class, who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. The ruling class has always made the war and made the peace.

"Yours not to question why,  
Yours but to do and die.

"Another bit of history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause



and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so ought I. What did she say? She said that a government could not serve both the profiteers and the employees of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. He would do everything possible to discredit Wilson's administration in order to give his party credit. The Republican and Democratic parties are all patriots this fall and they are going to combine to prevent the election of any disloyal Socialists. Do you know of any difference between them? One is in, the other is out. That is all the difference.

"Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist court was very farcical. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?

"If the war was over tomorrow, all the prison doors would open. They were just to silence these voices during the war, and the cases will be pending in court for months, perhaps years. The truth will make the people free and the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, to the exploiters. And every time they make an attempt (to attack Socialism) they have ten thousand voices proclaiming that Socialism must live.

(Gets a glass of water from one on the platform.)

"Thank you, comrade. How good the touch of the hand of a comrade is and a sip of water furnished by a comrade! And how good it is to look into your faces this afternoon! You are really good looking to me this afternoon, I assure you. Your tribe has increased wonderfully since I came here. You used to be so few and so far between. When you struck a place the first thing to do was to try to find a Socialist. If he happened to be the only one in town, he now holds a place of honor in the hearts of all now living. Now you can't throw a stone in the dark without hitting a Socialist.

"I went to Warren some years ago. It happened the year President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist who would have been guilty of that crime. We do not attack individuals. We have no fight with individuals. We are capable of pitying those who hate us. We do not hate them. We know better. We would hand them a cup of water if they needed it. There is not any room in our hearts for hate, except for a system, a system in which it is impossible for one man to achieve a tremendous fortune while millions and millions struggle for the bare necessities of life. When McKinley was assassinated the ministers met at Portsmouth and passed a resolution that Debs was responsible for the death of Mc-

135 Kinley. So all those ministers met and said I was not permitted to come into the city. I went there soon after, however.

"At Warren I was prepared to speak at the hall. I arrived in the evening and was no more than registered when I was ordered to leave the town, as I was not to be permitted to speak there. I sent word to the mayor that I would speak at Warren or I would leave Warren in a box. I went to the hall and the G. A. R. had a special meeting. In the full uniform they sat in the front seats. I went to the hall and made my speech. I told them who was responsible for the assassination. As long as there is misery, caused by robbery at the bottom, there will be assassination at the top. Well, I made the speech that night. I was back there the other day and the whole population of Warren was there to meet me.

"They who have had the courage to take their places at the front, they who have been true enough to speak the truth that is in them, who have espoused the cause of the suffering, struggling poor, who have upheld the cause of righteousness—they have made the history. They have paved the way to civilization. There are so many who remain on the popular side. They lack the fibre that endures. They are to be pitied and not treated with contempt. Those who have lived and endured that we should live on the earth today, had their bones broken on the wheel and were burned at the stake. We are under obligation to them because of what they suffered for us, and the only way we can cancel that obligation is by doing and seeking today for the interest of everyone who needs us.

"Every Socialist on the face of the earth is animated by the same principles. Everywhere they have the same noble idea, everywhere they are calling one another 'comrade', the noblest word that springs from the heart and soul of unity. The word 'comrade' is getting us into closer touch all along the battle line. They are waging the war on the working class against the ruling class of the world. They conquer difficulties; they grow stronger through them all.

"The heart of the international Socialist never beats a retreat. They are pressing forward here, there, everywhere, in all the zones that girdle this globe. These workers, these class-conscious workers, these children of honest toil are wiping out the boundary lines everywhere. They are proclaiming the glad tidings of the coming emancipation. Everywhere they are having their hearts attuned to the sacred cause; everywhere they are moving toward democracy, moving toward the sunrise, their faces aglow with the light of coming day. These are the men who must guide us in the greatest crisis the world has ever known. They are making history. They are bound upon the emancipating of the human race.

"They have been sufficient to themselves, pressing forward toward the heights. Do you wish to hasten the coming day? Join the Socialist party. Do not wait for the morrow. Come now. Enroll your name. Take your place where you belong. You cannot do your duty by proxy. You have got to do it yourself. You will have no occasion to blush. You will know what it is to be a man or a woman. You will lose nothing. You will gain everything. You are very apt to find something. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you are not created to work and to produce and to im-



poverish yourself. You need to know that you have a soul to develop. You need to know that it is for you to know something about literature and about science and about art. You need to get in touch with your comrades. You need to become conscious of your own interests. You need to know that as long as you are unorganized industrially and content you will remain exactly where you are.

136 You will be exploited. You will have to beg for a job and you will get just enough to keep you in working order. And you will be looked down upon in contempt. If you would be respected you will have to begin by respecting yourself. I would not want to be in the predicament that poor fellow was in who heard a Socialist speech the other day and thought he ought to be a Socialist. The argument was invincible.

" 'Well, all he said was true.'

"But he finally concluded he might lose his job.

" 'I guess I can't afford to take the chance.'

"That night he slept alone. He was in trouble with his conscience. Such men always are. A Socialist always goes to bed with his self-respect and he can look the whole face in the world (the crowd laughs at the unconscious inversion of words) without a tremor.

"This poor fellow had a terrible dream and bounded from his bed and said: 'My God, there is nobody in this room!' And he was absolutely right. No wonder he was terror-stricken. How would you like to sleep in a room with nobody in it?

"There is a great deal of hope for our comrades, Wagenknecht, Ruthenberg and Baker. Anybody can be nobody, but it takes a man to be somebody. Turn your back upon that corrupt Republican party and that still more corrupt Democratic party, the gold-dust twins of the ruling class. Get into a minority party that fights for a cause. Make that change. It will be the most important change you ever made in your life. You will thank me for having made the suggestion. It was a day of days for me. I passed from darkness to light.

"Great, seething, throbbing Russia was transferred from a land of seething darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself.

"You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent, no one knows. If you are of weak fibre, that weakness will be found out. We will have to bid good-bye to you. You are not of the stuff of which revolutionists are made. The intellectuals, a good many of them, are all gone. That is no loss to ourselves and no gain to others. In discussing intellectuals, let us answer this question: They have been with us for a long while. What will become of the rank and file as soon as the shepherds cease to guide us? 'You are my sheep.' In other words, you are my mutton. They are ruled through the intellectuals in the capitalist parties. If you are in the Republican or Democratic party, you will not be called upon to think. They ride in the carriages; you tramp in the mud. The capitalist system affects to have great regard for intellect. We used to tell the capitalists sometime ago, 'The working class will rule'. We used to say, 'The people ought to own



the railroads'. We advocated that twenty years ago. You have got to have brains to operate railroads—and the other day McAdoo fired all the brains. Have you noticed any change since the brains have gone? The railroads are now operated by hand.

"This determines how invaluable is the quality of capitalist brains. They have always given themselves credit for having superior brains. They have had all the brains and all the wealth. As to brain capacity, they are the most woeful people on the face of the earth. But they know how to gouge. And they do it legally, for the reason that the class which can rob on a large scale has the power to control courts.

137 "Among other things they tell you to cultivate war gardens. Government reports now show that 52% of the arable, tillable soil is held out of use by the profiteers. They do not allow others to cultivate it. They keep it idle, to enrich themselves. Thus, it makes their land valuable. It is not the fault of the people; it is the fault of the landlords. And while we are upon the subject, think about the landlord. The landlord is the great patriot. He is fighting to make the world safe for democracy. He it is who profits at the expense of the people under the pretense of being a great patriot. It is he whom you need to wipe from power. It is he who diminishes your health and your liberty far more than the Prussian junker on the other side of the ocean. According to their own figures, they will tell you that we will have to export more wheat for the soldiers on the other side.

"They tell you there is a coal famine. The State of Indiana, where I live, is underlaid with coal. The coal is under our feet. All that we can possibly use. The miners are ready to enter the mines. Here is the machinery ready to increase the output to any desired capacity. Aye, only three weeks ago, the officers of the United Mine Workers issued a bulletin to the Labor Department of the United States that the 600,000 coal miners of the United States at this time when they tell us of a coal famine, are not permitted to work more than one-half time. I have seen the miners idle. In the meantime there is a scarcity of coal. They tell you to buy your coal now and they charge you three prices for it. Now, we have private ownership of the coal mines, and you ought to have if you vote for the Democratic or Republican ticket. The profiteers want a scarcity of coal. They make money out of a scarcity of coal. The operators say there are no cars and the railroads say there is no coal. And between them they defraud the people. Here is the difficulty. Here are the cars. The Socialist says, 'Take possession of the mines. Set the miners at work. Give the miner all he produces.' The miner works three hundred feet in the earth. The owner of the mine lives in New York or Vienna or Paris. He does not have to do a bit of work. He owns the tools, the machinery and the miner. And that is what you do every time you vote the Democratic or Republican ticket. Let the miner mine the coal and then he gets the full value of his toil. He can then provide himself and his wife and his children with a good home (and plenty to eat). So they continue to

charge three prices for coal. If that is the thing you want, you will get it to your heart's content.

"A change is needed, a change of system from despotism to democracy, a change from slavery to freedom; a change from brute-hood to brotherhood. To accomplish this you have got to organize, and to organize not along the zig-zag lines laid down by Sam Gompers who, through all of his career, has been on the side of the capitalist class. You never hear the capitalist papers speak of him except in praise. Gompers was always conservative, \* \* \* by solving the labor situation by the aid of Elihu Root and Andy Carnegie with whom he drank wine and smoked scab cigars.

"Few men have the courage to say a decent word in favor of the I. W. W. I have. (Here several in the crowd yelled, 'So have I.')

"I have a great respect for the I. W. W. There has been a pamphlet issued called, 'The Truth about the I. W. W.' After long investigation by five men who are not Socialists: John Graham Brooks, Harvard University, Mr. Bruers, government investigator; (other names not noted).

"These men investigated the I. W. W. They have examined its doings, beginning at Bisbee, Arizona, where the officers deported five hundred. It is only necessary to label a man 'I. W. W.' to lynch him. Just think of the state of mind for which the capitalist press is responsible.

138 "When Wall Street yells war, you may rest assured every pulpit in the land will yell war. The press and the pulpit have in every age and every nation been on the side of the exploiting class and the ruling class. That's why the I. W. W. is infamous.

"The I. W. W. in its career has never committed as much violence against the ruling class as the ruling class has committed against the people. The trial at Chicago is now on and they have not proven violence in a single solitary case. And yet, one hundred and twelve have been on trial for months and months without a shade of evidence. And this is all in its favor. And for this and many other reasons, the I. W. W. is fighting the fight of the bottom dog. For the very reason that Gompers is glorified by Wall Street, Bill Haywood is despised by Wall Street. What you need is greater organization.

"In the shop is where the industrial union has its beginning. Organize. Define your capacity. Act together. And when you organize industrially you will soon learn that you can manage industry as well as operate industry. You will find that you do not have to take work from them; you give them work to do. You can dispense with them. You ought to own your own tools. Organize industrially. Make the organization complete. Unite in the Socialist party. Vote as you organize. Stand with your party. See that that party improves the working class, especially this year when the forces will clash as they have never clashed before. Take your place in the ranks. Help to inspire the weak and strengthen the faltering. Then, when we vote together we will develop the supreme power of the one class that can bring peace to the world. We will



transfer the title deeds of the railroads, of the telegraphs, the mines and the mills. We will transfer them to the people. We will take possession in the name of the people. We will have industrial, social and political democracy. This change will be universal.

"And now for all of us to do our duty. The call is ringing in your ears. Do not worry over the charge of treason to your masters, but be concerned about the treason that involves yourself. This year we are going to sweep into power and in this nation and we are going to destroy capitalistic institutions and re-create them. \* \* \* The world of capital is collapsing. We need industrial builders. We Socialists are the builders of the world that is to be. We are inviting you this afternoon. Join and it will help you.

"In due course of time we will proclaim the emancipation of the brotherhood of all mankind."

139 And the Grand Jurors aforesaid, further present and find that at the time and place aforesaid, and in the manner and under the circumstances aforesaid, and before the assembly and persons aforesaid, the said defendant did wilfully, by words and language spoken, oppose the cause of the United States so at war as aforesaid, with the Imperial German Government; contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

E. S. WERTZ,  
*United States Attorney.*

(Endorsement on Indictment:) No. 4057, District Court of the United States for the Eastern Division of the Northern District of Ohio. The United States vs. Eugene V. Debs. Indictment, For Violation of Sec. 3, Title 1, Act of June 15, 1917, as amended by Act of May 16, 1918, (Espionage.) A True Bill. W. H. Worst, Foreman of Grand Jury. E. S. Wertz, U. S. District Attorney, Filed June 29th, 1918, by B. C. Miller, Clerk, U. S. District Court, N. D. O.

140 (Defendant arraigned, plea not guilty entered—leave granted to withdraw plea—recognizance fixed in \$10,000.00 ent. July 1, 1918 by Judge Westenhaver.)

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

This day came the United States Attorney on behalf of the United States and also came the defendant accompanied by counsel at the bar of court, and being arraigned and waiving the reading of the Indictment he for plea thereto says that he is not guilty in manner and form as he is by the Indictment therein and thereby charged,



and leave is granted said defendant to withdraw his plea and file demurrer or other pleading to the Indictment herein. It is thereupon ordered that said defendant enter into a recognizance in the sum of Ten Thousand (\$10,000.00) Dollars for his appearance here in this Court from day to day during the present term and from term to term thereafter then and there to answer unto the Indictment pending against him and in default he stand committed to the Jail of Cuyahoga County. And thereupon came the said defendant as principal and A. A. Moskovitz and Marguerite Prevey as surety and entered into the required recognizance.

141 (Motion to Quash Filed Aug. 6, 1918.)

The United States District Court, Northern District of Ohio,  
Eastern Division.

No. 4057.

*Motion to Quash.*

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

The defendant, having heard the Indictment read, and now withdrawing by leave of Court his plea of Not Guilty heretofore entered, moves to quash the said Indictment, and each Count thereof, for the reasons following, to-wit:

1. The grand jury which found said indictment was not drawn and impanelled as required by law.

2. Said grand jury was not legally constituted and not a lawful grand jury.

3. The application for a venire, the order allowing same, the drawing of said venire, and the issuing of summons for said grand jurors were all done on the same day, within a few hours of each other at most, without any public notice or opportunity afforded defendant or the public to be present at said drawing.

4. All the names selected and placed in the jury-box were selected from only the Eastern Division and not from the entire District. Said Eastern Division is comprised of 19 Counties, with populations as follows, to-wit: Ashland, 22,975 persons; Ashtabula, 59,547; Carroll, 15,761; Columbiana, 76,619; Crawford, 34,036; Cuyahoga, 637,425; Geauga, 14,670; Holmes, 17,999; Lake, 22,927; Lorain, 76,037; Mahoning, 116,151; Medina, 23,598; Portage, 30,307; Richland, 47,667; Stark, 122,987; Summit, 103,253; Trumbull, 52,766; Tuscarawas, 57,035; and Wayne, 38,058. And said grand jurors were not selected and placed in said jury-box from said several counties in proportion to population, but on the contrary with entire disregard of said proportions.

142        5. The names drawn for said grand jury were not drawn according to the proportionate populations of said nineteen counties, as in the fourth ground above set forth; but on the contrary were drawn with entire disregard of said proportions.

6. The names selected and put in, and those drawn from, said jury-box did not include names of the wage-earning, laboring class which is dependent mainly or entirely upon the sale of its labor-power for maintenance, to which class defendant belongs, and which is a very large class within said division and district, numbering more than one-half the population of said district and division. Members of said class have been purposely excluded from said jury-service, and this defendant thereby deprived of his right of trial by due process of law as provided by Article Five of the Amendments to the Constitution of the United States.

7. The names selected and put in, and those drawn from, said jury-box were the names exclusively of adherents of the Republican and Democratic Parties. Members of the Socialist Party number more than 40,000 electors within said Division and District, and did at the time said jury-box was filled as aforesaid; and said members of the Socialist Party are in every way eligible to serve as jurors and were at said time, but have been by reason of their adherence to said Party excluded from said Jury service. The defendant is an adherent of the said Socialist Party; the offense with which he is charged is that of uttering Socialist propaganda and attacking the principles and the leaders of the said Republican and Democratic Parties and necessarily evoking the political prejudices and passions of members and adherents of said parties; and to cause defendant to be indicted by a jury composed exclusively of his political ad-  
143        versaries, while members of his own political party are excluded therefrom, deprives the defendant of the equal protection of the law and his constitutional rights.

8. Said grand jury was impanelled and sworn for the April Term, 1918, which began April 1st, 1918. The law, in its present form, under which this indictment has been found, was not enacted until May 16, 1918. Thus at the time said grand jurors were sworn and charged, there was no such crime, in the then existing laws, with which this defendant is now charged; and said grand jurors were not sworn or charged to inquire into the future offenses which might be created by future statutes and thereafter committed, but were sworn and charged solely as to the then existing laws.

The defendant says further that all of these facts are prejudicial to his defense; and all of them he is ready to verify.

Wherefore he prays judgment of the indictment and that the same, and each count thereof, may be quashed.

SEYMOUR STEDMAN,  
MORRIS H. WOLF,  
JOSEPH W. SHARTS,  
*Attorneys for the Defendant.*



STATE OF OHIO,

*County of Montgomery, ss:*

Joseph W. Sharts, being first duly sworn, says that he is one of the attorneys for defendant named in the foregoing Motion to Quash, and that the allegations therein contained are true as he verily believes.

JOSEPH W. SHARTS.

Sworn to before me and subscribed in my presence by the said Joseph W. Sharts this 1st day of August, A. D. 1918.

STANLEY R. SHARTS,

[SEAL.]

*Notary Public in and for Said County.*

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(Demurrer Filed Aug. 15, 1918.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 4057. Criminal.

*Demurrer.*

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

Now comes the defendant, Eugene V. Debs, in his own proper person and by Morris Wolf, Joseph W. Sharts, Seymour Stedman, and Morris Hillquit, his attorneys, and demurs to the indictment and each and every count thereof in the above entitled cause, and for the reason thereof says:

(1.) That said indictment and each and every count thereof is insufficient in that it fails to state and charge an offense under the laws of the United States;

(2.) That each and every count of Section 3, Title 1, of an Act of June 15, 1917, as amended by Act of May 16, 1918, entitled: "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States; to punish espionage, and better to enforce the criminal laws of the United States, and for the other purposes", is unconstitutional in that it is in violation of an amendment to the Constitution of the United States, entitled, "Article 1. Amendments to the Constitution", as follows: "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble and to petition the government for a redress of grievances";

(3.) That said indictment is bad in that it charges several distinct and separate offenses.

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*First Count.*

The first count is insufficient

(4.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(5.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(6.) in that it fails to allege with sufficient particularity how and in what manner the defendant wilfully did make and convey false reports or false statements with intent to promote the success of the enemies of the United States;

(7.) in that it fails to show wherein the said alleged reports and statements charged against the defendant were false;

(8.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, A. P. Owen, and Virgil Steiner were within the draft age, subject to military duty, or in the military and naval forces of the United States, or that they then and there heard of or became cognizant of the false reports or false statements charged to have been uttered, made, or conveyed by the defendant;

146 (9.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, A. P. Owen, Virgil Steiner, and persons unknown to the Grand Jury were of draft age or subject to military duty, or in the military and naval forces of the United States, or in the military services of the United States, or heard any language or the uttering of any false reports or false statements by the defendant, as alleged, with intent to promote the success of the enemies of the United States;

(10.) The said count is bad in that it appears that the persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are not by name or description set forth and presented or described in said count.

*Second Count.*

The second count is insufficient

(11.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(12.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(13.) in that it fails to allege with sufficient particularity how and in what manner the defendant wilfully did make and convey false

reports or false statements with intent on his part to interfere  
147 with the operation and success of the military and naval  
forces of the United States;

(14.) in that it fails to show wherein the said alleged reports and statements charged against the defendant were false;

(15.) in that it fails to charge that Clyde R. Miller and Dennis R. Smith were within the draft age, subject to military duty, or within the military and naval forces of the United States, or that they then and there or became cognizant of the false reports or false statements charged to have been uttered, made, or conveyed by the defendant;

(16.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, and persons unknown to the Grand Jury were of the draft age or subject to military duty, or within the military and naval forces of the United States, or heard any language or the uttering of any false reports or false statements made by the defendant, as alleged;

(17.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are not by name or description set forth and presented or described in said count;

(18.) in that it fails to allege the nature or character of the alleged interference with the operation and success of the military and naval forces of the United States and fails to point out what operation was interfered with of the military and naval forces of the United States;

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*Third Count.*

The third count is insufficient

(19.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(20.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(21.) in that it wholly fails to point out specifically in what way and by what fact, circumstance or statement the defendant did cause and incite, insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States;

(22.) in that it wholly fails to set forth particularly and by any allegation of fact or circumstance how or in what manner the defendant did attempt to cause and attempt to incite, insubordination, disloyalty, mutiny and refusal of duty in military and naval forces of the United States;

(23.) in that it fails to allege that Clyde R. Miller and Dennis R. Smith were within the draft age, subject to military duty, or within the military and naval forces of the United States, or in the military and naval service of the United States, or that they then



and there heard of or became cognizant of any statements, speech, address, charged to have been uttered, published, made or conveyed by the said defendant;

(24.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are  
149 not by name or description set forth and presented or described in said count.

#### *Fourth Count.*

The fourth count is insufficient

(25.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(26.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(27.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith and Virgil Steiner were within the draft age, subject to military duty, or within the military and naval services of the United States, or that they then and there heard of or became cognizant of any statements, speech, or address charged to have been uttered, published, made or conveyed by the said defendant;

(28.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith and Virgil Steiner, and persons unknown to the Grand Jury were of draft age subject to military duty or within the military and naval forces of the United States, or in the military services of the United States; or heard any language or the uttering of any statements or public speech by the defendant;

(29.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are  
150 not by name or description set forth and presented or described in said count;

(30.) in that it fails to allege any statement of fact, any method, manner, condition, circumstance, or utterance by the defendant, or caused by the defendant, which constituted an obstruction to the recruiting and enlistment service of the United States; or any fact, condition, circumstance, or utterance resulting from any public speech or action on the part of the defendant, or statement made by him, wherein, as alleged, he attempted to obstruct the recruiting and enlistment service of the United States.

#### *Fifth Count.*

The fifth count is insufficient

(31.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;



(32.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(33.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, A. P. Owen, and Virgil Steiner were within the draft age, subject to military duty, or within the military and naval forces of the United States, or in the military and naval service of the United States, or that they then and there heard of or became cognizant of any disloyal language or statements charged to have been  
151 uttered, made or conveyed by the defendant;

(34.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, A. P. Owen, Virgil Steiner, and persons unknown to the Grand Jury were of draft age or subject to military duty, or in the military and naval forces of the United States, or heard any language or the uttering of any statements or public speech by the defendant;

(35.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are not by name or description set forth and presented or described in said count;

(36.) in that it fails to point out, designate, or charge any facts or disloyal language about the form of government of the United States;

(37.) in that it fails to point out, designate, or charge any facts or disloyal language about the Constitution of the United States;

(38.) in that it fails to point out, designate, or charge any facts or disloyal language about the military and naval forces of the United States.

#### *Sixth Count.*

The sixth count is insufficient

(39.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(40.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances but the expression of  
152 an opinion upon the political and industrial policies and attitude, of the Administration and Governments of various countries;

(41.) in that it does not descend to particulars and state facts or circumstances or statements showing how or in what way or by what language the defendant intended to bring the form of government of the United States into contempt, scorn, contumely and disrepute;

(42.) in that it does not descend to particulars and state facts or circumstances or statements showing how or in what way or by what language the defendant intended to bring the Constitution of the United States into contempt, scorn, contumely and disrepute;

(43.) in that it does not descend to particulars and state facts or circumstances or statements showing how or in what way or by what language the defendant intended to bring the military and naval forces of the United States into contempt, scorn, contumely and disrepute;

(44.) in that it does not descend to particulars and state facts or circumstances or statements showing how or in what way or by what language the defendant intended to bring the flag of the United States into contempt, scorn, contumely and disrepute;

(45.) in that it does not descend to particulars and state facts or circumstances or statements showing how or in what way or by what language the defendant intended to bring the uniform of the army and navy of the United States into contempt, scorn, contumely and disrepute;

(46.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, A. P. Owen, Virgil Steiner, and persons unknown to the Grand Jury were of draft age or subject to military duty, or  
153 in the military and naval forces of the United States or heard any language or the uttering of any statements or public speech by the defendant;

(47.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are not by name or description set forth and presented or described in said count.

*Seventh Count.*

The seventh count is insufficient

(48.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(49.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(50.) in that it fails to allege that Clyde R. Miller, and Dennis R. Smith were a part of the military and naval forces of the United States, or in the military and naval service of the United States, or that they then and there heard of or became cognizant of the false reports or false statements charged to have been uttered, made, or conveyed by the defendant;

(51.) in that it fails to point out, designate, or charge any language or action intended to

(a) incite

(b) provoke

(c) encourage

154 resistance to the United States and to promote the cause of its enemy.

(52.) in that it appears that persons, respectively, alleged to have been present and alleged to be known to the Grand Jury, are not by name or description set forth and presented or described in said count.



*Eighth Count.*

(53.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(54.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(55.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith, Virgil Steiner and A. P. Owen were a part of the military and naval forces of the United States, or in the military and naval service of the United States, or that they then and there heard of or became cognizant of the false reports or false statements charged to have been uttered, made or conveyed by the defendant;

(56.) in that it fails to point out, designate, or charge any language or action, how or in what manner, or by what statement, the defendant did

(a) urge

(b) incite

(c) advocate

155 the curtailment of the production in the United States of arms, armament, ammunition and munitions necessary and essential to the prosecution of the war in which the United States is engaged;

(57.) in that it fails to point out, designate, or charge any language or action of which he, the said defendant, was guilty and which did

(a) urge

(b) incite

(c) advocate

a curtailment of production in the United States of arms, armament, ammunition and munitions necessary and essential to the prosecution of the war in which the United States is engaged.

*Ninth Count.*

The ninth count is insufficient

(58.) in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

(59.) in that the statement in words and figures therein alleged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(60.) in that it fails to allege that Clyde R. Miller, Dennis R. Smith were a part of the military and naval forces of the United



States, or in the military and naval service of the United States, or that they then and there heard of or became cognizant of the false reports or false statements charged to have been uttered, 156 made, or conveyed by the defendant;

(61.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully.

(a) advocate

(b) teach

(c) suggest

the wilfull making and conveying of false reports and false statements with intent to promote the success of the enemy of the United States;

(62.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully make and convey

(a) false reports

(b) false statements

with intent to interfere with the operation and success of the military and naval forces of the United States;

(63.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully

(a) cause

(b) attempt to cause

(c) incite

(d) attempt to incite

insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States;

(64.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully

(a) obstruct

(b) attempt to obstruct

157 the recruiting and enlistment service of the United States;

(65.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully utter and publish disloyal language about

(a) the form of government of the United States

(b) the Constitution of the United States

(c) the military and naval forces of the United States;

(66.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully utter and publish language intended to bring

(a) the form of government of the United States

(b) the Constitution of the United States

(c) the military and naval forces of the United States

(d) the flag of the United States

(e) the uniform of the army and navy of the United States into contempt, scorn, contumely and disrepute;

(67.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully utter and publish language intended to

(a) incite

(b) encourage

resistance to the United States and to promote the cause of its enemy.

158 (68.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully, by utterance and language spoken

(a) urge

(b) incite

(c) advocate

the curtailment of production in the United States of arms, armament, ammunition and munitions necessary and essential to the prosecution of the war in which the United States is engaged with intent by such curtailment to cripple and hinder the United States in the prosecution of the war;

(69.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did wilfully, by words and language, oppose the cause of the United States in the war with the Imperial German Government;

(70.) in that it fails to point out, designate and descend to particulars in charging any language, facts or action by which the defendant did then and there utter, state, publish and say, advocating, teaching, depending and suggesting the doing of all the acts and things set forth in the said alleged public address;

(71.) in that said count charges several separate and distinct offenses;

(72.) in that said count is incomplete in and of itself, and is ambiguous in that it refers to and attempts to make a part of said count the allegations and contents of various other counts therein referred to.

#### *Tenth Count.*

(73.) is insufficient in that it fails to properly charge an offense in that it does not descend to particulars and omits a statement of facts or circumstances constituting an offense;

159 (74.) in that the statement in words and figures therein charged to have been made and uttered by the defendant do not appear to be a statement of facts or circumstances, but the expression of an opinion upon the political and industrial policies and attitude of the Administration and Governments of various countries;

(75.) in that it fails to allege that Clyde R. Miller and Dennis R. Smith were a part of the military and naval forces of the United States, or in the military and naval services of the United States, or that they then and there heard of or became cognizant of the false reports or false statements charged to have been uttered, made, or conveyed by the defendant;



(76.) in that it fails to descend to particulars and state facts and circumstances, words, language, speech, address or utterances by the defendant wherein the defendant did unlawfully and wilfully oppose the cause of the United States in the war with the Imperial German Government;

(77.) in that each and every count of said indictment wherein it purports to set forth and allege the words, language, speech, false reports and false statements, literally or in substance, to have been caused, made, uttered, or conveyed by the defendant, appears to be incomplete by reason of substantial omissions and additions.

Because of the foregoing and divers other good reasons the said indictment and each and every count thereof fails to charge an offense against the defendant; therefore, the defendant prays judgment whether he ought to be required to further plead to the indictment herein presented against him.

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SEYMOUR STEDMAN,  
MORRIS H. WOLF,  
JOSEPH W. SHARTS,  
*Attorneys for Defendant.*

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(Memorandum Opinion Filed Sep. 3, 1918.)

In the United States District Court, Northern District of Ohio,  
Eastern Division.

No. 4057. Indictment.

UNITED STATES OF AMERICA, Plaintiff,

vs.

EUGENE V. DEBS, Defendant.

*Memorandum.*

Westenhaver, District Judge:

The motion to quash will be overruled. Points 1 to 7 inclusive were raised in the case of United States of America v. Ruthenberg, et al., and ruled adversely to the present contention of the defendant. These rulings were later affirmed by the United States Supreme Court. Point 8 is without substance, for obviously a grand jury may inquire into an offense committed after it was summoned or impanelled as well as one committed prior thereto.

On consideration of the demurrer to this indictment counts 1, 2, 5 and 9 will be disregarded, as the United States Attorney has announced in his brief on this demurrer an intention to enter a nolle prosequi as to each of them. The demurrer will be overruled as to the remaining counts, although counts 6, 7 and 8 are reserved for further consideration. My present inclination is to withdraw count 8 from consideration.



My purpose is, if time can be found, to file a memorandum opinion, but as I am by designation required to sit in an important case in the Southern District of Ohio, which may take several days, I probably will be unable to do so before the trial.

Each of the counts, except, perhaps, 8, is, in my opinion, sufficient in form and substance, and is unobjectionable on the ground of duplicity. Any contention that the Espionage Law is unconstitutional is, in my opinion, frivolous and entirely devoid of merit.

An exception may be noted to these rulings.

D. C. WESTENHAVER,  
Judge.

Cleveland, Ohio, September 3, 1918.

163 (Nolle Prosequi Entered as to Counts Nos. 1-2-5 & 9 ent.  
162 September 4, 1918 by Judge Westenhaver.)

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

On application of the United States Attorney, it is ordered that a Nolle Prosequi be entered as to each of counts numbers 1, 2, 5 and 9 of the Indictment returned herein.

164 (Order Overruling Demurrer-Exceptions ent. Sept. 4, 1918 by  
Judge Westenhaver.)

THE UNITED STATES OF AMERICA,

vs.

EUGENE V. DEBS.

No. 4057. Criminal.

This day this cause came on to be heard on defendant's demurrer to the Indictment herein and was submitted to the Court on briefs of both parties; on consideration thereof the Court overruled said demurrer to which ruling of the Court defendant, by his attorneys, excepts.

165     *(Order Overruling Motion to Quash-Exceptions ent. Sept. 4, 1918 by Judge Westenhaver.)*

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

VS.

EUGENE V. DEBS.

This day this cause came on to be heard on motion of defendant to quash the Indictment returned herein and was submitted to the Court, on consideration thereof the Court overruled said motion, to which ruling of the Court defendant, by his attorneys, excepts.

166     *(Defendant re-arraigned. Plea not guilty to 3, 4, 6, 7, 8 & 10 Counts. Jury impanelled and sworn—trial proceeded. Entered September 9, 1918 by Judge Westenhaver.)*

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

VS.

EUGENE V. DEBS.

This day came the United States Attorney on behalf of the United States and also came the defendant accompanied by counsel at the bar of Court and said defendant having withdrawn his plea of not guilty heretofore entered, and filed his motion to quash and his demurrer, which motion and demurrer were overruled by the Court to which order and judgment of the Court the defendant then and there excepted, whereupon said defendant being again arraigned, waived the reading of the Indictment and for plea thereto says that he is not guilty in manner and form as he is by the third, fourth, sixth, seventh, eighth and tenth counts of the Indictment therein and thereby charged. Thereupon a jury being called came to wit: Hiram Shaub, Joseph Pifer, K. Y. Hart, C. P. Dickerman, Maurice Bettes, Cyrus Stoner, Henry C. Dielhenn, John S. Kollar, Stephen McGowan, Chas. H. Slingluff, Henry Jolly and S. R. Moon, who being duly empaneled and sworn the trial of this cause proceeded as to the said third, fourth, sixth, seventh, eighth and tenth counts of the Indictment herein, a Nolle Prosequi having heretofore on the fourth day of September, A. D. 1918 been entered as to the first, second, fifth and ninth counts of the Indictment, statements of counsel to the jury having been concluded; and the hour of adjournment having arrived, further proceedings were continued until tomorrow morning at 9:30 o'clock.

167     *(Trial in progress ent. Sept. 10, 1918 by Judge Westenhaver.)*

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

This day came again the United States Attorney on behalf of the United States and also came the defendant accompanied by counsel and the Jury heretofore duly empanelled and sworn at the bar of Court and the trial of this cause proceeded. Testimony in chief on behalf of The United States was begun but not concluded when the hour of adjournment arrived, whereupon further proceedings were postponed until tomorrow morning at 9:30 o'clock.

168     *(Trial in progress ent. Sept. 11th, 1918 by Judge Westenhaver.)*

No. 4057. Criminal.

THE UNITED STATES OF AMERICA

vs.

EUGENE V. DEBS.

This day came again the United States Attorney on behalf of the United States and also came the defendant accompanied by counsel and the Jury heretofore empanelled and sworn and the trial of this cause proceeded. Testimony in chief on behalf of the United States was resumed and concluded, and the defendant not desiring to offer any testimony in his behalf moved the Court to instruct the Jury to find him Not Guilty as to each and every count of the Indictment herein, and it appearing that the Court had heretofore entered a Nolle Prosequi as to the first, second, fifth and ninth counts of the Indictment, it is after due consideration ordered by the Court that the said motion be and the same is hereby sustained as to the sixth and eighth counts of the Indictment, and as to the third, fourth, seventh and tenth counts of the Indictment, the said motion be and the same is hereby overruled to which ruling and judgment of the Court the defendant then and there excepted. Arguments to the Jury having been concluded and the hour of adjournment having arrived, further proceedings were postponed until tomorrow morning at 9:30 o'clock.



Debs v. United States  
249 U.S. 211 (1919)

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 714.

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EUGENE V. DEBS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OHIO.

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FILED OCTOBER 24, 1918.

(26,800)

(26,800)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 714.

EUGENE V. DEBS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OHIO.

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IN THE  
Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

No. 714

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EUGENE V. DEBS,  
*Plaintiff in Error.*

VS.

THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

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In Error to District Court of the United States  
for the Northern District of Ohio.

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**BRIEF FOR PLAINTIFF IN ERROR**

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**STATEMENT OF CASE.**

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(Citations to Transcript Are to Printed Record.)

On June 29, 1918, in the United States District Court, Eastern Division, of the Northern District of Ohio, the grand jury presented an indictment against Eugene V. Debs, consisting of 10 counts (1-138). All were under Section 3, Title I, of an Act of Congress of June 15, 1917, as amended by Act of May 16, 1918, known as the Espionage Act. A motion to quash was entered as to the indictment and each count thereof (139-140); also a demurrer (141-150). Both motions were denied (150-151). Before the trial 4 of the counts were withdrawn (Nos. 1, 2, 5 and 9 of the indictment (151). A verdict of not guilty was instructed as counts 6 and 8 (153), leaving only four counts for the consideration of the jury. The defendant was found not guilty upon the 10th

count, and guilty upon counts 3, 4 and 7 (154). Motions for a new trial (155) and in arrest of judgment (156) were overruled (157). Judgment was rendered accordingly, and Mr. Debs was sentenced to serve 10 years in the state penitentiary of West Virginia, upon each of these three counts, the terms to run concurrently (157).

As to count 3 (29-42), the charge is that on June 16, 1918, at Canton, Ohio, while the United States was at war with the Imperial German Government, defendant did unlawfully, wilfully and feloniously cause and attempt to cause and incite and attempt to incite, insubordination, disloyalty, mutiny and refusal of duty, in the military and naval forces of the United States; that is to say, defendant made a public speech to an assembly of people, among whom were citizens between the ages of 21 and 30 (two of whom are named), with intent to cause and attempt to cause insubordination, etc. The speech referred to is set out in full.

Upon the introduction of testimony as to the making of the speech at Canton, it appeared that the actual speech was considerably longer than appears in the indictment, and different at many points. We make no contention upon this variance, since Mr. Debs chooses to stand upon the speech as actually made, and we shall make our references in this brief to the more complete report, as introduced by the government. We set out at this point, therefore, the fuller text of the speech, in lieu of the text used in the indictment (194-215).

SPEECH AS REPORTED BY E. R. STERLING.

*Delivered by Eugene V. Debs, at Nimisilla Park, Canton, Ohio, Sunday Afternoon, June 16, 1918.*

Mr. Debs: Comrades, friends and fellow-workers, for this very cordial greeting, this very hearty reception, I thank you all with the fullest appreciation of

your interest in, your devotion to, the cause for which I am to speak to you this afternoon. (Applause.)

To speak for labor; to plead the cause of the men and women and children who toil; to serve the working class, has always been to me a high privilege (applause).

I have just returned from a visit over yonder (pointing to the workhouse) (laughter), where three of our most loyal comrades (applause) are paying the penalty for their devotion to the cause of the working class. (Applause.) They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make Democracy safe in the world. (Applause.)

I realize that, in speaking to you this afternoon, that there are certain limitations placed upon the right of free speech. I must be exceedingly careful, prudent, as to what I say, and even more careful and more prudent as to how I say it. (Laughter.) I may not be able to say all I think (laughter and applause); but I am not going to say anything that I do not think (applause). But, I would rather a thousand times be a free soul in jail than to be a sycophant and coward on the streets (applause and shouts). They may put those boys in jail—and some of the rest of us in jail—but they can not put the Socialist movement in jail (applause and shouts). Those prison bars separate their bodies from ours, but their souls are here this afternoon (applause and cheers). They are simply paying the penalty that all men have paid in all of the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind (applause).

If it had not been for the men and women, who, in the past have had the moral courage to go to jail, we would still be in the jungles (applause).

This assemblage is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon (laughter). What I say here amounts to but little; what I see here is exceedingly important (applause). You workers here in Ohio, enlisted in the greatest cause ever organized in the interest of your class, are making history today in the face of threatening trouble of all kinds—history that is going to be read with profound interest by coming generations (applause).



There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement (applause). It is only when you begin to compromise that trouble begins (applause). So far as I am concerned, it does not matter what others may say, or think, or do, as long as I am sure that I am right with myself and the cause (applause). There are so many who seek refuge in the popular side of a great question. On account of that, I hope, as a Socialist, I have long since learned how to stand alone (applause).

For the last month I have been traveling over the Hoosier State; and, let me say to you, that, in all my connection with the Socialist movement, I have never seen such meetings, such enthusiasm, such unity of purpose; never have I seen such a promising outlook as there is today, notwithstanding the statement they have published repeatedly that our leaders had deserted us (laughter). Well, for myself, I never had much faith in leaders, anyway (applause and laughter). I am willing to be charged with almost anything, rather than to be charged with being a leader. I am suspicious of leaders, myself, and especially of the intellectual variety (applause). Give me the rank and file every day in the week. If you go to the City of Washington, and you examine the pages of the Congressional Directory, you will find that almost all of those corporation lawyers and cowardly politicians, members of Congress, and misrepresentatives of the masses—you will find that almost all of them claim, in glowing terms, that they have risen from the ranks to places of eminence and distinction. I am so glad that I can not make that claim for myself (laughter). I would be ashamed to admit that I had risen from the ranks. When I rise it will be with the ranks, and not from the ranks (applause).

When I came away from Indiana, the comrades said: "When you cross the line and get over into the Buckeye State, tell the comrades over there that we are on duty and doing duty. Give them for us, a hearty greeting, and tell them that we are going to make a record this fall that will be read all around the world" (applause).

The Socialists of Ohio, it appears, are very much alive this year. The party has been killed recently (laughter) which, no doubt, accounts for its extraordinary activity (laughter). There is nothing that helps the Socialist

party so much as receiving an occasional death blow (laughter and cheers). The oftener it is killed the more boundless, the more active, the more energetic, the more powerful it becomes.

They who have been reading the capitalist newspapers realize what a capacity they have for lying. We have been reading them lately. They know all about the Socialist party—the Socialist party movement, except what is true (laughter). Only the other day they took an article that I had written—and most of you have read it—most of you members of the party, at least—and they made it appear that I had undergone a marvelous transformation (laughter). I had suddenly become changed—suddenly come to my senses; I had ceased to be a wicked Socialist, and had become a respectable Socialist (laughter), a patriotic Socialist—as if I had ever been anything else (laughter).

What was the purpose of this deliberate misrepresentation? It is so self-evident that it suggests itself. The purpose was to sow the seed of dissension in our ranks; to have it appear that we were divided among ourselves; that we were pitted against each other, to our mutual undoing. But Socialists were not born yesterday (applause). They know how to read capitalist newspapers (laughter and applause); and to believe exactly opposite what they read (applause and laughter).

Why should a Socialist be discouraged on the eve of the greatest triumph in all the history of the Socialist movement (applause)? It is true that these are anxious, trying days for us all—testing days for the women and men who are upholding the banner of the working class in the struggle of the working class of all the world against the exploiters of all the world (applause); a time in which the weak and cowardly will falter and fail and desert. They lack the fiber to endure the revolutionary test; they fall away; they disappear as if they had never been. On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect and assert their convictions; stand by them; fight for them; go to jail or to hell for them, if need be (applause and shouts)—they are writing their names, in this crucial hour—they are writing their names in fadeless letters in the history of mankind (applause).



Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers (laughter and applause); their very names throb in my heart, and thrill in my veins, and surge in my soul (applause). I am proud of them; they are there for us (applause); and we are here for them (applause, shouts and cheers). Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world (great applause).

Are we opposed to Prussian militarism (laughter)? (Shouts from the crowd of "Yes, Yes"). Why, we have been fighting it since the day the Socialist movement was born (applause); and we are going to continue to fight it, day and night, until it is wiped from the face of the earth (thunderous applause and cheers). Between us there is no truce—no compromise.

But, before I proceed along this line, let me recall a little history, in which, I think, we are all interested.

In 1869 that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sentenced to prison for three months, because of his war, as a Socialist, on the Kaiser and on the Junkers that rule Germany. In the meantime the Franco-Prussian war broke out. Liebknecht and Bebel were the Socialist members in the Reichstag. They were the only two who had the courage to protest against taking Alsace-Lorraine from France and annexing it to Germany. And for this they were sent two years to a prison fortress charged with high treason; because, even in that early day, almost fifty years ago, the leaders, these forerunners of the international Socialist movement, were fighting the Kaiser and fighting the junkers of Germany (great applause and cheers). They have continued to fight them from that day to this (applause). Multiplied thousands of them have languished in the jails of Germany because of their heroic warfare upon the ruling class of that country (applause).

Let us come down the line a little further. You remember that, at the close of Theodore Roosevelt's second term as President, he went over to Africa (laughter) to make war on some of his ancestors (laughter) (continued shouts, cheers, laughter and applause). You remember that, at the close of his expedition, he visited all of the capitals of Europe; and he was wined and dined, dignified



and glorified by all of the Kaisers and Czars and Emperors of the old world (applause). He visited Potsdam while the Kaiser was there; and, according to the accounts published in the American newspapers, he and the Kaiser were soon on the most familiar terms (laughter). They were hilariously intimate with each other, and slapped each other on the back (laughter). After Roosevelt had reviewed the Kaiser's troops, and, according to the same accounts, he became enthusiastic over the Kaiser's troops, and said: "If I had that kind of an army, I would conquer the world" (laughter). He knew the Kaiser then just as well as he knows him now (laughter). He knew that he was the Kaiser, the Beast of Berlin. And yet, he permitted himself to be entertained by the Beast of Berlin (applause); had his feet under the mahogany of the Beast of Berlin; was cheek by jowl with that Beast of Berlin (applause). And while Roosevelt was being entertained royally by the German Kaiser, that same Kaiser was putting the leaders of the Socialist party in jail for fighting the Kaiser and the junkers of Germany (applause). Roosevelt was the guest of honor in the whitehouse of the Kaiser, while the Socialists were in the jails of the Kaiser for fighting the Kaiser (applause). Who was fighting for Democracy? Roosevelt? (Shouts of "no.") Roosevelt, who was honored by the Kaiser, or the Socialists who were in jail by the order of the Kaiser? (applause).

"Birds of a feather flock together" (laughter).

When the newspapers reported that Kaiser William and ex-President Theodore recognized each other at sight, were perfectly intimate with each other at the first touch, they made the admission that is fatal to the claims of Theodore Roosevelt that he is a great friend of the people and the champion of Democracy; they admitted that they were kith and kin; that they were very much alike; that their ideas and ideals were about the same. If Theodore Roosevelt is now the great champion of Democracy (laughter), the arch—the arch foe of autocracy (laughter), what business had he as the guest of honor of the Kaiser? And when he met the Kaiser, and did honor to the Kaiser, under the terms imputed to him, wasn't it pretty strong proof that he, himself, was a kaiser at heart? (applause). Now, after being the guest of Emperor William, the Beast of Berlin, he came back

to this country, and he wants you to send ten million men over there to kill the Kaiser (applause and laughter); to murder his former friend and pal (laughter). Rather queer, isn't it? And yet, he is the patriot, and we are the traitors (applause). And I challenge you to find a Socialist anywhere on the face of the earth who was ever the guest of the Beast of Berlin (applause), except as an inmate of his prison—the elder Liebknecht and the younger Liebknecht, the heroic son of his immortal sire.

A little more history along the same line. In 1902 Prince Henry paid a visit to this country. Do you remember him (laughter)? I do, exceedingly well. Prince Henry is the brother of King William. Prince Henry is another Beast of Berlin, an autocrat, an aristocrat, a junker of junkers—very much despised, very much despised by our American patriots. He came over here in 1902 as the representative of Kaiser Wilhelm; he was received by Congress, by several state legislatures—among others, by the state legislature of Massachusetts, then in session. He was invited there by the capitalist captains of that so-called commonwealth. And when Prince Henry came there, there was one member of that body who kept his self-respect, put on his hat, and, as Henry, the Prince, walked in, that member of the body walked out. And that was James F. Carey, the Socialist member of that body (applause). All of the rest—all of the rest of the representatives in the Massachusetts legislature—all, all of them—joined in doing honor, in the most servile spirit, to the high representative of the autocracy of Europe. And the only man who left that body was a Socialist. And yet (applause), and yet they have the hardihood to claim that they are fighting autocracy and we are in the service of the German government (applause).

A little more history along the same line. I have a distinct recollection of it. It occurred just fifteen years ago when Prince Henry came here. All of our plutocracy, all of the wealthy representatives living along Fifth avenue—all, all of them—threw their palace doors wide open and received Prince Henry with open arms. They were not satisfied with this; they got down on their stomachs; they groveled in the dust at his feet; and our plutocracy—women and men alike—vied with each other to get



down and lick the boots of the Prince Henry, the representative of the Beast of Berlin (applause). And still our plutocracy, our junkers—don't think for a moment that the junkers are confined to Germany (applause). It is precisely because we refuse to believe this they brand us as disloyalists. They want our eyes focused on the junkers in Berlin, so that we will not see those within our own borders.

I hate, I loathe, I despise junkerdom. I have no earthly use for the junkers of Germany, and not one particle more use for the junkers in the United States (thunderous applause and cheers).

They tell us we live in a great Republic; our institutions are Democratic; we are a free people (laughter). This is too much, even as a joke (laughter). It is not a subject for levity; it is an exceedingly serious matter.

To whom do the Wall street junkers in our country—to whom do they marry their daughters? After they have wrung the countless hundreds of millions from your sweat, your agony, your life-blood, in a time of war as well as in a time of peace, they invest these billions and millions in the purchase of titles of broken-down aristocrats, and to buy counts of no-account (laughter). Are they satisfied to wed their daughters to honest working men? (Shouts from the crowd: "No.") to real democrats? Oh, no. They scour the markets of Europe for fellows who have titles and nothing else (laughter). And they swap their millions for the titles; so that matrimony, with them, becomes entirely a matter of money (laughter), literally so.

These very gentry, who are today wrapped up in the American flag, who make the claim that they are only patriots, who have their magnifying glasses in hand, who are scanning the country for some evidence of disloyalty, so eager, so ready to apply the brand to the men who dare to even whisper opposition to junker rule in the United States. No wonder Johnson said that "Patriotism is the last refuge of scoundrels." He had the Wall street gentry in mind, or their prototypes, at least; for in every age it has been the tyrant who has wrapped himself in the cloak of patriotism, or religion, or both (shouts of "good, good," from the crowd) (applause).

They would have you believe that the Socialist party consists, in the main, of disloyalists, and traitors. It is



true, in a certain sense. We are disloyalists and traitors to the real traitors of this nation (applause); to the gang that, on the Pacific coast, are trying to hang Tom Mooney, in spite of the protest of the whole civilized world (applause, shouts and cheers).

I know Tom Mooney intimately,—as if he were my own brother. He is an absolutely honest, innocent man (applause). He had no more to do with the crime with which he is charged than I have (applause). And, if he ought to go to the gallows, so ought I. If he is guilty, every man who belongs to a labor organization or to the Socialist party is, likewise, guilty.

What is he guilty of? I'll tell you. I am familiar with his record. For years he has been fighting the battles of the working class out on the Pacific coast. He refused to be bribed or to be browbeaten. He continued loyally in the service of the working class, and for this he was marked. They said: "He can't be bought; he refuses to be bribed, and he cannot be intimidated. Therefore, he must be murdered" (applause).

Let us review another bit of history. Do you remember that Francis J. Heney, the special investigator of the National Administration, was shot down in the court room in San Francisco? You remember it, don't you? The United Railways, consisting of a lot of plutocrats, hide binders, organized in the Chamber of Commerce, absolutely own and control the City of San Francisco. It is their private reservation. Their will is the supreme law. Take your stand against them, you are doomed. They do not hesitate to plot murder to perpetuate their murderous regime. Tom Mooney was the only representative of the working class they could not control (applause). They owned the railways; they controlled the great industries; they were the industrial masters; they were the political rulers; from their decision there was no appeal—the real autocrats of the Pacific coast—as infamous as any that ever ruled in Germany or any other country (applause). And when their rule became so corrupt that, at last, a grand jury was found that indicted them, and they were placed on trial, and Francis J. Heney, who has just incriminated the packers and found another gang—the packers of Chicago—Francis J. Heney, who had been selected by the national administration to assist in the prosecution, this same gang, rep-

resented by the Chamber of Commerce; this gang of plutocrats, autocrats and hide binders, hired a murderer to shoot Francis J. Heney down in the court room, and he did. Francis J. Heney happened to live through it. But that wasn't their fault. The identically same gang that hired the murderer to kill Heney, that very same gang are also for the execution of Tom Mooney (applause). Every solitary—every one of them claims to be an arch-patriot; every one insists through his newspapers that he is fighting to make Democracy safe in the world. What humbug! What rot! What false pretense! These autocrats, these tyrants, these red-handed robbers and murderers, the patriots, while the men who have the courage to stand up face to face with them and fight them in the interest of their exploited victims—they are the disloyalists and traitors. If this be true, I want to take my place side by side with the traitors in this fight (applause).

Why the other day they sent Kate Richard O'Hare to the penitentiary for ten years. Oh, just think of sentencing a woman to the penitentiary for talking (laughter). The United States, under the rule of the plutocracy, is the only country that would send a woman to the penitentiary for ten years for exercising her constitutional right of free speech (applause). If this be treason let them make the most of it (applause).

Let me review another bit of history in connection with this case. I have known Kate Richard O'Hare intimately for twenty years. I know her record by heart. Personally, I know her as if she were my own younger sister. All who know her know she is a woman of absolute integrity (applause). And they know that she is a woman of unimpeachable loyalty to the Socialist movement (applause). When she went out into Dakota and made her speech, followed by plain clothes men in the service of the Government intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when thirty farmers, men and women, who were in the audience she addressed—heard the speech,



when they went to Bismarck to testify in her favor, to swear that she had never used the language she was charged with having used, the judge refused to allow them to go upon the stand. This would seem incredible to me, if I had not had some experience of my own with a Federal court (applause).

Who appoints the Federal judges? The people? In all of the history of the country, the working class have never named a Federal judge. There are 121, and every solitary one of them holds his position, his tenure, through the influence and power of corporate capital. The corporations and trusts dictate their appointment. And when they go to the bench, they go, not to serve the people, but to serve the interests that placed them where they are (applause).

Why, the other day, by a vote of five to four—a kind of craps game—(laughter) come seven, come eleven—(laughter) they declared the child labor law unconstitutional (laughter), a law secured after twenty years of education and agitation on the part of all kinds of people. And yet, by a majority of one, the Supreme Court, a body of corporation lawyers—with just one solitary exception—wiped it from the statute books, and this in a Democracy, so that we may still continue to grind the flesh and blood and bones of puny little children into profits for the junkers of Wall street (applause). And this in a country that is fighting to make Democracy safe in the world (laughter). The history of this country is being written in the blood of the childhood they have murdered.

These are not very palatable truths to them. They do not like to hear them; and they do not want you to hear them. And that is why they brand us as undesirable citizens (laughter and applause), and as disloyalists, and as traitors. If we were traitors—if we were traitors to the people, we would be eminently respectable citizens of the republic; we could hold high office, and we could ride in limousines; and could be pointed out as people who had succeeded in life, in honorable pursuits. It is precisely because we are disloyal to the traitors that we are loyal to the people of this country (applause).

Scott Nearing. You have heard of Scott Nearing (applause). He is the greatest teacher in the United States (applause). He was in the University of Pennsylvania



until the Board of Trustees, consisting of great capitalists, found that he was teaching true economics to the students of the university. Then they said—just as the same usurers, the same money changers, the same Pharisees, the same hypocrites said of the Judean carpenter twenty centuries ago — of Jesus Christ, who was a working man, and an agitator, and an undesirable, they said: “He is preaching a false religion.” And they crucified him. And his lineal descendants said: “He is preaching false economics. We cannot crucify him, as we did his elder brother, so we will starve him to death (applause). We will discharge him and blacklist him, and make it impossible for him to get a job. He is a dangerous man; he is teaching the truth.” And the truth, Oh, the truth has always been unpalatable to the class who live out of the sweat of the working class (applause).

True, Max Eastman (applause) was indicted and his paper suppressed, just as papers with which I have been connected are all suppressed. What a wonderful compliment they paid us (laughter and applause). They are afraid that we might contaminate you. You are their wards; they are your guardians (laughter). They must see to it that our vicious doctrines don't reach your ears. And so, in our Democracy, under our free institutions, they flatter our press, and they imagine that they have silenced revolutionary propaganda. What a mistake they made. We ought to pass a resolution of thanks and gratitude to them. Thousands of people, who have never heard of our paper before, are now inquiring for it, wanting to see it. They have started inquiry and curiosity in our propaganda. And woe to the man who reads our Socialist literature from curiosity. He is a goner (applause). I have known of a thousand experiments, but I have never known of a single man or woman to escape it.

John M. Work. You know John, now, don't you, who is now on the Milwaukee Leader? When I first knew John he was a lawyer out in Wisconsin. The corporation capitalists became alarmed because of the rapid advancement of the Socialist movement. So they said: “We have to engage some bright fellow to fight this.” They said: “Well, John, you are a bright young lawyer; and you have a great career before you. We want

to engage you to find out all you can about Socialism, and then proceed to counteract its baneful effect.”

John got some Socialist literature, and began to study it; and after he had read the second volume he was a full-fledged Socialist, and he has been fighting for Socialism ever since.

How short-sighted the ruling class is. Cupidity is stone blind. The exploiter cannot see beyond the end of his nose. He can see a chance for an opening; he is just cunning enough to know what graft is and where it is, and how it can be secured, but he has no vision—not the slightest. He knows nothing of the great throbbing world that spreads out in all directions. That is the penalty that the exploiter pays. Rockefeller is blind. Every move he makes hastens the coming of his doom. Every time he and his class strike a blow at the Socialist movement it reacts upon them. Every time they strike us, they hit themselves. It never fails (applause). Every time they strangle a Socialist newspaper, they add a thousand voices proclaiming the eternal truth of the principles and doctrines of Socialism. They help us in spite of themselves.

Socialism is a growing idea, an expanding philosophy. It is spreading over the face of the earth. It is as useless to resist it as it would be to try to arrest the sunrise on the morrow. It is coming, coming, coming, all along the line. Can't you see it? If you can't, consult an oculist; there is something the matter; you are lacking in vision, in common understanding. The greatest movement in history. What a privilege it is to serve it. I have regretted a thousand times that I can do so little for the movement that has done so much for me (applause). The little that I am, the little that I am hoping to be, is due wholly to the Socialist movement (applause). It gave me my ideas and my ideals; and I wouldn't exchange all of them for all of Rockefeller's blood-stained dollars (cheers). It taught me how to serve—a lesson to me of priceless value. It taught me the ecstasy of the hand-clasp or a comrade. It taught me to hold high communion with you; it made possible for me to get in touch with you; to take my place side by side with you; to multiply myself over and over again; to make me thrill with a fresh-born manhood; to make life worth while; to open the avenues; to spread out the



glorious vistas; to know that I am akin with all that throbs; to become class conscious; to realize that, regardless of nationality, race, creed, color or sex, every man, every woman who toils, every member of the working class—every one of them—are my comrades, my brothers, my sisters—to serve them is the highest duty of my life. (Great applause.) And, in their service, I can feel myself expand; I rise to the stature of a man; I feel that I have a right to a place on earth—a place where I can stand and help to uphold the banner of industrial freedom and of social righteousness. Yes, yes; my heart is attuned with yours. Aye, all of our hearts are melted into one great heart that throbs responsive to the Social revolution.

Here, in this assemblage (applause) I hear our heart beat responsive to the Bolsheviki of Russia. (Deafening and prolonged applause.) Yes, those heroic men and women, those unconquerable comrades, who have, by their sacrifice, added fresh luster to the international movement. Those Russian comrades, who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like men or number of men and women anywhere else on earth, they have laid the foundation of the first real Democracy that ever drew (great applause) the first real Democracy that ever drew the breath of life on God's footstool (applause). And the very first act of that immortal revolution was to proclaim a state of peace with all the world, coupled with an appeal, not to the kings, not to the emperors, not to the rulers, not to the diplomats, but an appeal to the people of all nations (applause). There is the very birth of Democracy, the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central powers, to send representatives to a conference to lay down terms of peace that should be Democratic and lasting. Here was a fine—here was a fine opportunity to strike a blow to make Democracy safe in the world (applause). Was there any response to that noble appeal? And here let me say that that appeal will be written in letters of gold in the history of the world (applause). Was there any response to that appeal? (From the crowd "No.") Not the slightest.



Why, it has been charged that Leon Trotsky and the leaders of the revolution were treacherous, that they made a traitorous peace with Germany. Let us consider that proposition, briefly. At the time of the Revolution Russia had been three years in the war. Under the Czar she had lost more than four millions of her soldiers, slain or mutilated on the field of battle. She was absolutely bankrupt. Her soldiers were mainly without arms. This was what the Revolution—what was bequeathed to the Revolution by the Czar and his regime; and, for this condition Leon Trotsky was not responsible, nor the Bolsheviks. For this frightful condition, the Czar was responsible. When Trotsky came into power and went through the archives, they found the secret treaties—the treaties that were made between the Czar and the French government and the British government and the Italian government, proposing, after the victory was achieved, to dismember and disperse and destroy the Central Powers. These treaties have never been repudiated. Very little has been said about them in the American press. I have a copy of these treaties showing that the purpose of the Allies is exactly the purpose of the Central Powers (applause). And that is the purpose that has always been the purpose of war.

Wars have been waged for conquest, for plunder. In the middle ages the feudal lords, who inhabited the castles whose towers may still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall street junkers go to war (applause). The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought the battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and to cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them in contempt. And that is war in a nut-shell. The master class has always declared the war; the subject class has always fought

the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose including their lives (applause). They have always taught you that it is your patriotic duty to go to war and to have yourselves slaughtered at a command. But in all of the history of the world you, the people, never had a voice in declaring war. You have never yet had! And here let me state a fact—and it cannot be repeated too often: the working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war. The working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

“Yours not to ask the question why;  
Yours but to do and die.”

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary (applause).

Rose Pastor Stokes. And when I mention her name (applause), I take off my hat—mentally at least. (He spoke without a hat on his head.) Here is another heroic and inspiring comrade. She had her millions of dollars. Did it restrain her an instant? Her devotion to the cause had arrested all consideration of a financial or an economic nature. She went out to render her service to the cause in this day of crises, and they sent her to the penitentiary for ten years. Think of it! Ten years! What had she said? Not any more than I have said here this afternoon (laughter). I want to admit—I want to admit, without argument, that if Rose Pastor Stokes is guilty, so am I. If she is guilty, I wouldn't be cowardly enough to plead my innocence. And if she ought to be sent to the penitentiary for ten years, so ought I.

What did she say? Why, she said that a Government—a Government could not serve both the profiteers and the victims of the profiteers. Isn't that true? Certainly.

Roosevelt said a thousand times more in the same paper, The Kansas City Star. Roosevelt said, the other day, that he would be heard if he went to jail. He knows.



very well that he will not go to jail. He is laying his wires for the Republican nomination in 1920. And he would do everything possible to discredit Wilson in his administration. He would do that in order to give himself and his party all of the credit. That is your wonderful rivalry between the two patriotic parties—the Republican party and the Democratic party, the twins. They are not going to have any agitation between them this fall. They are all patriots this time, and they are going to combine to prevent the election of any disloyal Socialists. I haven't heard anybody anywhere tell me of any difference between them. Do you know of any? Not the slightest. One is in, the other is out. That is all the difference there is between them (laughter).

Rose Pastor Stokes never uttered a word she did not have a legal, constitutional right to utter. But her message for the people, the message that opened the eyes of the people—that must be suppressed; her voice must be silenced. And so she was confronted with a mock trial, and sent to the penitentiary for ten years. Her sentence was a foregone conclusion. A trial in a capitalist court usually ends farcical—very farcical. What ghost of a chance had she in a court with a packed jury and a corporation tool on the bench? Not the least in the world. So she goes to the penitentiary for ten years, if they carry out the program. I do not think they will. In fact, I am sure they will not. If the war was over tomorrow, all of the prison doors would open.

They just want to silence this voice during the war. The cases will be appealed, and they will remain pending in court many a month, perhaps years. What a compliment it is to the Socialist movement for telling the truth. The truth will make the people free (applause). And the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, the exploiter, the robber. So the truth must be suppressed. That is why they are trying to drive out the Socialist movement; and every time they make the attempt, they add ten thousand voices proclaiming that Socialism has come to stay (applause).

(Here Mr. Debs is handed a drink of water.)

How good the touch of the hand of a comrade is, and a sip of water furnished by a comrade; as refreshing as if it were out on the desert of life. And how good it is



to look into your faces this afternoon (applause). You are really good looking (laughter), to me, I assure you. And, I am glad there are so many of you. Your tribe has increased wonderfully since I first came here (laughter). You used to be so few and far between. And when you struck a place, the first thing you had to do was to see if you could locate a Socialist; and you were pretty lucky if you struck his trail before you left town. If he happened to be the only one in town, and he is still living, he is now regarded as practical, and he holds the place of honor, and he has lodgment in the heart of all those who come after him. Now here you can't throw a stone in the dark without hitting a Socialist (laughter). They are everywhere in increasing numbers; and what marvelous changes are taking place.

I went to Warren some years ago. It happened to be at the time that President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist, who would have been guilty of that crime. We do not attack individuals. We don't wreak our vengeance upon any individual opposed to our faith. We have no fight with individuals. We are capable of teaching those who hate us (applause). We do not hate them; we know better; we would hand them a cup of water, if they needed it (applause). There is not any room in our heart for hate, except for a system—a system in which it is possible for one man to achieve a tremendous fortune doing nothing, while millions upon millions suffer and struggle and agonize and die for the bare necessities of life (applause).

McKinley had been assassinated. I was booked to speak at Portsmouth. All of the ministers of Portsmouth met in a special session, and they passed a resolution that Debs, more than any other person, was responsible for the assassination of our beloved President (laughter). And it is due to what he was preaching that was he responsible for this crime. And so all of these pious gentry, the followers of the meek and lowly, as they believed, met and said I must not be permitted to enter the city. And they had the mayor to issue an order not permitting me to speak. I was all tired out. And they wanted me to call the meeting off. I went there soon after, however. Soon after I was booked to speak at Warren, where President McKinley's double cousin was postmaster. I went there and registered. I was

only registered when I was ordered to leave the hotel. I was exceedingly undesirable that day. I was served with notice that the hall would not be open, and that I would not be permitted to speak. I sent back word to the mayor, by the only Socialist who was permitted to remain in town—and he only remained because they did not know he was there—I sent word to the mayor that I would speak in Warren that night, according to the schedule, or I would leave Warren in a box (applause).

I went to the hall, and the Grand Army of the Republic had a special meeting, and in full uniform they all went to the hall and occupied the front seats, in order to pounce upon me and take good care of me if my speech did not suit them. I went to the hall and made my speech. I told them who was responsible for the assassination. I said: "As long as there is misery caused by robbery at the bottom, there will be assassination at the top" (applause). I showed them that it was their capitalist system that was responsible; that impoverished and brutalized the ancestors of the poor, witless boy who murdered the President. Yes, I made the speech that night. When I left there I was still very undesirable.

I returned some years thereafter. It seems that the whole population of Warren was out. I was received with open arms (applause). I was no longer a demagogue; I was no longer a fanatic; I was no longer an undesirable. I had become exceedingly honorable simply because the Socialists had increased in numbers and in power. Consequently, I had become something respectable—what a change, from poor respectability! If ever I become anything more respectable, I will be quite sure that I have outlived myself (laughter).

Oh, it is the minorities who have made the histories of this world! They who have had the courage to take their places at the front; they who have been true enough to themselves to speak the truth that is in them; they who have opposed the established order of things; who have espoused the cause of the suffering, struggling poor; who have upheld, without regard to personal consequences—who have upheld the cause of righteousness; they have made the history; they have paved the way to civilization. Oh, there are so many who remain upon the popular side. They lack the courage to join a despised minority; they lack the fiber that endures. They



are to be pitied, and not treated with contempt; they cannot help it. But, thank God, in every age and every nation there have been that few, and they have been sufficient; and they have lived; they have endured; and we, who are on earth today, are under obligation to them, because they suffered, they sacrificed, they went to jail; they had their bones broken upon the wheel; they were burned at the stake, and had their ashes scattered to the four winds by the hands of hate. We are under obligation to them, because of what they suffered for us; and the only way we can cancel that obligation is by doing or seeking to do in the interest of those who are to come after us (applause).

And this is the high purpose of every Socialist on the face of the earth. Everywhere they are animated by the same lofty principle; everywhere they have the same noble ideal; everywhere they are clasping hands across the boundary lines; everywhere they are calling one another comrades, the blessed word that springs from the heart and soul of unity; that bursts into blossom upon the lips; aye, the word "comrade"—getting in closer touch all along the battle line; and they are waging the war—the war of the working class of the world against the ruling class, the exploiting class of the world. They make mistakes; they profit with them all; we encounter defeats; they grow—they grow stronger through them all. They never take a backward step; the heart of the international Socialist never beats retreat; they are pushing forward (applause). They are pressing forward, here, there, everywhere, in all of the zones that girdle this globe; everywhere these awakening workers, these class-conscious proletarians, these horny-fisted children of honest toil, everywhere wiping out the boundary lines; everywhere facing the larger and nobler patriotism; everywhere proclaiming the glad tidings of the coming emancipation; everywhere having their hearts attuned to the most sacred cause that ever challenged men and women to action in all the history of the world. Everywhere moving toward Democracy; everywhere marching toward the sunrise, their faces all aglow with the light of the coming day. These are the Socialists; these are the most zealous, the most enthusiastic crusaders the world has ever known (applause). They are making history that will light the horizon in the coming generations; they are bound upon emancipating the human



race. They have been reviled; they have been persecuted; but they have been sufficient to themselves, pressing forward toward the height—aye, their triumph is now already begun.

Do you wish to hasten it? Join the Socialist party. Don't wait for the morrow. Come now (applause). Enroll your name; take your place where you belong. You cannot do your duty by proxy. You have got to do something yourself, and do it squarely, and look yourself in the face while you are doing it; and you will have no occasion to blush; you will know what it is to be a man or woman. You will lose nothing; you gain everything (applause). Not only do you not lose anything, but you are very apt to find something, and that something will be yourself. And you need to find yourself (applause). You need to know that you are fit for something better than slavery and cannon fodder (applause). You need to know that you were not created to work and to produce to impoverish yourself and to enrich an idle exploiter. You need to know that you have a soul to develop, a manhood to sustain. You need to know that it is your duty to rise above the animal plane. You need to know that it is for you to know something about literature, and about science, and about art. You need to know that you are on the edge of a great new world. You need to get in touch with your comrades; you need to become conscious of your interest and your power as a class. You need to know that you belong to the great majority. You need to know as long as you are ignorant, as long as you are indifferent, as long as you are content, as long as you are unorganized, you will remain exactly where you are (applause). You will be exploited; you will have to beg for a job; you will get just enough to keep you in working order; and you will be looked down upon with contempt by the very parasite that lives out of your sweat and unpaid labor. If you would be respected, you have got to begin by respecting yourself (applause). Stand up, and look yourself in the face, and see a man for the first time. See how he looks, please.

Do not be in the predicament of that poor fellow that after he had heard a Socialist speak, he concluded that he ought to be a Socialist. The argument was unanswerable. He said: "Yes. All he said is true. I ought to join the party." But, after while he concluded

that he might possibly anger the will of his old boss, and lose his job. He said: "I guess I can't afford to take the chance." That night he slept alone. He was in conflict with his conscience, as he went to bed; and he dreamed a very terrible dream. Men always do when they are untrue to themselves. Socialists always go to bed with a clear conscience. He goes to sleep with his manhood; and he wakes and goes forth in the morning with his self-respect; and he looks the whole face in the world (applause and laughter), without a tremor, without a flicker. But this poor fellow, who lacked the courage to do what his reason and his conscience commanded he should do—this poor fellow had a terrible dream. He awoke, and at midnight he bounded from his bed in a state of terror, for he said: "My God, there is nobody in this room." (Laughter.) And he was absolutely right (laughter and applause). No one! He was terror-stricken. How would you like to sleep in a room with nobody in it? (Laughter.) It is an awful thing to be nobody. That is a state of mind to get out of—the sooner the better.

There is a great deal of hope for Baker, Ruthenberg and Wagenknecht, but for the fellow that is nobody, there is no pardoning power. He is "in" for life. Anybody can be nobody, but it takes a man to be somebody.

To turn your back on that corrupt Republican party, and that still more corrupt Democratic party—the gold-dust boys of the ruling class (laughter), yes, it counts for something. To step out of those great, popular, subsidized capitalist parties, and get into a minority party that stands for a principle, and fights for a cause (applause). Make that change; it will be the most important change you have ever made in your life; and you will thank me to your dying day—or living day—a Socialist never dies—you will thank me for having made the suggestion. It was a day of days for me. I remember it so well. I passed from darkness to light. It came like a flash, just as great, seething, throbbing Russia, in a flash, was transformed from the land of supreme darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself, especially so in a crisis.

You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent no one knows. If you are weak-fibred, that weakness will be sought out, and



located. And if, through that weakness, you are conquered, you may be driven out of the Socialist movement. We will have to bid good-bye to you. You are not the stuff of which Revolutionists are made. We are sorry for you (applause), unless you happen to be an intellectual. The intellectuals, a good many of them, are already gone. No—no loss on our side, nor any gain on theirs.

But, when discussing the intellectual phase of this question, I am always amused by it. It is the same old standard under which the rank and file are judged. I fail to depend upon leaders of men—of others, because they haven't got a thing of their own. What would become of the men that are sheep unless they had shepherds to lead them out of the wilderness into the land flowing with milk and honey? Oh, yes, "Ye are my sheep." In other words, "Ye are my mutton." (Laughter.) And, if you had no intellectuals you could have no movement. They rule through their intellectuals in the capitalistic party. They have their so-called leaders. In the Republican and Democratic party you are not called upon to think. That is wholly unnecessary. The leaders do the thinking. You simply do the voting. They ride in the carriages, and you tramp in the mud, bringing up the rear, showing themselves cowards. They tend to the rest of the intellectuals in the capitalist party. The capitalist system affects to have great regard for intellect. They give themselves credit for having superior brains. We used to tell them sometime ago that the time would come when the working class would rule. They said: "Never in the world will they rule. It requires brains to rule." Implying that the workers have none.

We used to say that the people ought to own the railroads and operate them for the benefit of the people. We advocated that twenty years ago. They said: "You have got to have brains to run the trains." And the other day McAdoo fired all the brains (laughter). So, haven't all the trains been coming and going exactly on time? Have you noticed any change since the brains are gone? It is a brainless system now. It is operated by hand (laughter). But a good deal more efficiently than it was operated by brains before (laughter). And this determines infallibly the quality of capitalist brains. It is the kind of brains you can get at a very reason-



able figure at the market houses. There is not very much question about it. They have always given themselves credit for having superior brains. Aye, they have the brains of the fox; they have the brains of the wolf; they have had the shrewdness, the cunning of the coyote; but as for brains—brains, as representing intelligence and intellectual capacity, they are the most woefully ignorant people on the face of the earth. Give me a hundred capitalists, just as you find them here in Ohio—give me my pick of this plutocracy, and let me ask them a dozen simple questions about the history of their country, and I will show you that they are as ignorant as unlettered schoolboys (applause). They know nothing of history; they are ignorant of sociology; they are strangers to science; but they know how to gouge; how to rob, and do it legally. And they always do it legally, for the reason that the class which has the power to rob, upon a large scale, has the power to control the government and legalize their robbery. I haven't time to discuss this great question as extensively as I would like.

They are talking about your patriotic duty. Among other things, they are advising you to cultivate war gardens—cultivate a war garden. While they are doing this, a Government war report shows that practically fifty-two per cent. of the arable tillable soil is held out of use by the profiteers, by the land manipulators—held out of use. They, themselves, do not cultivate it. They could not if they would. They don't allow others to cultivate it; they keep it idle to enrich themselves; to pocket the hundreds of dollars of unearned increment. Who is it that makes their land valuable while it is fenced in and kept out of use? It is the people. Who pockets this tremendous value? The landlords. The landlords. Who is the patriot? And while we are upon the subject, I want you to think upon the term "land-lord." Land-lord. Lord of the land? This lord of the land is a great patriot. This lord, who professionally owns the earth, tells you that he is fighting to make the world safe for Democracy—he, who shuts all humanity out—and he who profiteers at the expense of the people who have been slain by multiplied thousands, under the pretense of being the great patriot he is—he, who is your arch-enemy; he it is that you need to wipe from power (applause). It is he, it is he that is a menace to your

loyalty and your liberty far more than the Prussian junker on the other side of the Atlantic ocean' (applause). Fifty-two per cent., according to their own figures. They tell you that there is a shortage of flour, and that you need to produce. We have got to save wheat that we can export more wheat for the soldiers who fight on the other side, while half of your tillable soil is held out of use by the profiteers. What do you think of that?

Again, they tell you there is a coal famine now, in the State of Ohio. The State of Indiana, where I live, is largely underlaid with coal. There is an inexhaustible supply of it. The coal is beneath our feet. It is within touch—all that we can possibly use. And here are the miners; they are ready to enter the mines. There is the machinery ready to be put into operation to increase the output to any desired capacity. And yet, only three weeks ago a national officer of the United Mine Workers issued and published an appeal to the Labor Department of the United States Government to the effect that of the six hundred thousand coal miners in the United States at this time, when they tell us of a coal famine—the six hundred thousand coal miners in this country are not permitted to work more than half time. I have been around over Indiana. I have been in the coal fields; I have seen the miners idle. In the meantime, scarcity of coal. They tell you that you ought to buy your coal right away. You may freeze to death next winter if you do not; and they charge you three prices for coal. Oh, yes, I think you ought to do this if you vote the Republican or Democratic ticket (applause). Now we have private ownership of the coal mines. And this is the result of private ownership of this great social utility. The coal mines are privately owned, and the operators want a scarcity of coal. Why? So they can boost the prices indefinitely. If there was an abundance of coal, there would be too much coal. They make more money out of the scarcity of coal. So there is collusion between the operators and the railroads. The operators say there are no cars, and the railroad men say no coal. And between them they simply humbug, delude, defraud the people.

There is the coal. Here are the miners. The coal has accumulated; the miners are idle and hungry.



We Socialists say: Take possession of the mines in the name of the people (applause). Set the miners at work; give every miner that works all the coal he produces. In this system the miner goes down in a pit three hundred feet. He goes to work and mines a ton of coal. He doesn't own one solitary bit of it. That ton of coal belongs to some plutocrat who lives in New York, Vienna or Paris. There is where the owners are before the war is declared. Then when they get together on their book accounts, he gets a share as if he did the work. The owner who lives in Europe, New York or Patagonia—it doesn't make any difference where he is. He doesn't have to keep at the work. He owns the tools, and he might as well own the miner. That is what you do for them as long as you vote the Republican ticket or the Democratic ticket. You vote to have these miners without a job—corporation vassals and also paupers. But I'll tell you we Socialists say: Take possession of the mines; call the miners to the coal mines. Let the miners mine the coal—every ounce. He himself is entitled to the full value of his toil. Then he can build himself a comfortable home; live in it; enjoy it; he can provide himself and his wife and children with clothes—good clothes—not shoddy; wholesome food in abundance, and the people will get coal at just what it costs to mine it.

Oh, that is Socialism as far as it goes. But you are not in favor of that program. It is too visionary. So continue to pay three prices for coal, and get your coal when winter comes, because you prefer to vote the capitalist ticket. You are still in the capitalist state of mind. It is a good deal like the Executive Lincoln said: "If you want that thing, that is what you will get to your heart's content." You will waken up; you will be raised up. A change is needed. Yes, yes. Not of party, but change of system; a change from despotism to Democracy, wide as the world (applause). A change from slavery to freedom! A change from brutehood to brotherhood; and to accomplish this you have got to organize; and you have got to organize industrially. Not along the zig-zag, craft lines laid down by Sam Gompers, who, through all of his career, has been on the side of the master class. You never hear the capitalist press speak of him except in praise and adulation. He has become a great patriot. Oh, yes. Gompers, who was never on the unpopular side



of any question or of any proposition; always conservative, satisfied to leave the labor problem to be settled at the banquet board with Elihu Root, Andy Carnegie and the rest of the plutocrats. When they drank wine together and smoked scab cigars, then the labor question was settled (laughter).

Oh, yes, while they are praising Gompers, there is the I. W. W. You find very few men who have the courage to say a word in behalf of the I. W. W. (applause). I have (applause). Let me say here that I have very great respect for the I. W. W. More than I have for their infamous detractors (applause).

Listen. There is a pamphlet just been issued called "The Truth About the I. W. W." It has been issued, after long investigation by five men, all of whom are known to the Socialists; all of whom are men of unquestioned standing in the capitalist world. At the head of this is Prof. John Graham Brooks of Harvard University; John Fitch of the Survey, of Pittsburgh, and Mr. Bruere, the Government investigator. Five of them conducted an impartial examination of the I. W. W. To use their own words, they have followed its trail; they have examined into its doings, beginning at Bisbee, where the patriots, the rotten business men, the arch-criminals, deported twelve hundred men, working men, charging them with being I. W. W., when they were nothing of the kind. It is only necessary to label a man "I. W. W." to have him lynched, just as they lynched Praeger, an absolutely innocent man—innocent as we are. Just simply started the rumor because he bore a German name. He was a Socialist, but he had never uttered one disloyal word; only the rumor was started he was disloyal, which was made up. Just think of the crime for which the poor capitalist party is responsible. But, when the war press says war, you may rest assured that every pulpit in the land will say war. And when Wall street says peace, they will all say peace, because they are simply the instruments of Wall street. The pulpits in every age have been on the side of every ruling, exploiting class—of the ruling class, and not on the side of the people. That is why the I. W. W. is infamous.

Look into this pamphlet. Don't take the word of the Wall street press for that. Get this pamphlet of truth

about the I. W. W. by five men who are incorruptible, uncontaminated—five men who dared to want to know the truth and tell the truth to the American people, with the truth in this pamphlet. They say that the I. W. W. in all of its career never committed as much violence against the ruling class as the ruling class has committed against the I. W. W. (applause).

You are not reading any reports about the trial at Chicago, are you? They used to publish extensive reports when the trials first began, and they told the people about what they proposed to prove about that gigantic conspiracy against the Government. And the trial has gone on now until they have exhausted all their testimony, and they have not proven violence in a single, solitary instance. Not one. They are utterly lacking in testimony; and yet, one hundred and twelve men are now on trial, after lying in jail for months and months, without the shadow of a crime on them—simply charged with belonging to the I. W. W. This is enough to take a man and send his soul to hell for. Just speak about the I. W. W. That is all; with no reason for it, they object to the I. W. W. The I. W. W. are fighting the fight of the bottom dog (applause). And for the reason that Gompers is loved and glorified by Wall street, Bill Haywood is despised and denounced by the same gang.

What you need is to organize, not along craft lines, but along revolutionary industrial lines (applause). You will never vote in the Socialist republic. You are needed to organize it; and you have got to organize it in the industries—unite in the industries. The industrial union is the forerunner of industrial Democracy. In the shop is where the industrial Democracy has its beginning. Organize according to the industries, and minimize all the Gompers. Get together. United, very often your power becomes invincible. Organize to get up to your fullest capacity. Organize. Act together. And when you organize industrially, you will soon learn that you can manage industry as well as operate industry. You can soon find that you don't need the idle for your masters. They are simply parasites. They don't give you work. You give them jobs taking what you produce, and that is all. Their function is to take what you produce. You can dispose of them. You don't need them to depend upon for your jobs. You ought to own



your own tools; you ought to control your own jobs; you ought to be industrial free men instead of industrial slaves. Organize industrially. Make the organization complete. Then unite in the Socialist party. Make your organization economically complete. Vote as you strive; get into the party; stand with the party all of the days in the year. See that your party embraces the working class. It is the only working class party, the party that expresses the interest, the hope, the aspirations of the toilers of the world. Get into the party. Get your fellow workers into the party, too. Yes, especially this year—this historic year; this year in which the forces will clash as they never clashed before. This is the year that calls for men and women who have the fiber; who have the courage, the manhood and the womanhood. Get into the party. Take your place in the ranks. Help to inspire the weak and to strengthen the faltering; and do your share to speed the coming of that brighter and better day for us all (applause). Then, when we vote together and act together on the industrial plane, we will develop the supreme power of the one class that can bring permanent peace to the world. We will have the courage. Industry will be organized. We will conquer the public power. We will transfer the title deeds of the railroads, the telegraph lines, the mills, the great industries—we will transfer them to the people; we will take possession in the name of the people. We will have industrial Democracy. We will have Socialist Democracy; we will have political Democracy. We will be the first free nation whose government belongs to the people. Oh, this change will be universal; it will be permanent; it looks towards the light; it paves the way to emancipation.

And now for all of us to do our duty. The call is ringing in our ears. It is your duty to respond; and you cannot falter without being convicted of treason to yourselves. Do not worry, please; don't worry over the charge of treason to your masters, but be concerned about the treason that involves yourselves (applause). Be true to yourself, and you cannot be a traitor to any good cause on earth.

Yes, we are going to sweep into power in this nation, and in every other nation on earth. We are going to destroy the capitalist institutions; we are going to re-



create them as legally free institutions. Before our very eyes the world is being destroyed. The world of capitalism is collapsing; the world of Socialism is rising.

It is your duty to help to build. We need builders of industry. Builders are necessary. We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind. (Thunderous and prolonged applause.)

\* \* \* \* \*

2. Count 4 (42-55) charges that defendant did obstruct and attempt to obstruct the recruiting and enlistment service of the United States. The making of the speech, and other averments are the same as before, except that the ages of hearers particularized is 18 to 45.

3. Count 7 (82-95), reciting the same facts, and again alleging hearers between 21 and 30, charges that the defendant did “unlawfully, wilfully and feloniously utter and publish certain language intended to incite, provoke and encourage resistance to the United States, and to promote the cause of its enemy, to wit: The Imperial German Government.”

Aside from the introduction of the Canton speech, most of the time of the trial was consumed in reading into the record the war proclamation issued by the Socialist Party in April, 1917, usually designated as the St. Louis Platform (218, Exhibit II); also the records of criminal prosecutions against Wagenknecht, Baker, Ruthenberg (226, Exhibits 9, 10, 11, 12 and 13), Rose Pastor Stokes (227, Exhibit 14), and Kate Richards O’Hare (228, Exhibit 15), and a speech made by Mr. Debs in Chicago on August 11, 1918 (220-223).

No witnesses were called for the defense. Mr. Debs made the only argument in his own behalf (236-248).

Counsel for Mr. Debs, proceeding upon this simple record, are conscious of an obligation to present the appeal to this court in entire harmony with the spirit and purpose of the defense in the trial court. The defendant comes before this court like any other person charged with crime, and his attorneys are under duty to this court to call attention to such manifest errors upon the trial as have thwarted the established requirements of a criminal proceeding. Yet in urging upon this court the several matters which we consider as highly prejudicial error against Mr. Debs in his trial, we hope in no way to give the least impression of altering his firm stand upon his public expressions as within his right of free speech under the Constitution.

#### SPECIFICATION OF ERRORS. □

We shall urge errors committed by the trial court to the prejudice of the defendant, as follows:

1. Overruling the demurrer to the indictment. The indictment fails to state an offense for the several reasons that:

(a) It states only conclusions of law in the language of the statute and makes no connection between these averments and the speech of the defendant, leaving this connection entirely to conjecture and argumentative inference;

(b) It proceeds upon the erroneous assumption, in counts 3 and 7, that all citizens between the ages of 21 and 30 are part of the military forces of the United States; and, in count 4, that all citizens between the ages of 18 and 45 are part of the recruiting service;



(c) *It states no charge and sets forth no language, no matter how aided by inference or deduction, which could bring the speech of defendant within the purview of Congressional penal legislation under the powers granted to Congress in the Constitution.*

2. The trial court erred in admitting as testimony a partial court record of criminal proceedings against Wagenknecht, Baker and Ruthenberg (226).

3. The trial court erred in admitting court records in the criminal prosecution against Rose Pastor Stokes.

4. The court erred, likewise, in admitting the records in the case against Kate Richards O'Hare.

5. Admission of portions out of two interviews, between witness Clyde Miller and the defendant, referring to the St. Louis Platform (166-175; 218-220).

6. Admission of the St. Louis Platform as testimony, erroneous because in no way connected with the making of the speech upon which the charges are founded, and immaterial and improper upon the issue of the criminal intent involved in the making of the Canton speech, which does not directly or inferentially adopt or refer to this document, or in any way bring its text to the consciousness of the hearers.

7. The court erred in admitting as evidence part of a speech said to have been made in Chicago, August 11, 1918, irrelevant and improper to prove the intent involved in the making of the speech at Canton on June 16th.

8. Error in refusing to direct a verdict of acquittal on each and every count of the indictment, because there was no evidence of any solicitation or urging of unlawful conduct on the part of others by the defendant, and because on no other basis could defendant's utterances



come within the constitutional power of Congress to prohibit or punish expressions of opinions and sentiments.

9. Error in the instructions of the trial judge as to those persons who make up *the military and naval forces and the recruiting service* of the United States (268, 270).

10. Error in the instructions as to the range of public discussion immune from Congressional interference under the First Amendment of the Constitution (278-279).

11. Error in the instructions (278) in declaring constitutional the clause of the Espionage Act upon which count 7 is based, namely, "whoever, when the United States is at war \* \* \* shall wilfully utter, print, write, or publish any language intended to incite, provoke or encourage resistance to the United States, or to promote the cause of its enemies \* \* \* shall be punished, etc." Which said clause is obnoxious to the First Amendment, prohibiting legislation abridging the freedom of speech, or of the press; obnoxious to section 3 of article III, limiting the definition of treason against the United States; obnoxious also to the provision in the Sixth Amendment (relating to the due process of law guaranteed to one charged with crime by the Fifth Amendment) which requires that accused shall be informed of the nature and cause of the accusation, and which requirement cannot be fulfilled in application to a penal provision of such extreme indefiniteness as the one in question.

## POINTS.

The argument on the errors above set forth will be made under five headings, as follows:

- I. The indictment fails to charge a crime.
- II. Admission of court records in other criminal proceedings.
- III. Admission of St. Louis Platform.
- IV. Definition of *military forces* and *recruiting service*.
- V. The acts charged against defendant are protected under the First Amendment of the Constitution.

## I.

## THE INDICTMENT FAILS TO CHARGE A CRIME.

The primary argument under this heading is carried over to the general discussion of the right of free speech under a subsequent heading of the brief. At this point we desire merely to call attention to the fictitious character of the pleading as pleading.

We have already summarized the three counts of the indictment with which we are here concerned. In each case there is the array of averments in the language of the statute and reference to the speech in its entirety. There is only a statement of crime by mere formulas of words, not a definition by facts. Whatever connection may exist between the formal averments and the speech is matter of inference or speculation. There are no conclusions of fact, based upon the speech or other matter. There is absolutely nothing in the indictment upon which a rule of the case could be founded, short of the proposition that the general array of words set forth,



addressed to a stated audience at a stated time and place, constitutes a violation of the Espionage Act. The time is specified as a time when the United States was at war, and the audience as containing young men of certain ages. The relation of the speech to these items, or to the general (statutory) averments, is ignored. This pleading we challenge under the general rule, as stated by Justice Story in *United States v. Davis*, 5 Mason 356, that "in criminal cases courts of law are not at liberty to make intendments and inferences to support indictments, in the same manner as they may do to support civil actions."

The case of *United States v. Bopp et al.*, 230 Fed. 723, is decisive of this point. The *Bopp* case, disposed of on demurrer, was a charge of conspiracy to organize a military enterprise against a foreign nation, and the decision was that acts were not set forth which made specific the crime alleged. Even though a charge was made in the precise words of the statute itself, this was not a sufficient description of a charge to organize a "military enterprise." The definition of such an enterprise, in concrete terms, must appear as the effect of the indictment, not as its conclusions of law, nor yet as its bare repetition of the statutory definition of the crime. It is only when the language of the statute itself contains the definition *in terms of acts* that it is alone sufficient. Adding the speech made at Canton to the abstract averments in the three counts here in question does not define the crime, unless it be further alleged in what respect the speech and other items combine toward a criminal end.

The crime must be fully described, not by intendment or implication, not inferentially or by way of recital, but directly and completely, so that the criminal purpose is plainly revealed. It is not a general intent which will



suffice, but the specific intent to achieve the crime set out. There must be a direct connection made clear between the intent to violate the statute and acts consummated or in process, not by legal conclusions of the pleader, but by the logical resultant of the sum total of the material of the indictment. The charge must rest in the facts and circumstances pleaded directly and positively, and cannot be made to depend upon inference and argument, as in the indictment which we challenge. *Pettibone v. United States*, 148 U. S. 197; *United States v. Hess*, 124 U. S. 483; Bishop's New Crim. Prac., Vol. I, Sec. 325; also, Vol. II, Sec. 779.

To state this another way, and taking the indictment in its original form for the sake of illustration, are there really ten different applications of the speech, or merely the lining up of charges in ten phases of the statute alongside the speech? Now this would seem to be proper pleading of the speech as an offense *per se*, of the language as the criminal act when accompanying an allegation of publication. But the theory of the speech as relating itself to acts of others is not revealed by setting out the text of the speech together with conclusions in statutory language of the kind here in question.

The rule of strict application of penal statutes is applicable to the situation here presented. Especially is this pertinent to a new offense (*Field v. United States*, 137 Fed. 6), and to a statute involving a change in our traditional policy in relation to public discussions. *Masses Pub. Co. v. Patten*, 244 Fed. 535.

We cite further the ruling and opinion of Judge Amidon in *United States v. Schutte*, 252 Fed. 213, wherein also appears the language of the Supreme Court of Minnesota in *State v. Spartz*, 167 N. W. 547. We go further than Judge Amidon, however, since the language of his

opinion would seem to make it sufficient if the pleader sets out the words *so that the court can pass upon them*. Presumably that is the process by which the trial judge eliminated several of the counts of the indictment here in question. Suppose then we proceed on this basis. The proposition is that the trial judge sustains the other counts upon the theory that by reasonable inference the language uttered by the defendant might be held appropriate to the wilful purpose alleged. On the other hand, what we contend is that *the connection between the language and the purpose ought to form part of the indictment*, so that the defendant may be enlightened, and not alone that the judge may have the materials for his ruling upon the indictment.

In short, there is in this pleading a speculative element, an invitation for inferences to go along with the abstract averments. We are asked to search the speech ten different times for possible applications to ten different offenses, the pleader standing aside in favor of conclusions of fact to be made by the court, and the court, and then the jury, proceeding to these conclusions in privacy of consciousness never revealed to the defendant, except in form of ruling and verdict. The elementary principles of pleading in defamation, where words carry the offense, would be violated by giving the words without a theory of their injury. Assuredly the requirements of pleading a felony cannot be satisfied by leaving a gap for guesswork, wherein the trial judge and the jury may arrive at the same point by processes of reasoning extremely divergent, and the rule of the case, as tested by the indictment, may go to nothing except a speech as an entity—when it is not the speech as language, but as motivation to action, which constitutes the charge.

## II.

ADMISSION OF COURT RECORDS IN OTHER CRIMINAL  
PROCEEDINGS.

In the speech upon which the several charges proceed, Mr. Debs referred to Wagenknecht, Ruthenberg and Baker, who were confined in the workhouse at Canton. We repeat the references to these men made by Mr. Debs:

"I have just returned from a visit over yonder (pointing to workhouse) where three of our most loyal comrades are paying the penalty for devotion to the cause of the working class. They have come to realize as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world. \* \* \* And they may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind. If it had not been for the men and women, who, in the past, have had the moral courage to go to jail, we would still be in the jungles. \* \* \*

Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers; their very names throb in my heart, and thrill in my veins, and surge in my soul. I am proud of them. They are there for us, and we are here for them. Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world.

There is a great deal of hope for Baker, Ruthenberg and Wagenknecht, but for the fellow that is nobody, there is no pardoning power. He is 'in' for life. Anybody can be nobody, but it takes a man to be somebody. \* \* \*



On the basis of this reference by Mr. Debs to these three persons, a partial record of criminal proceedings against them (in this same court) was introduced over objection. The clerk of the court identified the records, and the prosecuting attorney read them to the jury. The indictment against these persons was for a violation of an Act of Congress approved May 18, 1917, requiring registration for military service of persons designated as subject to draft, in that they aided and abetted someone in his refusal to register.

There is not a word in the speech of Mr. Debs which suggests approval, or even knowledge on his own part, of the criminal offense for which these three men were convicted. There is not a word by which he brings such knowledge to his hearers, or in any way holds up the acts charged against these men as an example or standard of conduct for others.

The defendant spoke also of Rose Pastor Stokes. He said:

“Another brief history I want to review is that of Rose Pastor Stokes, another inspiring comrade. She had her millions of dollars. Her devotion to the cause is without all consideration of a financial or economic view. She went out to render service to the cause and they sent her to the penitentiary for ten years. What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sentenced to the penitentiary for ten years, so ought I. What did she say? She said that a Government could not serve both the profiteers and the employes of the profiteers. Roosevelt has said a thousand times more in his paper, the Kansas City Star. \* \* \*

Rose Pastor Stokes never said a word she did not have a right to utter, but her message opened the eyes of the people. That must be suppressed. That voice must be silenced. Her trial in a capitalist

court was very farcical. What chance had she in a corporation court with a put-up jury and corporation tool on the bench?"

The trial judge, over objection, permitted the Government to introduce the indictment, verdict and sentence against Rose Pastor Stokes, who was tried May, 1918, in the District Court for the Western District of Missouri, on charges under the Espionage Act. Since the printed record does not set out this indictment, we refer here to the quotation from this indictment as used by the District Attorney in his argument (261):

"Here is what Rose Pastor Stokes said—you heard the record—for which she got ten years: 'A headline in this evening's issue of the Star reads: 'Mrs. Stokes for Government and Against War at Same Time.' I am not for the Government.' She says that she is not for the United States. Eugene V. Debs says to you, 'I am with Mrs. Stokes.' That means 'I am not for the United States.' Doesn't it?"

Gentlemen, there is a great war on. This man is charged with the crime of violating the Espionage Act. It is competent to show what he intended to do, what he had in mind, what his purpose was, when he made his speech down there. 'I am not for the Government. I am reported as having said "I believe the Government of the United States should have the unqualified support of every citizen in its war aims." You and I believe that, don't we? A citizen of this country that don't believe in that ought to be driven out of it, or not be permitted to run around loose. I made no such statement, and I believe no such thing. No government which is for the profiteers can also be for the people, and I am for the people, while the government is for the profiteers.' "

And of Kate Richards O'Hare he said:

"Why, the other day they sent Kate Richards O'Hare to the penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States, under the rule of plu-



toocracy, is the only country that would send a woman to the penitentiary for exercising her constitutional right of free speech. If this be treason, let them make the most of it. Let me review for all the history in connection with this case. I have known Kate Richards O'Hare intimately for 20 years. I know her record by heart. Personally, I know her as if she were my own sister. All who know her know she is a woman of absolute integrity. And they know that she is a woman of unimpeachable loyalty to the socialist movement. When she went out into Dakota and made her speeches, followed by plain-clothes men in the service of the Government, intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when 30 farmers, men and women, who were in the audience she addressed—made the speech to, when they went to Bismarck to testify in her favor, to swear that she had never used the language she was charged with having used, the judge refused to allow them to go on the stand.”

Similarly, over objection, the trial court permitted the Government to introduce the indictment against Kate Richards O'Hare, the verdict of guilty returned by the jury and the judgment and sentence of the court thereon. Mrs. O'Hare was tried under the Espionage Act, December, 1917, in the District Court for the District of North Dakota. For the substance of this indictment we refer again to the argument of the District Attorney (262):

“Kate Richard O'Hare, in a public meeting, said that ‘any person who enlisted in the army of the United States for service in France would be used for fertilizer, and that is all that he was good for, and that the women of the United States were noth-



ing more nor less than brood sows to raise children to get into the army and be made into fertilizer.' The record shows that she was found guilty by 12 men, and is under sentence for that offense; so we must assume that it is true. And Debs wants to take his place alongside of her. How much favor ought a man of that kind have in a court of justice, or in any court? If it was any other country in the world he would be facing a firing squad, after a trial on the head of a drum, and not after days of pain and effort to give him a fair, just and equitable trial."

It will be observed from the foregoing that nothing in the address of Mr. Debs, or in any other matter disclosed in the evidence, indicated that he or anyone who heard him speak on June 16th, had knowledge of the charges contained in these several pleadings against Wagenknecht, Ruthenberg, Baker, Kate Richards O'Hare, or Rose Pastor Stokes. That is, there was no showing of knowledge as to these charges, except as carried in the words of the Canton speech standing by itself. There was no basis whatever for an inference that the speaker intended to approve or indorse the offenses with which these persons were charged; nor that he was holding up these offenses as a standard of conduct for others (as was discussed in *Masses Publishing Co. v. Patten*, 244 Fed. 535; 246 Fed. 24). In fact, the defendant, by his own statement of the facts, as he understood them, shows conclusively that he had no knowledge of the specific criminal offenses of which these persons were found guilty.

The prejudicial character of this evidence is manifest when it is considered that there was no possibility of meeting it except by evidence relating to these charges against other persons. The introduction of these records raised a collateral issue which there was no way of meeting, and the effect was to impress the jury that

the defendant was admitting against himself the things charged in these indictments. There was no warrant or possibility in this trial to review these other cases, and there was no warrant or relevancy in permitting the jury to pass upon these records for the purpose of determining the intent of Mr. Debs in presenting these names to his hearers at Canton.

A striking tangent as to two of these records was that the cases were pending on appeal, namely, the cases of Kate Richards O'Hare and Rose Pastor Stokes. It is true the writ of error only suspends judgment. But the reversal of either of these cases, assuming now even that Mr. Debs referred to the charges as such, not to the individuals on the basis of long-cherished personal regard—the reversal might establish the correctness of a legal inference of innocence, while this action of the reviewing court would be unavailing to the defendant, who had made such inference contrary to the indictment and conviction.

In an indirect way, there was an attempt here to show by other proceedings other offenses of the defendant than that with which he was charged. There was the effect of making him a party to the charges and guilt established against five other persons, and of placing him in Fargo, Kansas City and Cleveland under the onus of proved criminality.

To make more emphatic the vice of admitting this testimony on the issue of intent, we call attention to the rules as to the admissibility of evidence of other crime committed by the same defendant. The general rule against the admissibility of such evidence is elaborately set forth in an annotation in 62 L. R. A. 193, to the leading case of *People v. Molineaux*, 168 N. Y. 264. From the abundance of authorities under this heading we cite par-

ticularly *State v. O'Donnell*, 36 Or. 222; *Davis v. State*, 54 Neb. 177; *People v. White*, 14 Wend. 112; *People v. Flanigan*, 59 N. Y. Supp. 101. The case of *Lightfoot v. People*, 16 Mich. 507, is specially appropriate; a witness testified that the defendant said he was the man who had broken into the house on a previous occasion, and the witness was then permitted to go on to state the fact of the former breaking. This was held reversible error. The court said:

“What defendant said at the time of the burglary for which he was being tried, in reference to the former breaking, was admissible, but evidence of the fact of that breaking was not.”

One of the recognized exceptions to the general rule of exclusion of evidence of other crimes is where the evidence is necessary to prove intent, or guilty knowledge. There are two views as to this exception, one that it is a rule of necessity, creating an exception only where the testimony as to the immediate transaction carries no proof of intent, the other view, that proof of intent by other crimes may be used cumulatively. But it is very clear from the character of the cases in which this exception is given application, and from the rationality of the general rule itself as applied to the circumstances with which we are dealing, that the rule of exception to prove intent can have no application here. It is in cases of fraud, forgery, counterfeiting, embezzlement, or receiving stolen property that this use of evidence of other crimes is applied, because it is in such cases particularly that the same act may be guilty or innocent depending only on the design of the doer. But when we deal with a charge of crime founded upon the use of words to influence the conduct of others, the intent must relate itself definitely to these words as instruments of action, not with the secret purposes locked within



the breast of the defendant and to be divulged only by exhibiting his prior conduct; or the sequence of his conduct, as by repetition which refutes mistake or accident. Either the words used at Canton measure up to the charges based upon them, or they do not. Other indictments cannot elucidate an intent in the use of these words which the words themselves do not carry.

It would seem obvious that the rule of exclusion against evidence of other crimes by a defendant would much more strictly apply to a use of indictments and sentences against third persons, to whom defendant has no relation other than the mention of their names in his speech, with such commendation as he gave them on the basis of their devotion to Socialism, as he knew it.

For a statement of the reason of this rule of exclusion which we here invoke, we cite the following language from the decision of this court in *Boyd v. United States*, 142 U. S. 450, 458:

(As to other robberies preceding a murder)—  
 “They were collateral to the issue to be tried. No notice was given by the indictment of the purpose of the government to introduce proof of them. They afforded no legal presumption or inference as to the particular crime charged. Those robberies may have been committed by the defendants in March, and yet they may have been innocent of the murder of Dansby in April. Proof of them only tended to prejudice the defendant with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no value to the community, and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving the punishment of death. \* \* \* However depraved in character, and however full of crime their past lives may have been, the defendants were entitled to be tried upon competent evidence, and only for the offense charged.”

We cite further the case of *Miller v. State* (Okla.) 163 Pac. 131, in which the court adopts this language from Underhill on Criminal Evidence (Sec. 88):

“Some connection between the crimes must be shown to have existed in fact, and in the mind of the actor, uniting them for the accomplishment of a common purpose, before such evidence can be received. This connection must clearly appear from the evidence. Whether any connection exists is a judicial question. If the court does not clearly perceive it, the accused should be given the benefit of the doubt, and the evidence rejected. The mind of the jurors must not be poisoned and prejudiced by receiving evidence of this irrelevant and dangerous description.”

In *Commonwealth v. Harmon*, 2 Gray (68 Mass.) 289 the court deals with evidence of other publications in a criminal prosecution for libelous publications:

“But in relation to this species of evidence, the prosecutor must be confined according to the recognized practice and course of judicial decisions in this commonwealth, to the proof of libelous and defamatory publications and statements of the same kind as those of which the defendant is accused in the particular proceeding then pending against him.”

We call attention also to the rule of construction of language in defamation cases which is specially appropriate here, that “where the charge is conditional in its form, the actionable quality of the imputation depends upon the fact assumed in the conditional clause” (25 Cyc. 361). The praise which Mr. Debs rendered to others convicted of crime was conditioned by his own statement of what he knew and felt about these persons, as has been herein quoted, not upon the averments of an indictment in no way brought to the consciousness of other minds by Mr. Debs, and plainly enough not even known to himself. Many of the noblest persons

who ever lived were convicted of the most serious felonies, yet praise of their nobility of character and purposes, or of their steadfastness to the truth as they saw it, would not be read as endorsement of the criminality charged against them. The judicial mind might recoil at the suggestion of high praise of murderers, yet the popular mind accepts as noble heroism the slaying of tyrants, an ever-recurring episode of progress toward liberty—and this without a changed conception of the crime of murder in its unheroic aspects of normal experience.

We add finally, as to the argument under this heading, that the argument under the next heading is largely applicable here as well.

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### III.

#### ADMISSION OF ST. LOUIS PLATFORM.

We urge as prejudicial error the admission as testimony of a document (Exhibit 2) purporting to be a members' referendum ballot of the Socialist Party. This was said to contain the "majority report" and "minority report" of a National Convention of that party held at St. Louis, April, 1917. As in the trial, this document will be referred to as the St. Louis Platform.

The argument under this heading applies also to the testimony of Joseph Trindel, who recited from memory two or three sentences purporting to be a verbatim record of what Mr. Debs said in a speech at Chicago, August 11, 1918, nearly two months after the Canton meeting (221). This Chicago speech, the complete record of which was not produced at the trial, was delivered at a National Conference of State Secretaries of the Socialist



Party, the witness stating that not over 20 were present (221). From the sentences quoted by the witness it appears that Mr. Debs characterized this war as a capitalist war, and that he hoped "there is no one present today who will want to change the party's former attitude toward the war." The witness, on cross-examination, added that Mr. Debs did not say what was the party's "former attitude" toward the war (222).

The St. Louis Platform was not mentioned in the Canton speech. There was no reference in that speech—the entire basis of all the charges in the indictment—which by any implication might be understood as a comment on that document, or on any part of its text. The testimony of Clyde Miller, a news writer for the Cleveland Plain-Dealer, was that he interviewed Mr. Debs an hour before the time of the meeting at Canton. The interview was brief, and was recollected as lasting between five and eight minutes (175). The witness asked Mr. Debs if the reports that he had repudiated the St. Louis Platform were true. Mr. Debs answered that he approved of that platform from the time of its adoption in spirit and substance; that he accepted its main ideas; but that "in the light of recent events" he favored a restatement (170). The witness pressed his inquiries as to what changes in that platform Mr. Debs would favor, and the answer was that a restatement at this time would take into account particularly the Russian developments (170).

There was no document used as the medium of this interview (172). There was simply the assumption that the interviewer and Mr. Debs understood each other in regard to what was the St. Louis Platform. In fact, in spite of a persistent attempt, the Government found it impossible to identify any writing as the St. Louis Plat-

form, in order to qualify it for an offer of testimony, by use of the witness Clyde Miller. This was done, finally, by calling Mr. C. E. Ruthenberg to the stand (216). He stated that he was a member of the Convention at St. Louis, and that from a cursory examination of Exhibit 2 he recognized the writing as the majority and minority reports of that Convention.

At this stage of the trial, the District Attorney read into the record the majority report of the St. Louis Convention as it appears in Exhibit 2 (218). It is to be noted that the writing which went to the jury contained also a minority report, not referred to in the testimony.

After the acceptance of the St. Louis Platform as evidence to show defendant's intent in making the Canton speech, witness Clyde Miller was recalled by the government (218) and related another interview with Mr. Debs in Cleveland on the day of his arrest (June 30th). In this interview it appears that the witness was primarily interested in the general career of Mr. Debs and there was only an incidental reference to the St. Louis Platform, whereupon Mr. Debs said again that he did not repudiate that platform "and if necessary, I will die for its principles" (218).

On the question of the admissibility of this document to prove defendant's "state of mind" in making his Canton speech, there was no testimony of affirmance of any version of the document by Mr. Debs in its entirety. There was no testimony of approval of its text in part, but there was testimony that Mr. Debs favored a restatement, without indication of how a restatement would affect the document as introduced. Yet what was permitted to go to the jury was the complete text of a document given publication about sixteen months before the time of the interview upon which its admissibility was predicated. No witness was produced who heard the

Canton speech and in any way connected it with the St. Louis Platform. This was done entirely as matter of argument by the District Attorney and his assistant, and in fact constituted the main theme of their addresses to the jury (Wertz argument, particularly 255-260).

Two of the charges upon which a verdict of guilty was returned were based upon the Espionage Act as it went into effect June 15, 1917; the third charge upon an amendment of May 16, 1918. Or, more exactly, the charges against Mr. Debs were all under the amended form of the Espionage Act. The St. Louis Platform is a writing of April, 1917. It is a writing emanating from a convention of which Mr. Debs was not a member (216). He told the witness that he approved the principles of that writing. He repeated this in his address to the jury, adding that he voted for the "majority report" as a member of the Socialist Party (242).

It might be contended that Mr. Debs could have taken the stand and gone ahead with his interview with Clyde Miller; that he could have explained what he meant by his adherence to the St. Louis Platform; that he might have made complete and explained his Chicago speech as reported by Joseph Trindel. Right here is the test of the impropriety and unfairness of the admission of this St. Louis document, because it invites the alternative of a line by line exposition and commentary on an elaborate writing in which defendant had no part, and with which the testimony had connected him only to the extent of a broad statement that he approved its principles. A writing, to repeat, which had in no way been connected by testimony with the understanding of the Canton audience of the speech of June 16th.

The anomaly of this entire trial situation, considering now the array of the St. Louis Platform, the August



speech at Chicago, the court records of convictions of the defendants in three unrelated prosecutions, is that while *the audience at Canton, the effect upon whose minds of one speech is the gravamen of all the charges, could only be influenced by the sentiments inherent in the expressions of Mr. Debs used in that speech*, the jury was given the one speech in the detailed setting of all this other evidence *without the least offer of proof that there was understanding of any of these matters upon the part of the Canton audience other than the plain meaning of the words of that speech standing by itself*. The trial became distorted from the issue of the effect of defendant's words on other minds to a laboratory analysis of the state of defendant's own mind on June 16th, 1918. Since the three charges in this review do not concern themselves with criminality of language *per se*, there is a tolerable approximation of the standard suggested by one of the Senators (Cong. Rec., May 3, 1918, p. 6469) of punishing persons "under general principles" \* \* \* "whose hearts are wrong."

The caution by the trial judge as to the limitation of this testimony to proof of criminal intent, repeated in the instructions, was of no benefit to the defendant, and was really prejudicial in its nature. In so far as defendant's "state of mind" was in issue, it could only have application to the specific criminal intent involved in making the Canton speech, the intent without which that speech, no matter what its character, could not be made the basis of a charge of crime. Here was a reiterated suggestion that this intent could be read into that speech by the jury, from all these other sources, and then read out again as if coming from the language of the Canton speech itself. This was a method not of deriving criminal intent out of that speech and its circumstances,

but *or reading criminal intent into it*, regardless of the potential effects of the Canton speech as a speech.

It would seem sufficient to state it as a self-evident proposition that the one fair way of dealing with the offers of evidence in this case was to give the jury what the audience at Canton got—a hearing of the one speech, with any description of the attendant circumstances, or gestures, or intonations, which would be helpful in making vivid what defendant did to influence his hearers. Or, if the language of the speech conceals its criminality, and this is to be elucidated by innuendoes, that this elucidation be definitely fixed in the understanding of the hearers subject to its invidious effects.

To illustrate, let us assume that there was some cabalistic word or phrase by which the speaker made known to his hearers the fact of the St. Louis Platform and his affirmance of that platform. (We ignore, of course, the character of that document, and the nature and pertinence of its affirmance in June, 1918.) Suppose that identification was made by testimony of hearers. What then? Is this sufficient to merge that document and the speech into one, as was done in this trial? As well say that the Constitution of the United States, or the Declaration of Independence, or the Bible, or all of these together, under a general affirmance by the speaker, in an interview or otherwise, should go to characterize his intent in making the speech of June 16th. As well open the doors to a reading into the record of the thousands of speeches made by Mr. Debs, four times candidate for the office of president of the United States, world renowned and active lecturer during a generation, every one of which undoubtedly reflected itself in the speeches which went before and after.

If the answer is that the test of relevancy is the effect of other utterances as carried to the hearers in question by the language declared upon, then we arrive at a definite rule of exclusion applicable against both the prosecution and the defense alike, and this is the rule which we invoke. The only "state of mind" which comes within the issues of this case is the specific criminal intent to use a particular means, the speech at Canton, to effect the criminal results charged. *People v. Molineux*, 168 N. Y., 297. Other utterances which do not incorporate themselves in the "particular means"—as affecting the Canton audience—can have no application to the issue of intent in this case. Undoubtedly the trial judge, in his references to "state of mind," failed to make an exact differentiation between motive and intent, a differentiation which becomes easily confused in a criminal prosecution based on a man's public declarations of his own sentiments. Nevertheless, it is precisely in this differentiation that we find any rational basis for a rule of evidence as to the scope of inquiry in relation to other utterances.

This point was squarely raised in the recent case of *United States v. Kraft*, 249 Fed. 919 (Circuit Court of Appeals, Third Circuit). The charges in that case were based on the Espionage Act before amendment, when it was fairly open to contention that an actual injury to the military service, at least a frustrated inception of some interference, was the minimum requirement for any charge under this law. But the court held that a willful purpose to cause insubordination was sufficient, going with the making of a speech. There were two issues: 1, what defendant said in his speech; 2, whether the language was used with willful purpose to cause insubordination, etc. On the issue of intent, or purpose in making the speech charged, evidence was offered in behalf of



the defendant of other utterances showing that he was in favor of the war with Germany. This evidence was held immaterial, and the reviewing court said (at p. 928):

“What he said or did at other times and places was not material to the issues on trial.”

Bearing in mind that the intention of the defendant in making his Canton speech cannot be arrived at except in the understanding of that speech itself, we cite further the accepted rule of *Post Publishing Co. v. Hallam*, 59 Fed. 530, that “words are to be construed according to their common understanding and not according to defendant’s secret intention.” The rules of construction of language in civil suits for slander and libel would, of course, be given even more strict application in dealing with words as the medium of committing felonies. If there is a hidden or covert meaning it must be known to those addressed (25 Cyc. 357). And in 25 Cyc. 355, the general rule of construction is stated as follows:

“The rule is that words are to be taken in their plain and natural meaning and to be understood by courts and juries as other people would understand them, and according to the sense in which they appear to have been used and the ideas they are adapted to convey to those who heard or read them.”

Or, as stated in *Reid v. Providence Journal Co.*, 20 R. I. 120:

“Language is not to be forced or tortured in libel cases in order to make it actionable. It is to be taken in its plain and ordinary sense.”

The rule as to spoken words is one of even greater liberality; Cooley on Torts, 2nd ed., p. 239, where the author says:

“Vocal utterance does not imply the same degree of deliberation (as writing or printing); it is more

likely to be the expression of momentary passion or excitement, and it is not so open to the implication of settled malice. Therefore, if one shall say of his neighbor, 'He is a rascal,' there is no very strong probability that the expression will be received by bystanders as anything more than a mere vituperative epithet, indicative of the feelings of the utterer, rather than of his convictions. Therefore to such oral expressions little importance is generally attached. On the other hand, the same words deliberately written or printed and afterward placed before the public, usually justify an inference that they are the expression of settled conviction, and they affect the public mind accordingly.

"An oral charge is merely heard, and the agency of the wrongdoer in inflicting injury is at an end when the utterance has died upon the ear. But the written or printed charge may pass from hand to hand indefinitely and for many years."

Quoting again from *Reid v. Providence Journal Co.*, 20 R. I., at 122:

"The fact that supersensitive persons, with morbid imaginations, may be able by reading between the lines of an article to discover some defamatory meaning therein is not sufficient to make it libelous."

The ordinary mind is the standard, and the ordinary instant impression of spoken words is the thing to be tested. Consider, then, the incongruity of putting before these jurors, as a basis for judgment upon the Canton speech, the actual text of the St. Louis Platform. And this, merely on the basis of the one question and answer in the interview of momentary character between Clyde Miller and Mr. Debs, and not by any connection with the Canton speech and its hearers.

We refer here to the preceding argument on the admission of the indictments and records of conviction in other cases, on the basis of warm praise of these other

persons by Mr. Debs in his Canton speech. All that is there said about proving intent by external evidence, as of prior convictions of same defendant, is also applicable here. The St. Louis Platform, if proclaimed by Mr. Debs in a public address or writing, by quotation of its text in full or part, on June 16, 1918, as of immediate pertinence, might very well, according to the understanding of the Espionage Act by the Government's attorneys, subject Mr. Debs to one or more criminal prosecutions. So of the Chicago speech of August 11th. There is nothing to be imagined about the confusion of issues in this proceeding, nothing left for surmise, when from the opening statement to the close of the argument the record leaves one in doubt whether the trial is proceeding upon the Canton speech or on the St. Louis Platform, so closely are the two held together before the jury.

There is no other angle from which the admission of this testimony can find support. To consider the proclamation of the Convention of April, 1917, as the initiation of a plan furthered by Mr. Debs on June 16, 1918, as indeed was the precise argument of the Government's attorneys, was to try him for conspiracy upon an indictment as sole defendant based on a single speech.

As to the possibility of invoking a doctrine of *res gestae*, of words accompanying other words as part of the same transaction, and constituting the criminal act, assuredly there is no shadow of affirmative argument. We call attention to the statement by Professor Wigmore, in his work on Evidence, Sec. 1774 (2) :

“The utterance serves merely to assist in completing and giving legal significance to conduct. Hence it is not needed when the conduct is already complete and definite in itself. The conduct must be equivocal or incomplete as a legal act before the utterances can be admissible.”



Again, in Sec. 1775 (3):

“It follows, also, as necessary deduction, that the utterances must be such as serve the assumed purpose, namely, giving *definite significance to the equivocal or indefinite conduct*, by adding a missing part. They must be such as do merely this, and not more.”

The primary test, of course, is that the words must be “contemporaneous with the conduct.” It is too apparent for argument that words spoken to a reporter, or to a Chicago audience, cannot form any part of the speech at Canton.

Of the Chicago speech, August 11th, it might be said that it can more easily be seen how it might exhibit Mr. Debs to the jury as an unrepentant sinner than how it attains pertinence to his achievements by words spoken June 16th. There is no question of motive; no question as to the likelihood or unlikelihood of Mr. Debs saying what he was charged with saying at Canton; no need for corroboration by bringing a witness from Chicago as to a speech in August. In the defamation cases, it is only in relation to *malice* that subsequent publications are admitted. How anything said by Mr. Debs to Clyde Miller on the day of his arrest, or at Chicago nearly two months later, could be resolved into the consciousness of his Canton hearers, or add to his *intent* on that occasion, is a good deal of a mystery.

We cite, finally, as to the admission of this testimony, the case of *United States v. Crandall*, 4 Cranch C. C. 683 (Fed. Cas. No. 14, 885). This was a prosecution for libels tending to excite sedition among slaves and free colored persons in the District of Columbia. Part of the charge was based on pictures, and the prosecution offered these pictures into evidence attached to the pamphlets which explained them (to show the evil intent with

which the pictures were published). Quoting from the report (25 Fed. Cas. 689):

“The court said, that if the matter now proposed to be read is not charged in the indictment, and would be, of itself, a substantive libel, and therefore indictable, it cannot be given in evidence.”

\* \* \* \* \*

## IV.

### MILITARY FORCES.

The indictment, as to counts 3 and 7, proceeds on the assumption that all citizens between the ages of 21 and 30 constitute *the military and naval forces* of the United States. Count 4 assumes that all citizens between the ages of 18 and 45 are part of *the recruiting and enlistment service*. The instructions (268, 270) of the trial judge not only developed these assumptions, but even extended the definitions by including all persons in any way related to or intimate with citizens of these ages (270-271).

It is our contention that these terms, *military and naval forces*, and *recruiting and enlistment service*, have the definite meaning which is apparent in the plain reading of the statute, not the meaning by implication which has here been used. There has been a good deal of confusion about these terms in the decisions arising under this act, but probably no case brings before this court a more extreme broadening of the statute by implication than is presented here by the instructions of the trial judge, taking in “the attitude of friends, companions and relatives” as affecting the disposition of those within enlistment age.

On the general proposition of exact and strict construction of penal statutes it is not necessary for us to

cite further authorities. On the definition of military forces, we adopt the language of Judge Bourquin, in *United States v. Hall*, 248 Fed. 150, as follows:

“Military and naval forces in the espionage act means the same as in the declarations of war, viz., those organized and in service, not those merely registered and subject to future organization and service.”

The recruiting and enlistment *service* obviously denotes a definitely organized body or department of the military. These terms would be extremely inappropriate to a statute having reference to citizens of the United States generally; with such intent Congress would have avoided these technical names in favor of some phrase like “persons who might under the laws of the United States be subject to military service by compulsory or voluntary induction,” or, in the recruiting clause, “citizens qualified to enlist.”

The amendments of May 16, 1918, have not changed the clauses upon which counts 3 and 4 are founded, except to add the attempt feature to the recruiting clause, and to strike out “to the injury of the military service,” presumably with the idea of discounting the suggestion of actual disturbance in the military forces.

The effect of this loose interpretation of these military designations in this case was, obviously, to direct attention entirely to general willingness to engage in the military service, aside from any question of legal obligation so to serve. The question was whether there might be an adverse effect on war enthusiasm and ardor, not whether anyone might be induced to forego his legal duty. In other words, these instructions and the indictment presented an issue of sedition, purely, and not an issue related to the organized military and enlistment services.



The terms "insubordination," "disloyalty," "mutiny" and "refusal of duty" bear definite understanding only in relation to an organized and established military body. Likewise, "to obstruct the enlistment service" obviously is not a description pertinent to the effect of utterances on the sentiments toward enlistment of people in general.

## V.

THE ACTS CHARGED AGAINST DEFENDANT ARE PROTECTED  
UNDER THE FIRST AMENDMENT OF THE CONSTITUTION.

The vital issue of this case is the right of free speech. From several aspects, namely, the sufficiency of the indictment as a charge of crime, the ruling of the trial judge against the motion for a directed verdict for the defendant on all the counts of the indictment, and the instructions of the trial judge (274, 278) as to the range of public discussion free from Congressional limitation, this question is here presented on the review.

At the outset we avow our purpose to deal with this crucial issue of American liberty in a realistic sense: Counsel for Mr. Debs, as the record shows on its face, sought to intrude as little as possible between the presentation of the case for the Government and the defense of legitimate exercise by Mr. Debs of his right of free speech under the Constitution. In due deference to Mr. Debs, whose place in American history called for such expression of his understanding of his position as one charged with crime as he alone could give, counsel yielded to him the full time allowed for argument before the jury, and did not seek to develop his statement by way of examination on the witness stand.

The millions in many countries who respond to the idealism of Eugene V. Debs, from one angle or another,

will bluntly speak of the Debs case as a free speech' fight. And their minds will not respond to a test of the right of free speech which concerns itself with the English common law arising out of the inspiration of the Star Chamber of Henry VII, which first applied the dormant Statute of Scandalum Magnatum (Statute 2 Richard 11 and 12 Richard 11). What they ask, we ask: What degree of tolerance of minority sentiments is to be read out of or into the American Bill of Rights in the year 1919 by the court of last resort? By this test has political freedom been gauged throughout the centuries. American tradition has so far made it unnecessary for this court to give a conclusive reading to the First Amendment in relation to a sedition enactment by Congress. With a profound sense of the significance of this present determination of the meaning of the First Amendment, for a century and a quarter the palladium of American freedom, we present the language of that amendment to the court as living words pertinent to the world as we know it—not as a harking back to legalistic shadings of restraints put upon opinion under the despotism from which the Revolution freed us.

\* \* \* \* \*

The present President has long held eminence as an authority on American political institutions and principles. In an address made October 13, 1899, at the annual meeting of the New England Association of Colleges and Preparatory Schools, Professor Wilson stated the perfect text for this brief. Especially significant is the relation of his statement to Spanish War criticism. He said:

“We have seen a good many singular things happen recently. We have been told that it is unpatriotic to criticize public action. Well, if it is, then there is a deep disgrace resting upon the origins of this nation. This nation originated in the sharpest

sort of criticism of public policy. We originated, to put it in the vernacular, in a kick, and if it be unpatriotic to kick, why, then the grown man is unlike the child. *We have forgotten the very principles of our origin if we have forgotten how to object, how to resist, how to agitate, how to pull down and build up, even to the extent of revolutionary practices if it is necessary, to readjust matters.* I have forgotten my history if that be not true history. \* \* \*

*“Self-government is the opportunity of laymen to speak their minds about affairs and get heard upon a public forum. That is the chief and essential feature of it. Just so long as European governments choke off discussion and put men in prison because of their opinions about personages in high places, they may have never so perfect a system of representation and never so modern a constitution, and be without self-government. Self-government is the free expression of lay, non-official opinion, and I know of no other essential characteristic about it.”*

\* \* \* \* \*

It is impossible to reconcile the published decisions in cases arising under the Espionage Act, on account of criticism of the government's war policies, with any rule as to the right of free speech. The First Amendment has been given some direct or inferential mention in practically all of these cases, but apparently the trial and Circuit appellate judges have easily swept it aside. In but one of these cases has there been discussion and definition leading to anything in the nature of a rule as to when the Espionage Act, applied to speech and press, might pass the bounds of constitutional validity. We refer to the discussion in *Masses Publishing Co. v. Patten*, 244 Fed. 535; 246 Fed. 24. While the decision in that case only goes to the question of the nature of the discretion lodged in the Postmaster-General under the Espionage Act, the discussion is somewhat helpful in presenting the gradation from a charge of crime based



on the use of words to incite specific action to a charge based on the objectionable temper of the words themselves.

Our contention here is that the pleadings, rulings on evidence and instructions have led to a sedition conviction under a thin disguise of a charge of actual military obstruction by means of words spoken to the Canton audience, and that this conviction cannot be sustained under any unequivocal application of the First Amendment.

The indictment, under the several counts, presents no theory of the pleader as to the pertinence of defendant's words to move others to action. That is left entirely to argumentative inference. The record of testimony shows not one single question propounded on the basis of appropriateness of defendant's speech to affect one result or another through the minds and agency of his hearers. In fact there is the caricature of a conviction based nominally on military exigencies in which every witness who heard the speech, and who was within the military age, had not for one moment hesitated to fulfil his military obligations. That an "attempt" is charged only qualifies the degree of achievement; it does not carry the determination into the realm of metaphysical speculation based on hypothetical persons. The conclusion is irresistible that in spite of the cloak of military appropriateness given by a free use of the phraseology of the Espionage Act, the conviction of Mr. Debs rests squarely upon his "seditious temper"—and nothing else.

In the *Masses* case there was presented a series of articles and cartoons attacking bitterly the policy of conscription, holding up to admiration conscientious objectors, praising Emma Goldman and Alexander Berkman, who had been convicted of urging non-compliance

with the Conscription Act, and reflecting on the war declaration as the meek compliance of Congress with the orders of financial masters. The test of non-mailability under section 3 of the Espionage Act was made on the same basis as testing the sufficiency of this literature for charging a criminal violation of the provisions of this section, but in this respect the upper court relaxed the test in yielding to the determination of the Postmaster-General. District Judge Learned Hand granted an injunction against the New York Postmaster, holding that there was no basis for refusing delivery through the mails of the issue of the Masses in controversy. We quote from his opinion to indicate his method of dealing with public discussion in conjunction with the Espionage Act:

“That such utterances may have the effect so ascribed to them is unhappily true; publications of this kind enervate public feeling at home, which is their chief purpose, and encourage the success of the enemies of the United States abroad, to which they are generally indifferent. Dissension in a country is a high source of comfort and assistance to its enemies; the least intimation of it they seize upon with jubilation. There cannot be the slightest question of the mischievous effects of such agitation upon the success of the national project, or of the correctness of the defendant's position.

“All this, however, is beside the question whether such an attack is a wilfully false statement. That phrase properly includes only a statement of fact which the utterer knows to be false, and it cannot be maintained that any of these statements are of fact, or that the plaintiff believed them to be false. They are all within the range of opinion and criticism; they are all certainly believed to be true by the utterer. As such they fall within the scope of that right to criticize either by temperate reasoning, or by immoderate and indecent invective, which is normally the privilege of the individual in countries dependent upon the free expression of opinion as the



ultimate source of authority. The argument may be trivial in substance, and violent and perverse in manner, but so long as it is confined to abuse of existing policies or laws, it is impossible to class it as a false statement of facts of the kind here in question. To modify this provision, so clearly intended to prevent the spreading of false rumors which may embarrass the military, into the prohibition of any kind of propaganda, honest or vicious, is to disregard the meaning of the language, established by legal construction and common use, and to raise it into a means of suppressing intemperate and inflammatory public discussion, which was surely not its purpose."

The same construction would apply to the provisions of the insubordination and enlistment clauses of Section 3 constituting counts 3 and 4 of our indictment. Surely an offense under these clauses must bear directly pertinent relation to the military and enlistment services, and cannot be founded upon discussion of public policies affecting public opinion and sentiment one way or another. It is the special embarrassment of the military which is protected by these two clauses as in the clause above analyzed by Judge Hand. As to the special character of the clause of Section 3 as now amended which is the basis of count 7, this will be considered later.

Judge Hand proceeds upon "the normal assumption of democratic government that the suppression of hostile criticism does not turn upon the justice of its substance or the decency and propriety of its temper." He avoids the direct question of Congressional power in this respect unless the statute clearly expresses the legislative intent to proceed on this basis. At page 540, he says:

"Assuming that the power to repress such opinion may rest in Congress in the throes of a struggle for the very existence of the state, its exercise is so contrary to the use and wont of our people that only the clearest expression of such a power justifies the conclusion that it was intended."



We challenge the assumption that such power may rest on Congress at any time under any circumstances, and with this we deal later, but on the basis of the Espionage Act in its relations to the military program as such, undoubtedly Judge Hand has here indicated the correct rule of statutory interpretation. The next question is the rule by which spoken or written language may be measured as offenses against the Espionage Act (excluding now any effect of the amendments of May, 1918, to make utterances criminal *per se*). Such a rule is stated by Judge Hand, as follows:

“Political agitation, by the passions it arouses, or the convictions it engenders, may in fact stimulate men to the violation of law. Detestation of existing policies is easily transformed into forcible resistance of the authority which puts them into execution, and it would be folly to disregard the causal relation between the two. Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholastic subterfuge, but a hard-bought acquisition in the fight for freedom, and the purpose to disregard it must be evident when the power exists. *If one stops short of urging upon others that it is their duty or their interest to resist the law, it seems to me one should not be held to have attempted to cause its violation.* If that be not the test, I can see no escape from the conclusion that under this section every political agitation which can be shown to be apt to create a seditious temper is illegal. I am confident that by such language Congress had no such revolutionary purpose in view.

“The defendant’s action was based, as I understand it, not so much on the narrow question whether these four passages actually advocated resistance, though that point was distinctly raised, as upon the doctrine that the general tenor and animus of the paper as a whole were subversive of authority and

sedition in effect. I cannot accept this test under the law as it stands at present. *The tradition of English-speaking freedom has depended in no small part upon the merely procedural requirement that the state point with exactness to just that conduct which violates the law.* It is difficult and often impossible to meet the charge *that one's general ethos is treasonable*; such a latitude for construction implies a personal latitude in administration which contradicts the normal assumption that law shall be embodied in general propositions capable of some measure of definition. The whole crux of this case turns indeed upon this thesis."

The point of challenge in the upper court opinion against the ruling of Judge Hand was as to the necessary degree of directness in urging conduct upon others, especially in respect of advocacy of conduct by holding up to admiration those who have violated the law in the precise connection of the military malfeasance attempted to be checked by this legislation. Since this point is of interest to us, not alone in defining the necessary connection between advocacy and action under this statute, but also in the analogy to the praise bestowed upon Wagenknecht and others by Mr. Debs in his Canton speech, we quote again the language of Judge Hand (p. 542):

"One may admire and approve the course of a hero without feeling any duty to follow him. There is not the least implied intimation in these words (praise of conscientious objectors) that others are under a duty to follow. The most that can be said is, that, if others do follow, they will get the same admiration and the same approval. Now, there is surely an appreciable distance between esteem and emulation; and unless there is here some advocacy of such emulation, I cannot see how the passages can be said to fall within the law. If they do, it would follow that, while one might express admiration and approval for the Quakers or any established sect which is excused from the draft, one could not le-



gally express the same admiration and approval for others who entertain the same conviction, but do not happen to belong to the society of Friends. It cannot be that the law means to curtail such expressions merely because the convictions of the class within the draft are stronger than their sense of obedience to the law. There is ample evidence in history that the Quaker is as recalcitrant to legal compulsion as any man; his obstinacy has been regarded in the act, but his disposition is as disobedient as that of any other conscientious objector. Surely, if the draft had not excepted Quakers, it would be too strong a doctrine to say that any who openly admire their fortitude or even approved their conduct were wilfully obstructing the draft."

The point of divergence from this opinion taken by the court of review is that the incitation to commit crime may stop short of a literal urging of the illegal performance. Account is taken as well of "the natural and reasonable effect of what is said to encourage resistance to a law." Counseling to crime may be indirect, but it is to be noticed that the citations of authorities relate to *accomplished crimes, traceable to such incitation*, not to the counseling or inducement standing by itself. The argument was that "the natural and reasonable" effect of this publication might be construed as an obstruction to recruiting, therefore that it was intended to obstruct recruiting. "And even though we were not convinced that any such intent existed, and were in doubt concerning it, the case would be governed by the principle that the head of a department of the government in a doubtful case will not be overruled by the courts in a matter which involves his judgment and discretion and which is within his jurisdiction."

The separate concurring opinion of Judge Ward, in the upper court, is very interesting as showing a hesitancy to go too far with the proposition of the effect



of language to produce a given result as the foundation for a statute limiting the use of the mails, not to mention its serious criminal penalties. Judge Ward says:

“Advice to resist the law may be indirect as well as direct and the conclusion of the Postmaster-General in matters of fact, whether we agree with him or not, is final.”

This is undoubtedly an overstatement of the weight given by the courts to findings made by administrative officers in the exercise of discretion subject to court review, and suggests at once that Judge Ward is anxious to limit the effect of this decision to the precise point of accepting the ruling of the Postmaster-General. He goes on:

“I think it important, however, to say that not every writing the indirect effect of which is to discourage recruiting or enlistment is within the statute. In addition to the natural effect of the language on the reader, the intention to discourage is essential. Arguments in favor of immediate peace or in favor of repealing the Conscription Act do this indirectly. It is, notwithstanding, the constitutional right of every citizen to express such opinion, both orally and in writing, and Congress cannot be presumed to have intended by the Espionage Act to authorize the Postmaster-General to exclude such articles written honestly and without the intention of advising resistance to law.”

The net result of the *Masses* case establishes this rule: that a violation of Section 3 of the Espionage Act (original clauses) consists of a purposeful urging, by direct or indirect means, of insubordination or refusal of duty in the military service, or purposeful obstruction, by like means, of the recruiting service. Unsatisfactory as is this decision, compounded of three distinct viewpoints, it still represents the only published decision which

makes any serious attempt to reduce to a rule the criminality of public statements under those clauses of the Espionage Act which relate to interferences with the military or enlistment services. It is our contention that the rule as stated by Judge Hand is the correct rule, and that the test of criminal responsibility for expressions leading up to insubordination, etc., is the common law liability as an accessory, created by urging violation of law upon others. Beyond purposeful incitement to specific unlawfulness on the part of others, there is no power in Congress to make public utterances criminal—under any exigency, or as an incident of any express power granted to Congress under the Constitution.

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Before reverting to the indictment and instructions under consideration, we state shortly our understanding of the power of Congress to regulate public discussion by criminal enactments. Practically all of the cases since the adoption of the Espionage Act, in dealing with the right of free speech, while giving some measure of verbal recognition to that right, have abruptly swept aside any consideration of such a right in conflict with the general war purposes of the government. The inference of these decisions, and the obvious theory of the amendments to Section 3 of the Espionage Act added in May, 1918, is that public discussion can be constitutionally controlled as an incident of the war power. We earnestly submit that such interpretation of the right of free speech is a careless sweeping aside of the most vital principle of American freedom, not only without affirmative constitutional warrant, but in the face of the direct prohibition of the First Amendment.

When the Constitution was submitted to the States for ratification one of the chief points of opposition was the failure to include a Bill of Rights. The answer given, in the Convention by Roger Sherman (5 Elliott's

Debates, p. 545), and in the Federalist (No. 84) by Hamilton, was that as far as freedom of the press was concerned it was unnecessary to declare that a thing shall not be done which there is no power to do. In a letter to Jefferson, dated October 17, 1788 (Watson on the Constitution, p. 1359), Madison explained why he considered a Bill of Rights unnecessary, as tending to particularize in a domain where Congress had no power anyhow; and he then went on to explain why he was not opposed to adding a Bill of Rights, since power would assert itself against parchment guarantees of any kind and it was desirable to have the Bill of Rights as a basis of protest.

The First Amendment was not a limitation of the power of Congress to control free speech and the press but a simple denial of any such power. The common law and sovereignty control of speech and the press passed to the States, upon the Revolution, and remained there under the reserved powers, of which the Tenth Amendment is declaratory. We are not here concerned with State limitation of discussion, yet the definition of freedom of the press under the police power is pertinent to its clear demarcation from solicitation of crime. It is interesting, therefore, to note the statement of an eminent authority on police powers, Professor Freund, as to the extreme case of anarchist propaganda in relation to free speech. We quote from Freund's text on Police Powers, Sec. 475:

“A proposition to forbid and punish the teaching or the propagation of the doctrine of anarchism, i. e., the doctrine or belief that all established government is wrongful and pernicious and should be destroyed, is inconsistent with the freedom of speech and press, unless carefully confined to cases of solicitation of crime, which will be discussed presently. As the freedom of religion would have no meaning without the liberty of attacking all re-



ligion, so the freedom of political discussion is merely a phrase if it must stop short of questioning the fundamental ideas of politics, law and government. Otherwise every government is justified in drawing the line of free discussion at those principles or institutions which it deems essential to its perpetuation,—a view to which the Russian government (1904) would subscribe. *It is of the essence of political liberty that it may create disaffection or other inconveniences to the existing government, otherwise there would be no merit in tolerating it. This toleration, however, like all toleration, is based not upon generosity, but on sound policy, on the consideration, namely, that ideas are not suppressed by suppressing their free and public discussion, and that such discussion alone can render them harmless and remove the excuse for illegality by giving hope of their realization by lawful means."*

Quoting further from the same author (Sec. 478, p. 513):

"In accordance with the principles above set forth the constitutional guaranty of freedom of speech and press and assembly demands the right to oppose all government and to argue that the overthrow of government cannot be accomplished otherwise than by force; and the statutes referred to, in so far as they deny these rights, should consequently be considered as unconstitutional.

"It is probably true to say that to the extent that anarchist agitation exceeds the bounds of free speech it is punishable under the principles of the common law, and that it is impossible to strike at anarchism as a doctrine without jeopardizing valuable constitutional rights."

It will be noted that the reasoning here is in exact accord with that of Judge Hand, as above quoted, with reference to anti-war agitation, except that Judge Hand makes the reservation that power to repress such opinion "may rest in Congress in the throes of a struggle for the very existence of the state." That this reservation is without substance is obvious when we ask at what

time is the life of the state, or its liberties, endangered? If this question is to be resolved by the declarations to that effect of one or many officials, such a danger will always exist as against the agitation desired to be suppressed. But if this question of danger to the state rests in the conscience of the people, how then can it ever become the foundation of legislation which gives it official fixity?

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In *Reynolds v. United States*, 98 U. S. 163, this court gave its approval to the Virginia Resolution drawn by Thomas Jefferson. That resolution defines the limits of toleration as follows:

“To suffer the civil magistrate to intrude his power into the field of opinion, or to restrain the profession or propagation of principles, on supposition of their ill tendency, is a dangerous fallacy which at once destroys all liberty because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own. *It is time enough for the rightful purpose of civil government for its officials to interfere when principles break out into overt acts against peace and good order.*”

The Sedition Act of 1797 and its fate has heretofore been accepted as so decisive a settlement of the constitutionality of such legislation that our text-writers have dealt with the crime of seditious libel as obsolete. (Freund, *Police Powers*, Sec. 474.) Judge Cooley, in his book on “*Constitutional Limitations*,” p. 526, says:

“The Sedition Law was passed during the administration of the elder Adams, when the fabric of government was still new and untried, when many men seemed to think that the breath of heated party discussions might tumble it about their heads. Its constitutionality was always disputed by a large party, and its impolicy was beyond question. It



had a direct tendency to produce the very state of things it sought to repress. The prosecutions under it were instrumental, among other things, in the final overthrow and destruction of the party by which it was adopted, *and it is impossible to conceive at the present time of any such a state of things as would be likely to bring about its re-enactment or the passage of any similar repressive statute.*”

Alongside the frequent judicial expressions which have lately found their way into the cases in which free speech has been an issue, that public discussion is protected if it is *temperate, or honest, or fair, or loyal, or not subversive of the national purposes*, we set up the calmer wisdom of Judge Coolëy (*idem.* p. 527) :

“It is very easy to lay down a rule for the discussion of constitutional questions; that they are privileged if conducted with calmness and temperance, and that they are not indictable unless they go beyond the bounds of fair discussion. But what is calmness and temperance, and what is fair in the discussion of supposed evils in the government? And if something is to be allowed ‘for a little feeling in men’s minds,’ how great shall be the allowance? The heat of the discussion will generally be in proportion to the magnitude of the evil as it appears to the party discussing it. Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be that the evil likely to spring from the violent discussion will probably be less and its correction by public sentiment more speedy than if the terrors of the law were brought to bear to prevent discussion.”



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Davis:



the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigencies of Government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

\* \* \* But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily it is not so."

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Mr. Debs made his speech at Canton to such a group of persons as he had addressed, as a noted and active publicist during three decades, thousands of times. The indictment charges that there were present in the audience young men of military and enlistment age. There was no dispute about this, and in fact it was reduced to irrelevance by the instruction of the trial judge that if Mr. Debs influenced anybody in a point of view inimical toward the war project, which these hearers might again transmit to friends of enlistment age, that was sufficient.

As has already been insisted, the charge of criminality does not relate itself to the speech—does not, we might more exactly say, *integrate* itself with anything that defendant said. The two, the formal averments and the speech, are set up in parallel columns. The indictment contains ten counts, but in no one of the counts is the pleading of the speech any different. The collision between the abstract averments and the speech is left for conjecture of judge and jury.



We call the attention of the court to the striking test of the character of this pleading, in that, in order to test the charges according to the canons of freedom of speech, under the Federal Constitution, we must search through this speech ten times—and ten times seek out for ourselves an affirmative theory of commission of the offense charged, or as many theories as any mind might produce out of this material in each of the ten instances, in order effectually to negative the charges as within defendant's right of free speech. The pleader having evaded the task of making a cogent charge, and the trial judge having again presented to the jury a series of legal abstractions alongside the mass of evidence, and the jury having added no clarification to the charges by the verdict, of what has defendant been informed except that, somehow, his speech, taken one way and another, is the basis of his conviction? Let another person seek guidance as to his rights of free speech and publication on the rule of this case, and what shall he find?

Inevitably, as we turn to this speech to see if there is anything in its character or text which leaves the domain of political discussion to enter upon solicitation of violations of law, we assume the viewpoint of the prosecuting attorney in argument, because the pleading leaves us no theory of unlawful speaking to take hold of. We must create such theories in order to answer them, *and this court would have to reconstruct, by its own inferences, the logic of the jury, in order to put into the record, for the first time, the three ways in which, by appropriate words to that end, the defendant induced or attempted to induce the several injuries to the United States to be fulfilled in the deeds of others.*

From our own viewpoint we would naturally see neither legal sense nor common sense, nor true honesty of criminal process, in straining to supply the series of



inferences, or rather guesses, invited by the pleader. We see no relation between the several formal recitals of the nature of certain crimes and the speech which they accompany, other than that they are printed in the same indictment and that the abstract averments state the time and place at which the speech was made. We would say, as Mr. Debs himself said (237):

“I admit having delivered the speech \* \* \*. In what I had to say there my purpose was to educate the people to understand something about the social system in which we live and to prepare them to change this system by perfectly peaceable and orderly means into what I, as a Socialist, conceive to be a real democracy \* \* \*.

“If I have criticised, if I have condemned, it is because I have believed myself justified in doing so under the laws of the land” (242).

But we go further. Search this speech through from first to last, and what is there in it that may be read as an incitement or encouragement toward dereliction of military or civic duty in relation to the war? Mr. Debs talks of the progress of the socialist movement and of the efforts to thwart it by misrepresentations; of Prussian militarism and the opposition of Bebel and the elder Liebknecht toward it as contrasted with the cordiality of Mr. Roosevelt toward the Kaiser and his enthusiasm for the German military system; of the reception of Prince Henry by the American plutocracy, with only James F. Carey, Socialist member of the Massachusetts Legislature, publicly protesting this obsequiousness to Kaiserism; of the universality of junkerdom, and its hypocritical pretensions of patriotism; of the assaults against Tom Mooney and Francis J. Heney; of the prosecutions against Kate Richards O'Hare, Scott Nearing, Max Eastman, Rose Pastor Stokes and the I. W. W.; of the Federal courts and the child labor decision; of the inspiration of Socialism; of the Bolsheviki of Russia; of

wars and their purposes; of landlordism; of exploitation of the miners and the Socialist plan of common ownership; of the history of the I. W. W. and the attacks against it; of the need of the workers for organization, industrial and political.

Out of all this what rule would obtain by affirmance of defendant's conviction? *That this court supports the Espionage Law as a means of suppressing during war time an exposition and exhortation toward Socialism, national and international.* Anti-war politics would be confined to times of peace, when the issue has not the vitality of national immediacy. Certainly the literal reader of the Espionage Act would find this a dubiously subtle method of arriving at such a rule of criminal conduct, with its extremely severe penalties.

One might assume, perhaps, that it is in what Mr. Debs had to say about war that he subjected himself to the charges in the indictment, and, presumably, passed the bounds of political discussion to enter upon solicitation or encouragement of conduct such as is described in the Espionage Act. What, then, did he say about war? Turning from the subject of events in Russia, Mr. Debs recalled the publication by the Russian Revolutionists of the secret treaties—, “the treaties that were made between the Czar and the French government and the British government and the Italian government, proposing, after the victory was achieved, to dismember and disperse and destroy the Central Powers.” Sterling report of Canton speech (204):

“These treaties have never been repudiated. Very little has been said about them in the American press. I have a copy of these treaties showing that the purpose of the Allies is exactly the purpose of the Central Powers. And that is the purpose that has always been the purpose of war.

Wars have been waged for conquest, for plunder. In the Middle Ages the feudal lords, who inhabited the cas-



cles whose towers may still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall Street junkers go to war. The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought the battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them in contempt. And that is war in a nutshell.

The master class has always declared the war; the subject class has always fought the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose, including their lives. They have always taught you that it is your patriotic duty to go to war and have yourselves slaughtered at a command. But in all of the history of the world you, the people, never had a voice in declaring war. You have never yet had. And here let me state a fact—and it cannot be repeated too often: the working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war. The working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

‘Yours not to question why,  
Yours but to do and die.’

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary.”



At another point in the Canton speech, comes this language (208):

“And this is the high purpose of every Socialist on the face of the earth. They are pressing forward, here, there, everywhere, in all of the zones that girdle this globe; everywhere these awakened workers, these class-conscious proletarians, these horny-fisted children of honest toil, everywhere wiping out the boundary lines; everywhere facing the larger and nobler patriotism; everywhere proclaiming the glad tidings of the coming emancipation; everywhere having their hearts attuned to the most sacred cause that ever challenged men and women to action in all the history of the world. Everywhere moving toward democracy; everywhere marching toward the sunrise, their faces all aglow with the light of the coming day. These are the Socialists; these are the most zealous, the most enthusiastic crusaders the world has ever known. They are making history that will light the horizon in the coming generations; they are bound upon emancipating the human race. They have been reviled; they have been persecuted; but they have been sufficient to themselves, pressing forward toward the height—aye, their triumph is now already begun!

Do you wish to hasten it? Join the Socialist Party. Don't wait for the morrow. Come now. Enroll your name; take your place where you belong. You cannot do your duty by proxy. You have got to do something yourself, and do it squarely, and look yourself in the face while you are doing it. And you will have no occasion to blush. You will know what it is to be a man or woman. You will lose nothing; you gain everything. Not only do you lose nothing but you are very apt to find something, and that something will be yourself. And you need to find yourself—to know yourself. You need to know that you are fit for something better than slavery and cannon fodder. You need to know that you were not created to work and to produce to impoverish yourself and to enrich an idle exploiter. You need to know that you have a soul to develop, a manhood to sustain. You need to know that it is your duty to rise above the animal plane. You need to know that it is for you to know something about literature, and about science, and about art. You need to know that you are on the edge of a great new world.”

We quote, finally, the closing sentences (214):

“And now for all of us to do our duty. The call is ringing in our ears. It is your duty to respond; and you cannot falter without being convicted of treason to yourselves. Do not worry, please—don’t worry over the charge of treason to your masters, but be concerned about the treason that involves yourselves. Be true to yourself, and you cannot be a traitor to any good cause on earth.

Yes, we are going to sweep into power in this nation, and in every other nation on earth. We are going to destroy the capitalist institutions; we are going to recreate them as legally free institutions. Before our very eyes the world is being destroyed. The world of capitalism is collapsing; the world of socialism is rising.

It is your duty to help to build. We need builders of industry. We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind.”

There is little need for comment as to the nature of the appeal, or inducement to action, made in this speech. It is repeated again and again—organization of the workers along definite political and industrial lines in their own interest. War—its inherent nature throughout history, as defendant conceives it, is used as one argument toward this end. As to war itself, what is the exhortation? “Let it be declared by the people”—no other appeal, no other suggestion, except that wars are inherently associated with some system of exploitation.

War is a matter of political policy. The war declared April 6, 1917, was debated bitterly in Congress and throughout the country. There were 50 votes against the declaration in the House of Representatives, 6 in the Senate. The sentiment of the American people on this



date will always be a matter of wide variance of conjecture. The continuation of war is a most vital matter of public policy. Is it intended by the Espionage Act to be made the exclusive concern of one or a few officials? The alternative to free discussion of war as a matter of public, or political policy, during wartime, is a preposterous perversion of the established precedents of our own history, and a caricature of freedom of press and speech. It would be to say that an inhibition upon free discussion arises in degree of vital interests at stake in such discussion.

It will probably be contended that it is the indirect effect of these statements, the appeal inherent in the statements themselves, regardless of the affirmative appeal made by the speaker to his hearers, upon which the charges of the indictment are predicated. It becomes obvious at once, when the problem of the prosecution is realized, why the Government had to seek so far afield to establish an "intent" to violate the Espionage Act—an "intent" derivable in law, no matter how bolstered up extraneously, only from the materials of this Canton speech. From "the reasonable and natural consequences" of this speech, the specific criminal intent three ways to prevail upon others in avoidance of military duties! Indeed it is not surprising that the pleader, facing the original ten counts, made no attempt to state a special and definite theory of the offense in even one of them.

Every way we approach this indictment, and the instructions of the court, we arrive at the contradiction of *statement of an offense upon the basis of the effect of defendant's words to incite action or inaction upon the part of others and the actuality of a charge and trial proceeding upon the basis of defendant's words as the mirror of his own mind in relation to war.*



There is not one syllable of this speech, or of any other statement of Mr. Debs, which does not come well within the range of freedom of speech. There is no statement attributable to him, and upon which the charge of the trial judge could proceed, which could be given criminal character by any act of Congress in conformity with the Constitution.

\* \* \* \* \*

Now as to the 7th count, which is one of the three counts upon which the conviction rests. The charge is that the defendant "did then and there unlawfully, wilfully and feloniously utter and publish certain language intended to incite, provoke and encourage resistance to the United States, and to promote the cause of its enemy, to wit, The Imperial German Government, etc."

There are three possible theories of this clause of the Espionage Act. The first is: to commit treason by instigation to treason. While the language might very well bear this construction it is an impossible basis upon which to sustain the clause, by the elementary principles applicable to the crime of treason. Congress has no power to amend or enlarge the definition of treason written into the Constitution.

The second alternative as to this clause is to give it the understanding of sedition, in the broad sense of irritating the general consciousness against the fact and program of war. This alternative is not only untenable under the First Amendment; it would have so glaring a vice of indefiniteness and generality in a criminal statute that it could not be entertained as the basis for an indictment.

The final alternative, the one apparently accepted by the pleader and the court in this case, is to deal with this clause as *répétition* and summary of the clauses

dealing with interferences with, and disobedience within, the military and enlistment services. This clause, in any reading, is of doubtful propriety in a criminal statute, but if its definition is of such character that it is properly joined with the other two clauses upon which the foregoing argument proceeds, we need press our objections to its constitutional validity no further.

\*                    \*                    \*                    \*                    \*

A case could not be imagined which brings more clearly and simply before this court the question whether or not ours is in truth "a government of opinion." It is only under the trying conditions of war, or other great national stress, that such a question could arise in a vital way. If the government is ever entitled to command a good opinion of itself and its policies on the part of its "subjects," the criterion enunciated by Lord Holt and many who entertain the same contempt of the people in our own day, then the event of war cannot remain the limit of power to silence "sedition." Either the First Amendment means all that it says—in the literal reading of Mr. Debs—or it means absolutely nothing. This latter alternative might seem an over-statement alongside the phraseology of "freedom from prior restraint." This is the favorite expression of some writers, but no matter that "freedom from prior restraint" may have meant much to the writers of a century and a half ago against the imprimatur by which all printing was subjected to despotic authority; it need only be said that the dependence of all present-day circulation of writings on the government postoffice, with power acknowledged in Congress to control broadly what shall go through the mails, leaves this distinction meaningless.

Freedom of speech, as enunciated by the First Amendment, must be declared in the broad terms of its universal understanding as the primary condition of human progress. No precision of judicial logic will give credence to any other reading of the First Amendment.

Respectfully submitted,

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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

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EUGENE V. DEBS, PLAINTIFF IN error, v. THE UNITED STATES OF AMERICA, defendant in error.	}	No. 714.
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*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO.*

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## BRIEF FOR THE UNITED STATES.

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### STATEMENT OF THE CASE.

On June 18, 1918, the plaintiff in error, Eugene V. Debs (hereinafter referred to as the defendant) made a speech at Canton, Ohio, which forms the basis of the charge on which he was tried and convicted. This was the period, it will be remembered, of the great 1918 German offensive when the situation on the battle fields of France and Belgium called for the greatest and speediest possible mobilization of men for the Army. On May 20, 1918, Congress had passed the act covering into the draft

men who had reached the age of twenty-one subsequent to the original registration of June 5, 1917. Draft boards were being called upon for their maximum of activity and the recruiting service of the Army was actively at work throughout the country. It was this period of crisis in the military situation which the defendant chose for his Canton speech.

The speech was delivered out-of-doors in a public park of the city of Canton, and constituted the closing event of a convention of the Ohio State Socialist Party. It was delivered from a band stand. No American flag was displayed upon the band stand nor in the park. The audience was variously estimated at from two hundred and fifty to fifteen hundred persons. Young men of draft ages predominated or at least were present in large numbers, four of whom were identified in the indictment by name and two of whom took the stand. (R. 167, 190, 223, 225, 231.)

At a short distance from this park was the Canton city workhouse, in which were confined Alfred Wagenknecht, Charles Baker, and Charles E. Ruthenberg, the three Cleveland men who, at a Socialist meeting in the city of Cleveland, had delivered speeches against the war and the draft which had caused their conviction for counseling and abetting a violation of the draft law, a conviction which was later upheld by this court in 245 U. S. 480. Immediately preceding his address, the defendant had visited these men in the workhouse. He opened his speech with the statement that he was speaking to



and for the working classes, and then referred to his visit to the workhouse in the following words (R. 194):

I have just returned from a visit over yonder (pointing to the workhouse), where three, three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world.

A minute or so later he added (R. 194, 195):

They are simply paying the penalty that all men have paid in all the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind.

If it had not been for the men and women who in the past have had the moral courage to go to jail, we would still be in the jungles.

Then followed a general reference to the Socialist movement, its situation and opportunities, beginning with the sentence "There is but one thing that you have to be concerned about and that is that you keep foursquare with the principles of the international Socialist movement." (R. 195.) The course which he advocated for the members of the working classes in the war between them and what he called the exploiting classes may be illustrated by the following passage, which again included a reference to Bakér, Wagenknecht, and Ruthenberg (R. 196):

It is true that these are anxious, trying days for us all—testing days for the women and

men who are upholding the banner of the working class in the struggle of the working class of all the world against the exploiters of all the world; a time in which the weak and cowardly will falter and fail and desert. They lack the fiber to endure the revolutionary test; they fall away; they disappear as if they had never been. On the other hand, they who are animated with the unconquerable spirit of the social revolution, they who have the moral courage to stand erect and assert their convictions; stand by them; fight for them; go to jail or to hell for them, if need be, and—they are writing their names, in this crucial hour—they are writing their names in fadeless letters in the history of mankind.

Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers; their very names throb in my heart, and thrill in my veins, and surge in my soul. I am proud of them; they are there for us; and we are here for them. Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world.

Then followed (R. 196–203) a picture of the contrast between the patriotism of militarists, junkers, and other types of those called exploiters and the patriotism of the socialist working class leaders. Persons named as illustrations of the one group were Theodore Roosevelt, the German Kaiser, various governmental bodies, Wall Street junkers, and of the other group, Kate Richards O'Hare, Scott Nearing,

and others. The reference to Kate Richards O'Hare (R. 200, 201) was as follows:

Let me review another bit of history in connection with this case. I have known Kate Richards O'Hare intimately for twenty years. I know her record by heart. Personally, I know her as if she were my own younger sister. All who know her know she is a woman of absolute integrity. And they know, too, that she is a woman of courage, and they know that she is a woman of unimpeachable loyalty to the Socialist movement. When she went out into Dakota and made her speech, followed by plain-clothes men in the service of the Government intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when thirty farmers, men and women, who were in Bismarck to testify in her favor, to swear that she had never used the language she was charged with having used, the judge refused to allow them to go upon the stand. This would seem incredible to me, if I had not had some experience of my own with a Federal court.

He then pictured the Bolsheviki revolution in Russia as the acme of the working class movement



which he was praising and glorifying, saying (R. 203, 204):

And the very first act of the immortal revolution was to proclaim a state of peace with all the world, coupled with an appeal, not to the kings, not to the emperors, not to the rulers, not to the diplomats, but an appeal to the people of all nations. There is the very birth of Democracy, the quintessence of freedom. They made their appeal to the people of all nations, the allies as well as the central powers, to send representatives to a conference to lay down terms of peace that should be Democratic and lasting. Here was a fine—here was a fine opportunity to strike a blow to make Democracy safe in the world. Was there any response to that noble appeal? And here let me say that that appeal will be written in letters of gold in the history of the world. Was there any response to that appeal? (From the crowd “No.”) Not the slightest.

Then, in the course of a discussion of the secret treaties between the allies discovered by the Bolshevik leaders, the defendant proceeded (R. 204):

I have a copy of these treaties showing that the purpose of the allies is exactly the purpose of the central powers. And that is the purpose that has always been the purpose of war.

Wars have been waged for conquest, for plunder. In the middle ages the feudal lords, who inhabited the castles whose towers may

still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall Street junkers go to war. The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought the battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and to cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them all in contempt. And that is war in a nutshell. The master class has always declared the war; the subject class has always fought the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose, including their lives. They have always taught you that it is your patriotic duty to go to war and to have yourselves slaughtered at a command. But in all of the history of the world, you, the people, never had a voice in declaring war. You have never yet had. And here let me state a fact—and it can not be repeated too often—the working class who fight the battles, the working class who made the sacrifices, the working class who shed the

blood, the working class who furnish the corpses, the working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

"Yours not to ask the question why;  
Yours but to do and die."

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary.

Then followed a discussion of the Rose Pastor Stokes case, in which the defendant said (R. 205):

Rose Pastor Stokes. And when I mention her name, I take off my hat—mentally at least. (He spoke without a hat on his head.) Here is another heroic and inspiring comrade. She had her millions of dollars. Did it restrain her an instant? Her devotion to the cause had arrested all consideration of a financial or an economic nature. She went out to render her service to the cause in this day of crises, and they sent her to the penitentiary for ten years. Think of it! Ten years! What had she said? Not any more than I have said this afternoon. I want to admit—I want to admit, without argument, that if Rose Pastor Stokes is guilty, so am I. If she is guilty, I wouldn't be cowardly enough to plead innocence. And if she ought to be sent to the penitentiary for ten years, so ought I.



What did she say? Why, she said that a Government—a Government could not serve both the profiteers and the victims of the profiteers. Isn't that true? Certainly.

Then comes (R. 207, 208) a passage of passionate praise for minorities and class-conscious proletarians, followed by an appeal to join the Socialist Party, containing the following words, "you need to know that you are fit for something better than slavery and cannon fodder." In the course of this appeal for joining the Socialist Party, the defendant returned to the subject of Baker, Ruthenberg, and Wagenknecht in the following passage (R. 209):

There is a great deal of hope for Baker, Ruthenberg, and Wagenknecht, but for the fellow that is nobody there is no pardoning power. He is 'in' for life. Anybody can be nobody, but it takes a man to be somebody.

Adding a moment later (R. 209, 210):

You are in a crucible to-day, Mr. Socialist. You are going to be tried, to what extent no one knows. If you are weak fibered, that weakness will be sought out, and located. And if, through that weakness, you are conquered, you may be driven out of the Socialist movement. We will have to bid good-by to you. You are not the stuff of which revolutionists are made. We are sorry for you unless you happen to be an intellectual. The intellectuals, a good many of them, are already gone. No—no loss on our side, nor any gain of theirs.

Throughout this part as well as the remainder of the address, the contrast between the capitalists and exploiting class on one hand and the working-class on the other is constantly drawn, permeating almost every sentence. For instance (R. 210 and 211), after paying his respects to the owners of the railroads as one species of the exploiters, he turns to another exploiting group, namely the landlords, saying, in the course of this portion of the address (R. 211):

They are talking about your patriotic duty. Among other things, they are advising you to cultivate war gardens—cultivate a war garden. While they are doing this, a Government war report shows that practically fifty-two per cent of the arable, tillable soil is held out of use by the profiteers, by the land manipulators—held out of use. They, themselves, do not cultivate it. They could not if they would. They don't allow others to cultivate it; they keep it idle to enrich themselves; to pocket the hundreds of dollars of unearned increment. Who is it that makes their land valuable while it is fenced in and kept out of use? It is the people. Who pockets this tremendous value? The landlords. The landlords. Who is the patriot? And while we are upon the subject, I want you to think upon the term "landlord." Landlord, lord of the land? This lord of the land is a great patriot. This lord, who professionally owns the earth, tells you that he is fighting to make the world safe for democracy—he, who shuts all humanity out; and he who profiteers at the expense of the people who have been slain by multi-

plied thousands, under the pretense of being the great patriot he is—he, who is your arch-enemy; he it is that you need to wipe from power. It is he, it is he that is a menace to your loyalty and your liberty far more than the Prussian junker on the other side of the Atlantic ocean.”

Then follows an attack upon another group of exploiters, the owners of coal mines and an advocacy of the socialization of the ownership of mines and then, by way of contrast, a laudation of the I. W. W., in the course of which the defendant said (R. 213):

But, when the war press says war, you may rest assured that every pulpit in the land will say war. And when Wall Street says peace, they will all say peace, because they are simply instruments of Wall Street. The pulpits in every age have been on the side of every ruling exploiting class, and not on the side of the people.

The picture of a bitter conflict between the exploiting classes and the working classes is carried throughout the remainder of the address, which ends with an appeal to all members of the working-class to do their duty in this time of crisis and emergency. The nature of this duty as described by the defendant may be judged from the following passage, occurring toward the end of the address (R. 214, 215):

And now for all of us to do our duty. The call is ringing in our ears. If you do, it is your duty to respond; and you can not falter



without being convicted of treason to yourselves. Do not worry, please; don't worry about the charge of treason to your masters; but be concerned about the treason that involves yourselves. Be true to yourselves, and you can not be a traitor to any good cause on earth.

The indictment originally contained 10 counts, all based upon section 3, Title I of the Espionage Act (act of June 15, 1917, c. 30, 40 Stat. 217), as amended by the act of May 16, 1918 (Pub. No. 150, 65th Cong. 2d sess.), the full text of which will be found in the margin.<sup>1</sup> By virtue of withdrawals and

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<sup>1</sup> SEC. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent 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, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever, when the United States is at war, shall willfully cause, or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States into contempt, scorn, contumely, or disrepute; or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United

verdicts of not guilty, seven of these counts were eliminated, leaving three counts, namely the third, fourth, and seventh counts, in the case.

The seventh count charged that the defendant uttered language intended to incite, provoke, and encourage resistance to the United States and to promote the cause of its enemy, namely, the German Empire. The Government, however, is not convinced that the facts of the case clearly demonstrate a violation of this clause of the law and will make no further contentions concerning the seventh count.

This leaves counts three and four. The third count (R. 29) charges the defendant with having caused and attempted to cause and incited and attempted to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, in that he made the said Canton speech, the words of the speech being set forth in the indictment. It names two members of the audience of draft age, and alleges that numerous others of the same ages were present.

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States may be engaged; with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both: *Provided*, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service. Any such employee shall be dismissed by the head of the department in which the employee may be engaged, and any such official shall be dismissed by the authority having power to appoint a successor to the dismissed official.



It alleges that he made these utterances willfully and "with the intent on his part to cause and attempt to cause and incite and attempt to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States."

The fourth count (R. 42) charges the defendant with obstructing and attempting to obstruct the recruiting and enlistment service of the United States, in that he made the said speech, the words of which are set forth in the indictment. It names three of the members of the audience between the ages of eighteen and forty-five, and alleges others of those ages as present. It alleges the defendant willfully uttered the words set forth in the indictment, and "with the intent on his part to obstruct and attempt to obstruct the recruiting and enlistment service of the United States."

Defendant's motion to quash the indictment (R. 139) and demurrer (R. 141) were overruled as to all counts involved in these error proceedings.

In explanation of the defendant's references to the Wagenknecht, Ruthenberg, Baker, Kate Richards O'Hare, and Rose Pastor Stokes cases and as bearing on the question of intent, the Government introduced into evidence, and the court, over the objection of the defendant, admitted so much of the records of the Wagenknecht, Ruthenberg, and Baker cases as showed the nature of the charge upon which they had been prosecuted, tried, and convicted, and copies of the indictments, verdicts, and sentences in the



O'Hare and Stokes cases. (R. 226-228, Government Exhibits 9-15.) The cases against Wagenknecht, Ruthenberg, and Baker arose out of speeches made by them at a public meeting, for which they were convicted of aiding, abetting, counseling, and inducing a violation of the selective service act. The case against Mrs. O'Hare arose out of a speech for which she was convicted of willfully obstructing the enlistment service of the United States. Similarly, the case against Mrs. Stokes arose out of a public address for which she was convicted of attempting to cause insubordination and refusal of duty in the military forces of the United States and obstructing the recruiting and enlistment service of the United States. The sentiments expressed by all of said defendants in these cases, especially the Cleveland cases, bore a striking family likeness to the utterances of the defendant in the instant case.

It appeared in evidence that shortly before his Canton address the defendant Debs was asked concerning the truth of the reports that he had repudiated the so-called "St. Louis platform," being the "war program and proclamation" adopted at the emergency convention of the National Socialist Party at St. Louis, Mo., a few days after the declaration of war with Germany (R. 169). The defendant answered (R. 170, 171, 174) that he approved of that report in spirit and substance at the time of its adoption and still approved of it, although he favored a restatement of some of the aims. Two weeks later

he again stated, in regard to this St. Louis platform, when asked whether he repudiated its platform and principles, "I do not, and, if necessary, I will die for those principles" (R. 218). This platform, together with a minority report of those at the St. Louis meeting who disagreed with it, was sent to the members of the socialist locals throughout the country for a referendum vote. (R. 216, Government Exhibit 2.)

At a meeting in Chicago of the State secretaries of the National Socialist Party, called to discuss the question of a repudiation of or change in the St. Louis platform, the defendant Debs was present and said (R. 221):

A working man has no place in a capitalist's war such as this. The only war in which I have any interest is that of the workers against the capitalists. They may call me a disloyalist and brand me a traitor, but I shall stick to my principles. The master class pretend to wage this war for democracy, but by persecuting us they have branded this pretention a lie. I honestly hope that there may be no one present here to-day that will want to change the party's former attitude toward the war.

As bearing on the question of his intent in making the Canton speech, the court, over the objection of the defendant, admitted a copy of this St. Louis platform in evidence, including both majority and minority report. (R. 216-8, Government Exhibits 1 and 2.) It constitutes a bitter attack on the war

and an appeal to all socialists to oppose and resist the prosecution of the war and all participation in the war. The following passages are typical of both the attitude to the war and the appeal:

The Socialist Party of the United States in the present grave crisis, solemnly reaffirms its allegiance to the principle of internationalism and working class solidarity the world over, and proclaim its unalterable opposition to the war just declared by the Government of the United States.

Modern wars as a rule have been caused by the commercial and financial rivalry and intrigues of the capitalist interests in the different countries. Whether they have been frankly waged as wars of aggression or have been hypocritically represented as wars of "defense," they have always been made by the classes and fought by the masses. Wars bring wealth and power to the ruling classes, and suffering, death, and demoralization to the workers.

The Socialist Party of the United States is unalterably opposed to the system of exploitation and class rule which is upheld and strengthened by the military power and sham national patriotism. We, therefore, call upon the workers of all countries to refuse support to their Governments in their wars. The wars of the contending national groups of capitalists are not the concern of the workers. The only struggle which would justify the workers in taking up arms is the great struggle of the working class of the world to free



itself from economic exploitation and political oppression, and we particularly warn the workers against the snare and delusion of defensive warfare. As against the false doctrine of national patriotism we uphold the ideal of international working class solidarity. In support of capitalism, we will not willingly give a single life or a single dollar; in support of the struggle of the workers for freedom we pledge our all.

Our entrance into the European war was instigated by the predatory capitalists in the United States who boast of the enormous profit of seven billion dollars from the manufacture and sale of munitions and war supplies and from the exportation of American foodstuffs and other necessities. They are also deeply interested in the continuance of war and the success of the allied arms through their huge loans to the Governments of the allied powers and through other commercial ties. It is the same interests which strive for imperialistic domination of the Western Hemisphere.

We brand the declaration of war by our Government as a crime against the people of the United States and against the nations of the world.

In harmony with these principles, the Socialist Party emphatically rejects the proposal that in time of war the workers should suspend their struggle for better conditions. On the contrary, the acute situation created by war calls for an even more vigorous prose-

cution of the class struggle, and we recommend to the workers and pledge ourselves to the following course of action:

1. Continuous active and public opposition to the war, through demonstrations, mass petitions, and all other means within our power.

2. Unyielding opposition to all proposed legislation for military or industrial conscription. Should such conscription be forced upon the people, we pledge ourselves to continuous efforts for the repeal of such laws and to the support of all mass movements in opposition to conscription. We pledge ourselves to oppose with all our strength any attempt to raise money for payment of war expense by taxing the necessities of life by issuing bonds which will put the burden upon future generations. We demand that the capitalist class, which is responsible for the war, pay its cost. Let those who kindled the fire furnish the fuel.

At the conclusion of the Government's evidence, the defendant moved for a directed verdict, which motion was overruled (R. 232). The defendant introduced no evidence. He personally made his own address to the jury, in the course of which he said (R. 239):

I have been accused of having obstructed the war. I admit it. Gentlemen, I abhor war. I would oppose the war if I stood alone. When I think of a cold, glittering steel bayonet being plunged in the white, quivering flesh of a human being, I recoil with horror.

I have often wondered if I could take the life of my fellow men, even to save my own.

\* \* \*

I have read some history. I know that it is ruling classes that make war upon one another, and not the people. In all of the history of this world the people have never yet declared a war. Not one. I do not believe that really civilized nations would murder one another. I would refuse to kill a human being on my own account. Why should I at the command of anyone else or at the command of any power on earth?

(R. 242:)

You have heard a great deal about the St. Louis platform. I wasn't at the convention when that platform was adopted, but I don't ask to be excused from my responsibility on that account. I voted for its adoption. I believe in its essential principles. There was some of its phrasing that I would have otherwise. I afterwards advocated a restatement. The testimony to the effect that I had refused to repudiate it was true.

At the time that platform was adopted the Nation had just entered upon the war and there were millions of people who were not Socialists who were opposed to the United States being precipitated into that war. Time passed; conditions changed. There were certain new developments and I believed there should be a restatement. I have been asked why I did not favor a repudiation of what was said a year before. For the reason that I



believed then, as I believe now, that the statement correctly defined the attitude of the Socialist Party toward war. The statement, bear in mind, did not apply to the people of this country alone, but to the people of the world. It said, in effect, to the people, especially to the workers, of all countries, "Quit going to war. Stop murdering one another for the profit and glory of ruling classes. Cultivate the arts of peace. Humanize humanity. Civilize civilization." That is the essential spirit and the appeal of the much-hated, condemned St. Louis platform.

The jury brought in a verdict of guilty on the third, fourth, and seventh counts (R. 154). Motions for a new trial and arrest of judgment were overruled and the sentence was expressly declared to run concurrently and not cumulatively (R. 155-157). The case is in this court on writ of error.

The numerous assignments of error have been concentrated by the defendant's attorneys into five points, namely:

1. The indictment fails to charge a crime.
2. The admission into evidence of the court records in the Ruthenberg, Stokes, and O'Hare cases.
3. The admission into evidence of the St. Louis platform.
4. The definition of the expressions "military forces" and "recruiting service."
5. The acts charged against the defendant are protected under the first amendment of the Constitution.

The Government will reply to these points in the same manner, contending:

1. That the indictment is sufficient;
  2. That the said court records were properly admitted into evidence, as bearing upon and relevant to the question of the defendant's intent;
  3. That the St. Louis platform was properly admitted into evidence for the same reason;
  4. (a) That the military forces of the United States, within the meaning of the said clause of the espionage act relating to causing or attempting to cause insubordination in the military forces, was properly defined by the court in his charge;
- The expression "enlistment and recruiting service," was too narrowly, rather than too broadly, defined by the trial court, and consequently was not prejudicial to the defendant;
5. That the first amendment of the Constitution is not essentially involved in the case, and the conviction and sentence of the defendant do not constitute a violation thereof.

#### ARGUMENT.

##### I.

The indictment sufficiently charges the crime.

The substance of the argument of the defendant under this head seems to be that the Canton speech, upon which the prosecution was based, was not clearly connected on the face of the indictment with the intent which constitutes an essential element of the crimes charged. While this point made by the defendant is not clear, it seems to involve the proposi-

tion that something more than the setting out of a full description of the criminal act and an unequivocal allegation of the criminal intent is necessary.

However, it is difficult to conceive what more could be set forth than is contained in this indictment, without pleading evidence. The indictment first charges the offenses in the language of the statute (R. 29, 42), namely, that the defendant did attempt to cause insubordination, etc., in the military forces and did obstruct and attempt to obstruct the recruiting and enlistment service of the United States. It fixes the date of the offense. It describes the offense, namely, the Canton speech, setting it forth in full. It describes the audience as containing men of the designated draft and military ages, giving the names of some of them. It then alleges the unlawful intents in the language of the statute, alleging that "when the defendant uttered, published, and said the aforesaid words, speech, and address to the persons aforesaid he did so willfully and with the intent on his part to cause and attempt to cause and incite and attempt to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States"; and, in the fourth count, "with the intent on his part to obstruct and attempt to obstruct the recruiting and enlistment service of the United States." Nothing is left to inference. The intent is completely alleged; anything further would be pleading the evidence of intent. The defendant was apprised by the indictment of the act and intent with which he was charged.



An indictment is sufficient if the language used clearly and accurately sets out all the elements necessary to constitute the offence and acquaint the defendant with reasonable certainty of the accusation against him.

*Cannon v. United States*, 116 U. S. 55;  
*United States v. Britton*, 107 U. S. 655.

It is well settled that an indictment for a statutory offense which substantially follows the language of the statute and apprises the defendant of the offense charged is sufficient:

*Commonwealth v. Bearse*, 108 Mass. 487;  
followed in *Commonwealth v. Hobbs*, 140 Mass.  
443; 1 *Wharton's Criminal Procedure*, 308-310,  
10th ed.

See also the note in 11 L. R. A. 532 on an indictment for a statutory offense.

The Circuit Court of Appeals for the Eighth Circuit held in *McCarty v. United States*, 101 Fed. 113, that an indictment based on a statute punishing counterfeiting sufficiently charged that the acts were done with a criminal intent by alleging that the defendant acted "with intent to defraud." The following language is quoted from the opinion:

\* \* \* The objections to the sufficiency of the indictment upon its face are few, and not of a serious character. It is objected that the averment that the defendant did the acts complained of with "intent to defraud" is "too general for toleration, and only amounts

to pleading a conclusion." The pleader is never required in this class of cases to set out the evidence or facts going to prove the intent to defraud, or the particular means by which the party named in the indictment was to be defrauded. It is never done, and in most cases would be impractical. In the case of *U. S. v. Ulrici*, 3 Dill. 532, 535, Fed. Cas. No. 16, 594, this same objection was made to the indictment which charged the act was done "with intent to defraud the United States," and Mr. Justice Miller, in answering the objection, said:

"It is contended that there should be some statement of the evidence of this intent—that some one or more of the facts which manifest this intent should be set out in the indictment; but I suggested to counsel at the time that, if he could show where it was necessary to describe more than what the party intended to do, in a case where intent was the essence of the crime, then this might not be considered a sufficient charge, but I apprehend that no such instance can be produced. But it is said that you must show how he was going to do it. Now, an intent is often very hard to prove, but when you show that it is essential to a civil or criminal proceeding you can demonstrate it in a thousand ways. All human actions are the external evidence of intent. The conduct of a man, in its thousand various forms, goes to discover his inner thoughts; and to say that the indictment should allege these with particularity would be very difficult for the pleader. Are

we to set all the facts out? If not, where is the limit to be fixed? The objections, therefore, to this count are overruled, and it is held to be good."

Dr. Wharton, in his valuable work on Criminal Law, says:

"The means of effecting the criminal intent, or the circumstances evincive of the design with which the act was done are considered to be matters of evidence to the jury to demonstrate the intent, and not necessary to be incorporated in an indictment." (1 Whart. Cr. Law, sec. 292.)

Certain of the counts on which the defendant was convicted charged that he did the acts complained of with intent to defraud a named person "and divers other persons to the grand jurors unknown." \* \* \* where it is necessary to allege an intent to defraud some one, it is sufficient, when the fact is so, to allege an intent to defraud "divers persons to the grand jurors unknown."

In *Burton v. United States*, 202 U. S. 344, at 372, this court said:

It is equally true that the accused was informed with reasonable certainty by the indictment of the nature and cause of the accusation against him—the two counts hereinbefore given at large, and upon which sentences were pronounced, being as full as any of the others. The averments of the indictment were sufficient to enable the defendant to prepare his defense, and in the event of



acquittal or conviction the judgment could have been pleaded in bar of a second prosecution for the same offense. The accused was not entitled to more, nor could he demand that all the special or particular means employed in the commission of the offense should be more fully set out in the indictment. The words of the indictment directly and without ambiguity disclosed all the elements essential to the commission of the offense charged, and, therefore, within the meaning of the Constitution and according to the rules of pleading, the defendant was informed of the nature and cause of the accusation against him.

*United States v. Simmons*, 96 U. S. 360, 362;

*United States v. Carll*, 105 U. S. 611; *Blitz v.*

*United States*, 153 U. S. 308, 315.

In *Doe v. United States* the Circuit Court of Appeals for the Eighth Circuit, in an opinion recently rendered but not yet reported except in Bulletin No. 167, Department of Justice Interpretation of War Statutes, passed upon and upheld the sufficiency of an indictment under the same clauses of the Espionage Act as those involved at bar. That indictment set out the charge and intent with less particularity than the indictment at bar. The court said:

The offense charged is purely statutory and the words of the statute contain all the ingredients of the offense. The count under consideration charges the offense in the language of the statute and this is sufficient. *Potter v. United States*, 155 U. S. 438; *United*

*States v. Gooding*, 12 Wheat. 460; *United States v. Britton*, 107 U. S. 655; *Burton v. United States*, 202 U. S. 344.

Wharton's Criminal Law, section 292; *Evans v. United States*, 153 U. S. 584; *May v. United States*, 199 Fed. 42.

We think the count in question clearly apprised the defendant of what he must be prepared to meet and showed with accuracy to what extent he might plead a former acquittal or conviction. *Cochan v. United States*, 157 U. S. 286.

## II.

**Records of cases referred to in defendant's address properly admitted on issue of intent.**

The defendant assigns as error the admission into evidence of so much of the records of the Ruthenberg, Wagenknecht, Baker, O'Hare, and Stokes cases as show the nature of the offenses with which those persons were charged and convicted. The defendant claims that there was no proof of defendant's knowledge of the facts of those cases. This is a frivolous claim. The references to these cases in defendant's speech show that he knew all about them and any assumption to the contrary would be contrary to every reasonable inference.

The main contention of the defendant regarding these records is that their admissibility depends upon some proof that the audience would understand his references to these cases. This evidence, however, was not admitted upon any theory that it related to

the question of the effect of the speech upon the audience, but by reason of its relevancy to the question of the defendant's intent. Did he intend, when he made the speech, to cause insubordination, etc., in the military forces of the United States or obstruct its recruiting and enlistment service, that is, was it all or a part of his intent that he influence the men of military age against enlistment and faithful military service? That was an issue before the jury. He referred to these Ruthenberg et al., O'Hare, and Stokes cases at some length, coming back to them with frequency during the address. His was not an expression of regret that these men and women had violated the laws provided for the protection of the Army, but an expression of pride in their acts and of glorification in their violations of law. He held them up as models to be followed by his audience and expressly identified his own purposes and point of view with the acts of these other persons for which they had been convicted. Under these circumstances, the nature of the acts of these men and women, the fact that they had been convicted of inducing violations of the Selective Service Act, or of attempting to cause insubordination in the military forces of the United States or of obstructing the recruiting and enlistment service bore obviously on the defendant's purpose in his speech, and tended to show that he had the same unlawful purpose as those whom he praised so highly and asked others to emulate.



The trial court, in its charge to the jury, carefully limited the application of this evidence to the question of intent, saying (R. 277-278):

Certain testimony was permitted to go to you as to statements made by the defendant at other times than the occasion charged in the indictment. More particularly I refer to the testimony of Clyde R. Miller, and the witness from Chicago by the name of Triner. This testimony, I then warned you, and I wish to repeat, was permitted to go to you and is to be weighed by you only in enabling you to find the intent with which the words and language was uttered as charged in the indictment. He is not on trial and is not to be tried for any other offense than that charged in the indictment, namely, that said to have been committed by certain public utterances and language used on the 16th day of June, 1918, at the band stand in Nimisila Park. Language or utterances made by him at any other time or place is not to be weighed by you for the purpose of enabling you to find that he uttered this language charged, or that he committed the offense charged at that time and place; but only if you shall find from the evidence relating thereto beyond a reasonable doubt that he uttered the language, or the substance of it, as charged, at that time and place, and that the natural or reasonably probable tendency and effect thereof would be to produce the results forbidden by the provisions of the law, then, in that event, being required to

pass to a consideration of the specific intent with which he made the utterances, you may, for that purpose alone, weigh and consider the testimony permitted to go to you as to what he said at some other times or places.

I also permitted to be read in evidence the so-called antiwar platform or program of the Socialist Party, and the record and conviction of Ruthenberg, Wagenknecht, and Baker, and of Rose Pastor Stokes, and of Kate Richards O'Hare. This evidence also is to be received and weighed by you under the same limitations and for the same purpose only as I have already stated that I permitted the testimony of Miller and Triner to go to you, and it is to be so weighed and considered.

Particularly do I warn you to bear in mind that the defendant here is not on trial for having uttered any of the words charged to have been uttered by Mrs. O'Hare or by Mrs. Stokes, or for that which is contained in the antiwar program or pronunciamento of the Socialist Party. He is on trial here for what he did in Canton on the 16th day of June, 1918, and these other scraps of evidence are merely to be received and weighed by you for the purpose of enabling you to find what was the intent and state of his mind and purpose with which he made and uttered the remarks or address upon that occasion.

The cases cited by the defendant in this subdivision of his brief all relate to the question of the admissibility, in a prosecution for one crime, of evidence of other crimes committed by a defendant; a question not involved in the case at bar.

## III.

**St. Louis platform clearly admissible in evidence on question of intent.**

The St. Louis platform represented the decision of the governing board of the National Socialist Party to oppose the war to the bitter end or any participation of its members in war service. On a referendum vote of the members of the party the defendant had voted in favor of this platform. Both before and after his Canton speech he expressed approval of the spirit and substance of that platform and he opposed the repudiating of that platform when the question of that repudiation was under discussion at a conference of State secretaries of the party. The basic principle and appeal set forth in that platform completely corresponded to the basic theme and appeal of the defendant's speech, namely, the capitalist class is the real enemy of the working class; the war is for the benefit of the capitalist class; the duty of a member of the working class is to stick by his class and resist participation in the war. The St. Louis platform and defendant's approval of it were obviously relevant to the question of whether, when he made his speech at Canton, the defendant had an intent to influence his hearers against loyal military service. When a man makes a public address to workingmen, which is of a nature to discourage military service, the fact of his approval of a platform of his party calling upon all workingmen to refuse and resist war service, has an obvious relevancy to the



question whether he had the purpose of influencing his audience against loyal and faithful military service.

As seen in the passage above quoted from the court's charge, the jury was carefully warned that this evidence was to be considered only upon the issue of the defendant's intent, and, at the time of the introduction of the St. Louis platform and the defendant's utterances concerning it, the court stated to the jury (R. 169-170):

Statements made by Mr. Debs other than the specific statements charged against him in the indictment as an offense will be received by you, gentlemen of the jury, for the purpose of determining whether or not he did make or utter the words charged against him in the indictment. An element of the offense charged in the indictment, however, is the specific intent with which the words and utterances were made and acts done as charged in the indictment. Now, this testimony which is now being offered as to statements made by Mr. Debs other than those specified in the indictment is to be received, and will be received and weighed only for the purpose of enabling you to find and determine the intent with which the words and utterances were made as charged in the indictment, in the event you should ultimately find that he did make and utter the words charged in the indictment.

The evidence falls within the recognized principle that where the issue of intent is involved, and intent

must be shown as an element of the offense, evidence may be admitted of other acts or utterances of the defendant's bearing on his attitude of mind on the subject matter of the acts or utterances with which he is charged.

It is, for instance, well settled that in cases where the intent to deceive or defraud is an essential element of the offense other fraudulent acts of the defendant may be shown.

See *Bottomley v. U. S.*, 1 Story, 135, where the court held that where a party is charged with fraud in a particular transaction evidence may be offered of similar previous fraudulent transactions between him and third persons; and wherever the intent or guilty knowledge of a party is material to the issue of the case, collateral facts tending to establish such intent or knowledge, are proper evidence. Judge Story in this case at pages 142-145, in an oft-quoted statement says:

The objection taken to all these three last portions of the evidence excepted to, is, that it is *res inter alios acta*, and upon other occasions; and therefore, not properly admissible to establish a fraud in the case of the importation of the goods now before the court. But it appears to me clearly admissible upon the general doctrine of evidence in cases of conspiracy and fraud, where other acts in furtherance of the same general fraudulent design is admissible; first, to establish the fact, that there is such a conspiracy and fraud; and, secondly, to repel the suggestion,

that the acts might be fairly attributed to accident, mistake, or innocent rashness, or negligence. In most cases of conspiracy and fraud, the question of intent, or purpose or design in the act done, whether innocent or illegal, whether honest or fraudulent, rarely admits of direct and positive proof; but it is to be deduced from various circumstances of more or less stringency, and often occurring, not merely between the same parties, but between the party charged with the conspiracy or fraud and third persons. And in all cases where the guilt of the party depends upon the intent, purpose, or design, with which the act is done, or upon his guilty knowledge thereof, I understand it to be a general rule, that collateral facts may be examined into, in which he bore a part, for the purpose of establishing such guilty intent, design, purpose, or knowledge. Thus, in a prosecution for uttering a bank note, or a bill of exchange, or promissory note, with knowledge of its being forged, proof, that the prisoner had uttered other forged notes or bills, whether of the same or of a different kind, or that he had other forged notes or bills in his possession, is clearly admissible as showing, that he knew the note or bill in question to be forged. So the law is laid down in Mr. Phillips and Mr. Amos's excellent Treatise on Evidence, in the last edition. The same doctrine is applied in the same work to a prosecution for uttering counterfeit money, where the fact of having in his possession other counterfeit money, or having



uttered other counterfeit money, is proper proof against the prisoner to show his guilty knowledge. I have looked into the authorities; and they fully support the statement of the learned writers.

After citing certain leading cases, Judge Story concludes:

In short, wherever the intent or guilty knowledge of a party is a material ingredient in the issue of a case, these collateral facts, tending to establish such intent or knowledge, are proper evidence. In many cases of fraud it would be otherwise impossible satisfactorily to establish the true nature and character of the act.

*1 Greenleaf on Evidence, 15th Ed. 88.*

Among the decisions of this court recognizing this principle in cases involving fraudulent intent are:

*Castle v. Bullard*, 64 U. S. 172.

*Butler v. Watkins*, 80 U. S. 456.

*N. Y. Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 591.

*U. S. v. Wood*, 41 U. S. 341.

*Buckley v. U. S.*, 45 U. S. 250.

*Allis v. U. S.*, 155 U. S. 117.

*Schultz v. U. S.*, 200 ~~U. S.~~ <sup>Fed.</sup> 234.

More nearly related to the instant case are those authorities which hold that, on the question of malice in actions for libel, evidence of other utterances of the defendant, tending to show his attitude toward the person libelled, is admissible.

In *Eldridge v. State*, 27 Florida 162, the Court at page 450 says:

To the introduction of this article in evidence defendant objected on the ground that it was printed after the finding of the indictment, and because the same is not libelous, and does not refer to the same subject matter as the article set forth in the indictment, and because the same is irrelevant and immaterial. This objection was overruled and the said article was read to the jury. Permitting this article to be read to the jury is the first error assigned. The authorities referred to by counsel for defendant do not, in our opinion, sustain the objection here made. This is a criminal prosecution for maliciously publishing a libel. The rule announced in the case of *Com. v. Damon*, 136 Mass. 441, we think, is correct. The conclusion of the court in that case on this point is stated in the following language:

"We think that in criminal prosecutions for libel the reasonable doctrine is that some connection must be shown between the publication complained of and the publications admitted in evidence to prove actual malice; but if these tend to show ill will towards the person concerning whom the publication complained of is made, and are of such a nature as to indicate a persistent disposition of hatred or ill will towards him, or if they appear to be a part of a settled purpose to bring him into public hatred, contempt, or ridicule, and are sufficiently near in time to

afford a natural inference that the same state of mind existed when the publication complained of was made, they are admissible, although they are subsequent to the publication complained of, and do not expressly refer to it."

The article here objected to was published seven days after the publication of the alleged libelous article, and the former refers in direct terms to the same subject matter and persons mentioned in the latter. We think these publications are so related to each other in time and subject matter as to make it proper to admit the second in evidence on the question of malice, and the court committed no error in this respect. Whart. Crim. Ev., sec. 52; 3 Greenl. Ev., sec. 168; *Williams v. Miner*, 18 Conn. 464; *State v. Riggs*, 39 Conn. 498; *Kennedy v. Gifford*, 19 Wend. 296; *Robbins v. Fletcher*, 101 Mass. 115; *Com v. Damon*, 136 Mass. 441.

1 *Wharton Criminal Evidence*, 10th Ed. 154.

*State v. Riggs*, 39 Conn. 398, 503.

Still more closely related to the present case are those involving seditious libels and seditious activities, and the decisions in those cases upholding the admissibility of other acts or utterances of the defendant's therein completely dispose of the contentions of the defendant at bar.

In *Böttomley v. U. S.*, 1 Story 135, cited supra, while discussing the leading authorities for the principle which the court was then upholding, cited



*Rex v. Hunt*, 3 Barn. & Ald., 566 as the authority for the proposition:

So, in an indictment for a conspiracy to create public discontent and disaffection, proof is admissible against the prisoner, that at another meeting held for an object professedly similar, and of which the prisoner was chairman, resolutions were passed of a character to create such discontent and disaffection.

This case of *Rex v. Hunt* holds that "upon an indictment against X and other for unlawfully meeting together for seditious purposes, X having presided at this meeting, resolutions passed at a former meeting assembled a short time before in a distant place and at which X had also presided and the avowed object of which meeting was that of the meeting mentioned in the indictment, were admissible in evidence to show the intents of X in assembling and attending the meeting in question." The court at page 572-573 says:

The second point of objection is, to the admission of the resolutions of the *Smithfield* meeting. The objection here is twofold: First that the best evidence was not produced; and secondly, that no evidence of them was admissible. Now the paper produced was proved to have been received from the hands of one of the present defendants at the time and place of passing the resolutions, as containing the very resolutions then actually in progress, and then in the act of being passed

by or proposed to the persons assembled, and as against the party to whom this proof applied, the paper produced was as good, if not better evidence than any other could have been. On the second part of the objection, it is to be observed, that these resolutions were proposed at a large assembly, very recently held for some alleged purpose of parliamentary reform, which was the avowed purpose of the meeting at *Manchester*, at which previous assembly, one of the defendants had presided, and put the question (if, indeed, any question can be deemed to be effectively propounded on such an occasion) which defendant, a stranger in point of residence or other than political connection with *Manchester* or its vicinity, was announced as the invited chairman, and actually became the chairman at the meeting in question. Under such circumstances, upon the question of intention, I have no doubt that it was competent to show, as against that individual, that, at a similar meeting, held for an object professedly similar, such matters had passed under his immediate auspices. I have no doubt of the competency of such evidence; its effect was for the consideration of the jury, and was properly left to them. It was in its nature, a declaration, by that defendant, of his own sentiments and views, with reference to what is called parliamentary reform, and to the assembling of large numbers of persons to hear speeches and resolutions under that pretext.

*1 Wharton Criminal Evidence, 10th Ed., p. 154.*

The whole subject of the admissibility of other acts or utterances of the defendant on the question of the intent with which he committed the act or utterance with which he is charged in the case on trial, is ably discussed in—

*1 Wigmore on Evidence*, 304, 390-391, 414-415, 490-492.

On page 304 this learned author says, by way of general introduction:

Of the three modes of evidencing a state of mind, \* \* \* (1) Conduct or behavior (including language not used assertively) illustrates and points back to the state of mind producing it; and the state of mind which is variously termed knowledge, belief, or consciousness shows itself in the conduct of its bearer. (2) External circumstances, calculated by their presence or occurrence to bring about the state of mind in question, are also available to show the probability that consciousness, knowledge, or belief, subsequently ensued. (3) A prior or a subsequent state of mind indicates, within certain limits, its existence at the time in question.

He then proceeds to discuss the admissibility of various types of acts, declarations, or facts bearing upon knowledge, belief, consciousness, or intent, as indicative of the state of mind of the defendant and the various classes of cases in which similar acts of the defendant are admissible in evidence to prove



intent. On page 490-492, discussing the proof of malice in defamation cases, the author proceeds:

The probative value of other utterances as showing malice at the time charged rests on a double argument; (a) that the other-utterance indicates malice at that time of utterance; and (b) that malice then indicates malice at the time charged.

(a) That the other utterance may indicate malice at that time is clear, on the general principle that all conduct, including language, is one of the legitimate sources of inference to the feeling that inspires it.

(b) The second branch of the inference, that malice *then* indicates malice *at the time charged*, is merely another and legitimate application of the general principle, already dealt with. There can be and is no question as to the propriety of the argument. \* \* \*

(1) The *length of time* elapsing between the evidential utterance and that charged may of course affect the strength of the inference. The English courts treat the lapse of time as never affecting the admissibility of the utterances; but in this country a few courts have sought to put some rational limitation to it. The matter ought to be left entirely in the hands of the trial court.

(2) That the evidential utterances occurred *subsequent* to that charged, and, in particular, after action or trial begun, is equally immaterial, from the point of view of probative value; but a limitation is here suggested by the ensuing considerations of the auxiliary policy.

Thus the limitations that result from the point of view of relevancy are merely: That (perhaps) an unproved and unwithdrawn plea of truth is not receivable; that (in this country) the subject of the other utterances must be the same; and that (in this country, perhaps) the evidential utterance must not be too remote in time.

As for the old Circuit Court case of *United States v. Crandall*, cited on page 58 of the defendant's brief, and the only citation in favor of his contentions, there appears to be some uncertainty concerning the decision of the court, for in 6 *Fed. Cas.* as case No. 3350 appears the following:

#### CRANDELL'S TRIAL.

##### CRIMINAL LIBEL—EVIDENCE.

On an indictment for a seditious libel, in order to show the defendant's intent the prosecution may give in evidence any libellous papers subsequently published by the defendant or found, unpublished, in his possession.

(See *U. S. v. Crandell*, case No. 14885.)

(Nowhere reported; opinion not now accessible. The above statement of the point determined was taken from Brightley's Dig. 232.)

With the reported cases in both this country and England holding with Crandall's case as that case is described in 6 *Fed. Cas.* and against Crandall's case as described in 25 *Fed. Cas.*, that unreported and very uncertain case could hardly be considered as strong authority for the defendant. Even if it held

as claimed in defendant's brief, it would not support his contentions, for the St. Louis platform was adopted previous to the passage of the Selective-Service and Espionage Acts and the defendant did not, so far as appears, write or publish it.

#### IV.

**The trial court's definitions of "military forces" and "enlistment and recruiting service" were too narrow, rather than too broad, and therefore not prejudicial to the defendant.**

(a) "MILITARY FORCES."—The defendant complains of the meaning which the trial court gave in its rulings and instructions to the expression "military forces of the United States." The court's definition of that phrase is embodied in the following passage from the charge to the jury (R. 268):

The military forces of the United States as defined in this provision of the act and of the law, I say to you, are not limited to those actually enlisted and enrolled in the active, organized military forces. The act of May 18, 1917, providing for the creation of an active army for the purpose of carrying on this war required that all male persons between the ages of twenty-one and thirty, both inclusive, to enroll or register for military service, and it is from the men thus registered, excluding aliens who had not declared an intention to become citizens, that contingents of men are, from time to time, called into the active military forces of the United States. For the purposes of this act, and of this offense, I say to you that all such persons thus registered and enrolled, and thus subject from time to



time to be called into the active service, are a part of the military forces of the United States, and a causing or attempting to cause, or inciting or attempting to incite disloyalty, insubordination, mutiny, or refusal of duty among them, or any of them, will be sufficient to constitute the crime charged under this count of the indictment.

The history of the statutes in the United States relating to military service, beginning with the statute of 1792 and going down through the Selective Service Act itself, shows that in the evolution of the Federal military policy, male citizens and declarant aliens of the ages designated in the statutes (eighteen to forty-five) came to be treated as constituting the national or military forces of the United States, subject to call into active duty whenever the emergency might require, and in the Espionage Act, the expression "military forces of the United States" was intended to have that significance. Furthermore, while the principle of strict construction of penal statutes applies here as elsewhere, in questions of statutory interpretation, it is the intention of Congress which is always the object of the inquiry; and, in considering the meaning of any part of the Espionage Act, the tremendous emergency for which Congress was legislating should be kept in mind. That act was pending contemporaneously with the Selective Service Act itself, and it was passed a few weeks after Congress had determined upon the raising of great new armies under that act. The evident design of

this section 3 of the Espionage Act was to protect from deliberate obstruction and interference the whole process of raising these great armies. In view of this statutory history and situation, it may be fairly determined, that in the use of the expression "military forces of the United States," Congress intended to cover the whole body of persons constituting the national forces, including those in active service, those in any state of the process of induction into service, and those in reserve. This expression has come for construction before practically every district court in the United States, and with but three or four exceptions, they have given it the broader rather than the excessively narrow interpretation for which the defendant contends.

#### HISTORICAL REVIEW OF STATUTES RELATING TO MILITARY FORCES AND SERVICE.

The statutory history of our military policy has recently been discussed in considerable detail on pages 16-27 of the Government's brief in the case of *Abraham L. Sugarman, plaintiff in error, v. United States of America*, No. 345 of this court, and the court is hereby respectfully referred to the said discussion, as well as to the résumé of this history contained in the *Selective Draft Law cases*, 245 U. S. 366, 384. We will here content ourselves with a summary of that discussion and the conclusions to be drawn therefrom.

From the beginning of that history, represented by "An act more effectively to provide for the national

defense by establishing an uniform militia throughout the United States" (act of May 8, 1792, c. 33, 1 Stat. 271), down to the Civil War Act of March 3, 1863, the military forces of the Nation consisted of the mixed State and Federal militia system and volunteers; the said Civil War statute being the first national draft law. Amongst the decisions interpreting the early militia statutes is *Tyler v. Pomeroy*, 8 Allen (Mass.), 480, 493, where the court said:

Under this power to organize (the militia) Congress has the exclusive power of determining who shall constitute the militia, and all persons coming within the class defined by Congress are members of the militia *without any act of their own*.

This is an early recognition of the principle that a man becomes a member of the military forces by virtue of the statute itself and may be treated as a deserter subject to court-martial, though he fails to report for service and fails to take any steps himself toward induction into service.

See also, to the same effect:

*Opinion of Justices*, 14 Gray, 614.

*McCall's Case*, Federal Cases, No. 8669.

*Kneedler v. Lane*, 45 Pa. St., 238.

*Houston v. Moore*, 5 Wheaton, 1.

*Martin v. Mott*, 12 Wheaton, 19.

This principle has received uninterrupted judicial sanction, including cases arising under the Selective Service Act itself.



The Civil War draft law (act of Mar. 3, 1863, c. 75, 12 Stat., 731) provided in the first section thereof:

That all able-bodied male citizens of the United States and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years,—are hereby declared to constitute the *national forces* and shall be *liable* to perform military duty in the *service* of the United States when called out by the President for that purpose.

Section 3 provided:

The *national forces of the United States* not now in the military service, enrolled under that act, shall be divided into two classes, the first of which shall comprise all persons subject to do military duty between the ages of 20 and 35 years, and all unmarried persons subject to military duty above the age of 35 and under the age of 45; the second class shall comprise all other persons subject to do military duty, and they shall not, in any district, be called into the *service* of the United States until those of the first class shall have been called.

Section 13 provides:

And any person failing to report after due service of notice (to report for duty) \* \* \* shall be deemed a deserter \* \* \* and sent to the nearest military post for trial by court martial.

This statute is significant. It marked a radical change in the Federal military policy. The first matter of note in its language is that it converts into the military forces not, as in the case of the old militia statutes, the "citizens of the States," but the "citizens of the United States" of the designated classes and ages. It also includes declarant aliens. It further makes a clear distinction between "forces" and "service." All citizens and declarant aliens of the designated classes and ages are declared to constitute the "national forces," which are then divided into two subdivisions, those in the service and those not yet inducted. This creation of a "national force," consisting of male citizens of the United States and declarant aliens of certain ages, from which drafts into the Federal service may be made from time to time as the emergency may require and the President or Congress may direct, has been continued and recognized ever since this statute of 1863 down to the present, including the Selective Service Act and its supplements.

The act of March 3, 1863, like the later Selective Service Act, provided a draft process beginning with registration of all persons of draft ages, said registration being, in the earlier statute, called "enrollment." In *United States v. Scott*, 70 U. S. 642, in which the scope of "enrollment" in that statute was in question, this court, speaking through Mr. Justice Miller, said at page 646:

It is to be observed, however, that this construction of the word enrollment must depend

entirely upon the statute for its support, as there is nothing in the derivation of the word, or in its ordinary use, which would justify such a meaning. It may be defined to be the act of inserting in a list or roll; and in reference to the purpose of calling the able-bodied men of the country into its service, its usual meaning is fully satisfied when the names of the persons liable to such service are placed on a roll or register. We accordingly find that the first duty imposed by the act on this board of enrollment is to ascertain who those persons are, and place their names on a register. This catalogue is properly called the roll, and the completion of it, the enrollment of the *military force* of the country.

The next general military statute was passed for the Spanish-American War, being the act of April 22, 1898 (30 Stat. at Large 361), the first section providing:

All able-bodied male citizens of the United States and persons of foreign birth who shall have declared their intention to become citizens of the United States \* \* \* between the ages of 18 and 45, are *hereby declared to constitute the national forces* and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform *military duty in the service* of the United States.

The only change made by this statute was the extension of the age limits to include all over 18. It maintains the creation of "national forces" and the distinction between "forces" and "service."



This statute has never been repealed. It is still the law and makes every citizen of the United States and declarant alien of the designated ages and classes a member of the "national forces of the United States."

On June 3, 1916, in the face of an impending emergency which might require a largely increased and reorganized Army, Congress passed the National Defense Act (39 Stat., c. 134, 1917). This statute provided for an enlarged and reorganized Army consisting of the Regular Army and militia, and section 57 provides for a "Militia of the United States" which shall include the National Guard, the Naval Militia, and the *Unorganized Militia*.

The statute then proceeds to deal with the organization of the National Guard and National Guard Reserve, obviously constituting the successors of the old State Militia, under a mixed State and Federal control. It is to be noted, however, that it provides for the draft of the individual members of the National Guard into the Federal forces, and section 57 itself speaks of the "Militia of the United States." The statute contains no further reference to the Unorganized Militia, which remains, therefore, obviously in the light of the statute of 1863 and the unrepealed statute of 1898, simply that portion of the "national forces" which has not been inducted into the organized Regular Army or National Guard.

The court's attention is also particularly called to the use of the expression "armed land forces" in section one hundred and eleven of the National Defense

Act, which provides for Federal draft of the National Guard "when Congress shall have authorized the use of the *armed land forces* of the United States for any purpose requiring the use of troops in excess of those of the Regular Army;" showing a distinction in the mind of Congress between that portion of the military forces which has been armed and is in service and that which is in reserve but subject to call.

The Selective Service Act (act of May 18, 1917, 40 Stat. 76), makes no change in this situation. It provides for bringing the Regular Army and National Guard up to their maximum strength, for certain volunteer bodies, and for the drafting into new national armies of that portion of the remainder of the national forces falling between the ages of 21 and 31. Later in the war, provision was made for the drafting of the rest of the national forces falling between the ages of 18 and 45.

It is to be noted in this connection, that the process of selecting men for active service provided in the Selective Service Act is a process of exclusion and not of inclusion. All of the designated classes and ages are liable to active service unless exempted as provided in the statute. Taken in connection with the unrepealed act of 1898 and the National Defense Act, the draft sections of the Selective Service Act simply provide the call into service of a portion of the existing "national forces."

In fact the draft process as provided by the Selective Service Regulations is one of classification rather than exemption; the registrant not selected

for immediate active service being retained on the classified lists subject to later call by the draft authorities for such service as the exigencies of the situation might require. A striking instance of this aspect of the draft process is the so-called "work or fight" order, being the regulation promulgated by the President on May 23, 1918 (Selective Service Regulations, sections 121-A to 121-L and 318-322), by virtue of which all men of draft age who, after a designated date, continue in what are defined as nonproductive occupations or employments are ordered inducted into active military service.

The decisions under the Selective Service Act, as under the draft acts of 1863 and 1898, clearly uphold the jurisdiction of courts-martial to try and punish as deserters men who fail to respond for service when called into service by the draft boards. The Selective Service Regulations promulgated by the President in pursuance of the Selective Service Act provide that, without any act of enrollment or other action on his part, a registrant who fails to respond to certain orders of his draft board automatically becomes a deserter subject to court martial (Selective Service Regulations, sec. 140). In other words, these regulations place the registrant in a military status subject to court-martial without any act of his own; and this has been upheld by the courts. The question was fully discussed in *Franke v. Murray*, 248 Fed. 865, a decision of the Circuit Court of Appeals, Eighth Circuit, the court deciding squarely against the contention of a registrant, who had failed to



respond to the call for service, that as he had not entered the military service he must be treated as a civilian and not subject to the military tribunal.

The history and development of the Federal statutes upon compulsory military service clearly demonstrate, therefore, that the "national forces" include the whole body of able-bodied males, both citizens and declarant aliens, of the ages of 18 to 45 years. The Selective Service Act designated the portion of these forces between the ages of 21 and 31 as immediately subject to the call into service. Section 3, Title I, of the Espionage Act, passed at about the same time, was designed to protect the process calling them into the service. A distinction in this regard between "military forces" and "national forces" would be untenable. Our national forces in the sense of all those who contribute to the national strength, financial and industrial as well as military, could not be limited to persons under 45; so where national forces are referred to as the males of certain limited ages, especially in statutes dealing exclusively with the subject of armies, "national forces" and "military forces of the United States" may be considered synonymous expressions.

Interpretation contended for by defendant would render a portion of the section superfluous and without effect.

This interpretation also finds support in the provisions of the clause of the Espionage Act itself involved in this case. This clause provides for the punish-

ment of persons who "cause insubordination, disloyalty, mutiny, or refusal of duty in the military forces of the United States." Insubordination, disloyalty, mutiny, or refusal of duty on the part of a soldier in the service is and, of course, always has been a violation of the Articles of War. Article 22 prohibits mutiny or sedition. Article 47 prohibits desertion and provides for the punishment thereof. Article 62 covers all crimes not capital and all disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in other articles. Consequently section 332 of the Penal Code provided for the punishment of any person guilty of causing one in the military service to commit any such offense. Therefore no statute was needed at the time of the passage of the Espionage Act to reach those who caused insubordination, etc., on the part of men in military service. On the principle, therefore, that no portion of a statute should be given an interpretation which would render it an absolutely superfluous and unnecessary piece of legislation, some significance and effect should, if possible, be sought in the language used by Congress. The clause is a blanket clause, intended to cover all attempts, successful or unsuccessful, to cause unlawful disobedience to the constituted authorities on the part of men either already in the military service or subject to call into that service.

## DECISIONS OF THE COURTS.

As above stated, the question has been passed upon by almost all district courts and with an overwhelming preponderance in favor of the decisions of the trial court in this case. Two of these decisions are reported, namely, *U. S. v. Hall*, 248 Fed. 150, which supports the defendant and *U. S. v. Boutin*, 251 Fed. 313, which supports the Government. Most of these decisions being contained in the charges to the jury have not found their way into the Federal Reporter. The Department of Justice has printed in a series entitled "Interpretation of War Statutes" a number of bulletins containing decisions of the courts on the war statutes. Many of these were cited in the Government's brief in the Sugarman case, No. 345 of this court, to which reference is hereby made.

A typical expression of the larger reasons for the more broad interpretation is the following quotation from the charge to the jury in *United States v. Huhn* in the District Court of Wyoming, Bulletin No. 58:

Considering the broad purposes of the Selective Draft Act, and considering the evils that were intended to be met by the statute under which this indictment was drawn, you are instructed that the words "military forces" as therein used are to be given a broad, rather than a narrow meaning, and held to mean not merely the men in active military service, but also the men who had registered as required by law.



The following quotation from the charge to the jury in *U. S. v. Stokes*, Bulletin 106, illustrates the reasons in support of the prevailing and, as we contend, the correct view:

Discussing then the nature of the publication and its adaptability to the accomplishment of the purpose charged, it is proper first to define to you what is meant by the military or naval forces of the United States. In the first place, they include all in active service, either in training at military or naval camps or within the body of the Army and Navy in actual service after the period of training has been completed. In the next place, by act of Congress, still in force, all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States, under and in pursuance of the laws thereof, between the ages of 18 and 45 years, are declared to constitute the national forces, and, with such exceptions and under such conditions as may be provided by law, shall be liable to perform military duty in the service of the United States. Third, by the Selective Service Act of May 18, 1917, the President was authorized to increase temporarily and for the purposes of this war the Military Establishment of the United States. All male persons between the ages of 21 and 30, inclusive, were required to register on the 5th day of June, 1917. They did so to the number approximately of ten millions. All were given a serial number, and subsequently

thereto and from time to time have been, are being, and will be drawn and placed in active service according to their classes and physical ability and as necessity may arise. All such male persons so registered and having received their serial number subjecting them to call are a part of the military and naval forces of the United States.. It will thus be seen that such military and naval forces consist of those already at the front, in training camps preparatory thereof, and among the body of the people subject to call and enlistment for military and naval service.

A similar charge to the jury, though perhaps not applicable to the facts of the case, was upheld by the Circuit Court of Appeals, Third Circuit, in *United States v. Krafft*, 249 Fed. 919.

The defendant was found guilty of attempting to cause insubordination, etc., in the military forces. Let us assume, for a moment, that the phrase refers exclusively to men in active service. Some of Debs's audience were likely to be in active service at an early date. The defendant was trying to induce them to be disloyal and insubordinate when their turn for faithful military service might come. As said by the Circuit Court of Appeals for the Third Circuit in *U. S. v. Krafft*, 249 Fed. 919 at 924:

Both "willfully causing" and "willfully attempting to cause" are by the statute made alike criminal; and, such being the case, the attempt to cause being forbidden, as well as the causing, there is no ground to construe or apply this statute on theory that insubordination, mutiny, or disloyalty must be effected.

To so hold would be to defeat the whole purpose of the statute. For the purpose of the statute as a whole was not to wait and see if the seed of insubordination—in this case sown in August in Newark—a later date in some camps sprang into life and brought forth fruit, but it was to prevent the seed from being sown initially. Moreover, it is clear that this new statute was to enable the civil courts to prevent the sowing of the seeds of disloyalty, for with the fruits of disloyalty, to which a misguided soldier might be led by the disloyal advice, the military court-martial already provided was sufficient. The statute was not addressed to the misguided man who was in the service, but was manifestly to include any one—for “whoever” is a broad inclusive word—who in any way willfully created or attempted to cause insubordination. Clearly the court below was right in holding that if in fact the defendant used the language alleged, and if his purpose was willful to cause insubordination, then the statute was violated. Clearly it was right in holding that, to constitute the crime at the start, it was not necessary for that willful purpose to succeed.

(b) “RECRUITING AND ENLISTMENT SERVICE.”—The trial court’s conception of the meaning of the phrase “recruiting and enlistment service” is contained in the following portion of its charge to the jury (R. 270):

\* \* \* The recruiting or enlistment service of the United States is designed to enroll in the Army or Navy persons only who come



forward voluntarily to enlist and to enroll themselves. To be sure, arguments, inducements, and persuasions may be and usually are resorted to to effect that result; but whether or not anyone enrolls or enlists, or, in other words, volunteers for this service, depends upon the state of the mind of the individual. All male persons between the ages of eighteen and forty-five, both inclusive, who are citizens of the United States, or who have declared their intentions to become citizens of the United States, and are not subjects of the nations with which we are at war, are and were then eligible for enrollment in the enlistment or recruiting service.

In weighing and scrutinizing the evidence, therefore, both in finding whether or not the evidence shows beyond a reasonable doubt that the defendant wilfully obstructed or attempted to obstruct the recruiting or enlistment service, and in also finding from the evidence whether or not he had a specific criminal intent, either to obstruct or attempt to obstruct, it is proper that you should bear in mind this mental attitude toward the military or naval service of the individuals of that class of our population from which persons must be recruited or enlisted. And it is also proper for you to bear in mind how this attitude or disposition of mind of such individuals is or may be affected by the attitude of their friends, companions, and relatives. And it is also important, in passing upon this, that you should bear in mind the natural and reasonably probable effect of such public words or utterances as

you may find the defendant to have used, upon this attitude of mind on the part of the persons from whom recruits are obtained.

The defendant did not except to that portion of the charge and his complaint relates rather to the basic merits of the case under the fourth count than to any particular ruling of the court. He seems to argue that, to fall within the statute, the obstruction of the recruiting and enlistment service must be directed upon or against an officer engaged in this recruiting or enlistment service. Plainly, however, the obstruction can operate, and more effectively operate, upon the military eligible himself, who is the object of the activities of the recruiting and enlistment service. If, for instance, a defendant knowing that a certain young man of military age is about to attend a recruiting meeting and fearing that this young man might be influenced to enlist, deliberately, for the purpose of preventing this enlistment, locks the young man in a room, no one certainly would claim that this was not an obstruction of the recruiting service even though the defendant did not touch or approach a recruiting officer. Similarly, an attempt to keep the same young man from enlistment by influence rather than violence would have the same purpose and evil effect. The enlistment of young men of military age in the Army being the object of the activities of the recruiting and enlistment service, obstruction of that service can be as effectively, indeed more effectively, pro-

duced by actions or utterances directed at the military eligible than at the recruiting officer.

The Government contends that the court gave too narrow an interpretation of the phrase under discussion, and that the significance of "recruiting and enlistment service," as intended in the Espionage Act, is the whole process of raising an army, both by volunteer enrollment and by draft. "Enlistment" is practically synonymous with "enrollment," and the enlisted men are all those whose names are upon the rolls of the Army, whether their original induction was by virtue of volunteering or draft.

The New Standard English Dictionary gives the following definition of "recruiting":

Enlisting men for military or naval service in; supply with recruits; as, to recruit an army. To gain or raise new supplies of anything lacking or needed, especially of new soldiers for an army.

Black's Law Dictionary under "enlistment" says:

The words "enlist" and "enlistment," in law as in common usage may signify either the complete fact of entering into the military service or the first step taken by the recruit towards that end. When used in the former sense as in statutes conferring a right compelling the military service of enlisted men, the enlistment is not deemed completed until the man has been mustered into the service.

Enlisted applies to a drafted man as well as a volunteer, whose name is duly entered on the military rolls.



Similarly Bouvïer's Law Dictionary:

The act of making a contract to serve the Government in a subordinate capacity, either in the Army or Navy. The contract so made is also called an enlistment. A drafted man is said to be "enlisted" as well as a volunteer, but the term does not apply to one entering the Army under a commission.

The Selective Service law itself (act of May 18, 1917, c. 15, 40 Stat. 76), as well as other recent war statutes, show the meaning of the term "enlistment service" to include both the volunteer and draft service. In the Selective Service law a man, other than an officer, enrolled in the Army through the process of registration and selective draft under that law, is usually referred to as an "enlisted" man. Thus section 1 provides, first, for an increase of the Regular Army; second, for draft of members of the National Guard; and third, as follows:

To raise by draft as herein provided, organize and equip additional force of five hundred thousand *enlisted* men.

References to enlisted men as part of the draft Army in other sections of the Selective Service law are equally unmistakable. The third paragraph of section 1 contains the following sentence:

The machine-gun companies organized under this section shall consist of such commissioned and *enlisted* personnel and be equipped in such manner as the President may prescribe \* \* \*

The sixth paragraph provides:

\* \* \* Such organizations shall be officered in the manner provided in the third paragraph of this section, and *enlisted men* may be assigned to said organizations from any of the forces herein provided for or raised by selective draft as by this act provided.

The seventh paragraph provides for voluntary enlistment of not to exceed four Infantry divisions.

Section 10 provides:

That all officers and enlisted men of the forces herein provided for other than the Regular Army shall be in all respects on the same footing as to pay, allowances, pensions as officers and enlisted men of corresponding grades and length of service in the Regular Army;

\* \* \*

Section 12 provides:

That the President \* \* \* is authorized to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the Army \* \* \*

The act of October 6, 1917, c. 81, 40 Stat. 384, provides:

The Secretary of War is hereby authorized to permit \* \* \* any officer or *enlisted* man on the active list of the Army, \* \* \* to make allotments of his pay for the support of his wife \* \* \*

The enlisted man there described clearly includes the drafted soldier below the grade of officer, as does

the language of the Soldiers' Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, as follows:

(P. 402.) SEC. 200. That the provisions of this article (relating to allotments and family allowances) shall apply to all *enlisted* men in the military or naval forces of the United States.

(P. 405.) SEC. 300. That for death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or *enlisted* man \* \* \* the United States shall pay compensation \* \* \*

(P. 409.) SEC. 400. That in order to give to every commissioned officer and *enlisted* man \* \* \* greater protection for themselves and their dependents than is provided in Article III, the United States \* \* \* shall grant insurance \* \* \*

The act of March 16, 1918, Public, No. 105, Sixty-fifth Congress, is also broadly inclusive. The act authorizes the Secretary of War—

to grant furloughs to *enlisted* men of the Army of the United States \* \* \* to permit said *enlisted* men to engage in civil occupations and pursuits.

The Army appropriation act of July 9, 1918, Public No. 193, Sixty-Fifth Congress, uses the term "enlisted man" in the same comprehensive sense. On page 8 it provides:

*Enlisted* men of the line: For pay of one million nine hundred and sixty-four thousand three hundred and seventy-six enlisted men of the line, \$776,458,721.04.



See also page 40 of the Army appropriation act providing for claims for loss of private property belonging to officers and enlisted men. Plainly in these war statutes, "enlisted" includes all men, other than officers, who become members of the Army either by volunteering or draft.

Certain analogies in the Civil War draft laws confirm this view. The above-mentioned act of March 3, 1863, contained a section, namely, section 25, directed against interference with the draft, whether by force applied to the draft officers or force or suasion applied to the military eligible. That section read as follows:

That if any person shall resist any draft of men enrolled under this act into the service of the United States, or shall counsel or aid any persons to resist any such draft; or shall assault or obstruct any officer in making such draft, or in the performance of any service in relation thereto; or shall counsel any person to assault or obstruct any such officer; or shall counsel any drafted men not to appear at the place of rendezvous, or willfully dissuade them from the performance of military duty as required by law, such person shall be subject to summary arrest by the provost marshal, and shall be forthwith delivered to the civil authorities, and, upon conviction thereof be punished by a fine not exceeding \$500, or by imprisonment not exceeding two years, or by both of said punishments.

Experience had developed that the section did not cover attacks upon the registration or, as they were

then called, enrollment officers, and in a supplementary statute, the act of February 24, 1864, c. 13, 13 Stat. 6, section 12, Congress provided:

That any person who shall forcibly resist or oppose any enrollment, or shall incite, counsel, encourage, or who shall conspire or confederate with any other person or persons, forcibly to resist or oppose any such enrollment; or who shall aid or assist, or take any part in any forcible resistance or opposition thereto; or who shall assault, obstruct, impede, or threaten any officer or other person employed in making or aiding to make any such enrollment, or employed in the performance, or aiding in the performance, of any service in any way relating thereto, etc., shall, upon conviction, be punished by fine not exceeding \$5,000; or by imprisonment not exceeding five years; or both of said punishments, in the discretion of the court. And in cases where such assaulting shall produce the death of such officer or other person, the offender shall be deemed guilty of murder, and upon conviction, etc., be punished with death, etc. And nothing in this section shall be construed to relieve the party offending from liability, under proper indictment or process, for any crime against the laws of a State.

In *United States v. Scott, supra*, this court held that this section 12 supplemented and did not modify section 25 of the earlier law. The Selective Service Act of 1917 provided for raising the new armies by both volunteering and draft; but provision

against obstruction of this process was not placed in the Selective Service Act itself, but in the Espionage Act passed a few weeks later. This Espionage Act was obviously designed to protect the whole military program against all types of interference therewith; and it is a reasonable inference that in the phrase "obstruct the recruiting and enlistment service" Congress intended to cover all willful interference with the process of raising of the Army, including both volunteer and draft process and including the types of interference which had been enumerated in the Civil War draft laws.

The Espionage Act was pending at the same time as the Selective Service Act and was finally passed a few weeks later; and, taking into consideration the exigency which produced these statutes, their purpose, the meaning given to the word "enlisted" in the Selective Service Act, and the fact that the new armies were being raised both by voluntary enlistment and draft, there can be no doubt that "obstruct the recruiting and enlistment service" was intended to cover all willful obstruction of the process of raising the armies, both volunteer and draft, not already covered by previous statutes.

As his audience contained both men subject to the draft and men eligible as volunteers, the evidence and verdicts of the jury show the defendant to have been guilty, whether the phrase under discussion be given the narrower meaning given it by the trial court or the broader meaning claimed by the Government.



## V.

The constitutional question discussed by defendant not necessarily involved in this case—No infringement of first amendment in conviction of defendant.

(A) RIGHT OF FREE SPEECH NOT ABSOLUTE—SUBJECT TO WELL-RECOGNIZED EXCEPTIONS.

The defendant seems to contend that the first amendment of the Constitution creates a sort of field of immunity from Federal interference for all exercise of the vocal organs, as distinguished from the other parts of the human organism; and likewise a field of immunity from Federal interference of all products of the printing press as distinguished from other human contrivances. The history of criminal and constitutional law demonstrates the fallacy of any such conception. Many Federal crimes, sanctioned by the courts, consist exclusively of the use of the spoken, written, or printed word. For instance, the crime of fraud in its various phases is generally committed exclusively by means of the written or spoken word. Conspiracy frequently does not get beyond the use of spoken or written words. Further concrete illustrations are hardly necessary. There can be no doubt that punishment may be administered for causing an evil or danger to public safety or welfare by means of the written or spoken word, as well as by the use of other human faculties or products.

2 *Story Constitution of the United States*, 5th ed., pp. 634, 635, says:

That this amendment was intended to secure to every citizen an absolute right to speak, write, or print whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged in by any rational man. This would allow every citizen to destroy at his pleasure the reputation, the peace, the property, and even the personal safety of every other citizen. A man might, because of mere malice or revenge, stir up rebellion and treason even against the Government itself. \* \* \* It is plain, then, that the language of this amendment imports no more than that every man shall have the right to speak, write, and print his opinions on any subject whatsoever without any prior restraint so always that he does not disturb the public peace, or attempt to subvert the Government.

*Robertson v. Baldwin*, 165 U. S. 275, where this court at page 281 says:

The law is perfectly well settled that the first ten amendments to the Constitution \* \* \* were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors and which had from time immemorial been subject to certain well-recognized exceptions. \* \* \*

In the recent case of *Toledo Newspaper Co. v. United States*, 247 U. S. 402, 419, dealing with the subject of the obstruction of justice by means of newspaper articles, this court said:

We might well pass the proposition by because to state it is to answer it, since it involves in its very statement the contention that the freedom of the press is the freedom to do wrong with impunity and implies the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including that of the press, depends. The same guarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom therefore does not and can not be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and talk them, that right, as every other right in human society, is subject to the restrictions which separate right from wrong doing.

(B) CONSTITUTIONAL GUARANTY DOES NOT INCLUDE INTENTIONAL INCITEMENT TO VIOLATION OF LAW—DEFENDANT CHARGED WITH SUCH INCITEMENT AND FOUND GUILTY THEREOF.

In the sentence on page 71 of his brief, reading—

\* \* \* Beyond purposeful incitement to specific unlawfulness on the part of others, there is no power in Congress to make public



utterances criminal, under any exigency, or as an incident of any express power granted to Congress under the Constitution—

the defendant admits that intentional incitement to violations of law by others does not fall within the constitutional immunity. But “purposeful incitement to specific unlawfulness on the part of others” is just what the defendant was charged with in this case, and the jury found him guilty. The charge against him was that of attempting to cause violations of the Selective Service and other laws relating to military service on the part of men subject to those laws.

The defendant seems to contend that as he did not express this unlawful advice in words so direct, plain, and unmistakable as to leave no room whatever for the slightest thought or intellectual process on the part of the jury, no need of any process of inference whatever, the constitutional immunity applies to his speech. This means that the Constitution renders the Nation powerless to punish any incitement to lawlessness, however intentional and however effective, so long as it is concealed in veiled, indirect, or rhetorical language.

This contention is, of course, not sustainable. It was discussed by the Circuit Court of Appeals for the Second Circuit in *Masses Publishing Co. v. Patten*, 246 Fed. 24. That case also involved the constitutionality and interpretation of section 3, Title I, of the Espionage Act and is quite analogous to the case at bar in its issues both of fact and law.

The lower court held that certain articles and cartoons published in *The Masses* could not be said to violate the Espionage Act and enjoined the Postmaster from barring them from the mails. The quotations on pages 65-69 of the defendant's brief are from the opinion rendered by the lower court. This decision was, however, reversed by the Court of Appeals, which, speaking through Judge Rogers, said on page 37 of the report:

\* \* \* The district judge thought no crime had been committed, and that the magazine was thereforeailable, because the publication did not in so many words directly advise or counsel a violation of the act. He declared that—

"If one stops short of urging upon others that it is their duty or their interest to resist the law, it seems to me one should not be held to have attempted to cause its violation. If that be not the test, I can see no escape from the conclusion that under this section every political agitation which can be shown to be apt to create a seditious temper is illegal. I am confident that, by such language, Congress had no such revolutionary purpose in view."

This court does not agree that such is the law. If the natural and reasonable effect of what is said is to encourage resistance to a law, and the words are used in an endeavor to persuade to resistance, it is immaterial that the duty to resist is not mentioned, or the interest of the persons addressed in resistance

is not suggested. That one may willfully obstruct the enlistment service, without advising in direct language against enlistments, and without stating that to refrain from enlistment is a duty or in one's interest, seems to us too plain for controversy. To obstruct the recruiting or enlistment service, within the meaning of the statute, it is not necessary that there should be a physical obstruction. Anything which impedes, hinders, retards, restrains, or puts an obstacle in the way of recruiting is sufficient. In granting the stay of the injunction until this case could be heard in this court upon the appeal Judge Hough declared that—

“It is at least arguable whether there can be no more direct incitement to action than to hold up to admiration those who do act. *Oratio obliqua* has always been preferred by rhetoricians to *oratio recta*; the Beatitudes have for some centuries been considered highly hortatory, though they do not contain the injunction, ‘Go thou and do likewise.’”

With this statement we fully agree. Moreover, it is not necessary that an incitement to crime must be direct. At common law the “counseling” which constituted one an accessory before the fact might be indirect. See Wharton's Criminal Law (11th ed.), sec. 266. Bishop lays down the rule thus:

“Every man is responsible criminally for what of wrong flows directly from his corrupt intentions. \* \* \* If he awoke into action and indiscriminate power, he is responsible. If he gave directions vaguely and incautiously,



and the person receiving them acted according to what he might have foreseen would be the understanding, he is responsible." 1 Bishop on Criminal Law, sec. 641.

Circuit Judge Ward in his concurring opinion, stated "Advice to resist the law may be indirect as well as direct."

(C) CHARGE OF COURT ON ISSUE OF DEFENDANT'S PURPOSE AND INTENT WAS FREE FROM ERROR AND FULLY PROTECTED DEFENDANT'S RIGHTS.

The question of the defendant's intent or purpose—that is, the issue between the Government's charge of unlawful purpose and defendant's defense of lawful purpose, was placed by the court before the jury in a manner so clear and so fair to the defendant, that he does not and could not complain of the charge in this respect. The court told the jury (R. 279-280):

In passing upon the question of specific intent, I wish to say something additional thereto. Disapproval of war is, of course, not a crime, nor is the advocacy of peace a crime under this law, unless the words or utterances by which the expression or advocacy is conveyed shall have been willfully intended by the person making them to commit the acts forbidden by this law, and, further, not even then unless the natural and reasonably probable tendency and effect of such words and language as he may use will have the effect and consequences forbidden by the law.

Every citizen, I say to you, notwithstanding the espionage law, has the right, without intending to cause insubordination, disloyalty or refusal of duty, or without intending to obstruct the recruiting or enlistment service of the United States, or without intending to resist the United States, or to promote the cause and success of its enemies, or oppose the cause of the United States, to discuss, criticize or disapprove of any law proposed or in existence, or of any policy proposed or in existence, made for the purpose of carrying on the war.

If you shall find from the evidence here that the defendant did nothing more than that by this public speech and utterance, and intended nothing more than that by this public speech and utterance; or even if you find that he intended more than that, but the natural and reasonably probable consequences of what he said and did would be to produce no other result or effect in the minds of his hearers, then he is not guilty, and it will be your duty, in the discharge of your oath, to find him not guilty.

If the conscious purpose of the defendant was only to state the truth as he saw it, to convey information to his fellow citizens, with the object only of bringing about the reconstruction or reshaping, by peaceful, ordinary methods, of the national policy in accordance with what he believed to be the right and correct view of the national policy, and that he did not, in so doing, have the intent willfully to do any of the prohibited acts, he would not, in that event, be guilty, and it

would be your duty also, to return a verdict of not guilty. An offense under this law, as I have said to you, and I repeat, is committed only when the defendant has the specific, willful, criminal intent, such as has been defined, and the words and utterances have a natural and reasonably probable tendency to cause the results which have been forbidden by these provisions of the espionage law.

(D) ISSUE THEREFORE NARROWS DOWN TO SUFFICIENCY OF EVIDENCE—NOT A CONSTITUTIONAL QUESTION—EVIDENCE AMPLY SUPPORTS VERDICT.

The Canton speech being, to say the least, capable of an interpretation as an "incitement to specific unlawfulness on the part of others," and the court having fairly left to the jury the question whether it was such and was "purposeful," the defendant would seem to be reduced to the contention that the evidence does not support the verdict. The sentences on page 64 of his brief reading—

Our contention here is that the pleadings, rulings on evidence, and instructions have led to a sedition conviction under a thin disguise of a charge of actual military obstruction by means of words spoken to the Canton audience, and that this conviction can not be sustained under any unequivocal application of the first amendment.

\* \* \* The conclusion is irresistible that in spite of the cloak of military appropriateness given by a free use of the phraseology of



the Espionage Act, the conviction of Mr. Debs rests squarely upon his "seditious temper"—and nothing else—

show his recognition of this position in which he is logically placed. The sufficiency of the evidence is, however, not a constitutional question. A constitutional question is, therefore, not necessarily involved in this case.

No lengthy review of the evidence is required to show that it amply supports the verdict. At a time of extreme military crisis in a great war, the defendant, an adherent of a platform which advocated uncompromising resistance to war service, delivered an eloquent address to a working-class audience. He was the announced speaker of the occasion, and his speech was a long one, too long to be considered merely an impulsive utterance. The international Socialist movement was described as based upon the principle of a bitter conflict between the working classes and others and the war as an instrumentality devised and used by these others in this conflict. The audience was told "there is but one thing that you have to be concerned about, and that is that you keep foursquare with the principles of the international Socialist movement." Men who had been convicted or jailed for obstruction of the military service were held up to praise and emulation as martyrs on the workers' side of this conflict, and jail held forward as preferable to any submission to the service of their enemies; that is, service in the war. Refusal to submit would be called treason, but it

would be treason to the enemy, that is, the exploiting classes, not treason to themselves, the workers; and their duty is to be true to themselves. These sentiments can have but one meaning, the meaning attributed to them by the jury. At least the evidence amply supports the verdict. The fact that the defendant may have joined this unlawful appeal with a lawful appeal to join the Socialist Party does not relieve him from the consequences imposed by the law.

(E) CONSTITUTIONAL GUARANTY OF FREE SPEECH  
DOES NOT GRANT IMMUNITY FOR DELIBERATE  
OBSTRUCTION OF PROCESS OF RAISING ARMY,  
WHETHER BY VOLUNTEERS OR DRAFT.

The court's charge to the jury on the fourth count of the indictment does, however, raise a constitutional question which, though for the above reasons not necessarily involved in this case, should, for the sake of completeness, be discussed. The court in effect charged the jury that willful obstruction of volunteering falls within the expression "obstruct the recruiting and enlistment service." The question may be stated in this way: The country being at war and engaged in raising an enlarged Federal Army, both by draft and by volunteer service, does the first amendment of the Constitution prohibit Congress from penalizing a public address of a nature calculated to and actually intended to obstruct the process of raising the volunteer portion of this Army by inducing men of military age not to volunteer?

Congress is expressly granted the power to make a war and raise and support armies. The power to protect the process of raising these armies is necessarily implied. The Government contends that this power, so vital to the Nation and so inherent in the right of national self-preservation, includes the power to punish willful obstruction of that process, whether that obstruction be by spoken or written word or by other means.

The prevailing view in the United States is that the constitutional guaranty of a free press is directed against a system of license or censorship previous to publication and does not relate to immunity from punishment. This view is often referred to as the Blackstone doctrine, based on the passage from *4 Blackstone Commentaries*, 151, reading:

\* \* \* freedom of the press \* \* \*  
 "consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published.  
 \* \* \* To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government."

In *Rex v. St. Asaph*, 3 T. R. 428, (note a) 431, Lord Mansfield said: "The liberty of the press consists in printing without any previous license, subject to the consequence of law."



That view has been sustained by this court in *Patterson v. Colorado* (1907), 205 U. S. 454, where, speaking through Mr. Justice Holmes, this court said:

The main purpose of such constitutional provisions is to "prevent all such previous *restraints* as had been practiced by other governments," and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare.

The court then proceeds to the length of saying:

The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false.

This view is to some extent inapplicable to free speech, as a licensing or censorship system can not, in the nature of things, be applied to the spoken as distinguished from the printed word. Some authorities hold that the constitutional provision grants some degree of immunity from punishment and restricts the power of the legislature to the field of those crimes which were punishable according to common-law standards. But all authorities agree that there is no immunity from punishment of that which is generally recognized as harmful, such as obscene, libellous, and seditious matter. For instance, *Cooley on Constitutional Limitations*, 6th Ed., 441-442, says:

\* \* \* we understand liberty of speech and of the press to imply not only liberty to

publish, but complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords. For these standards we must look to the common law rules which were in force when the constitutional guaranties were established \* \* \*.

*Warren v. United States*, 106 C. C. A. 156, where the court holding that unrestrained use of the mails was not guaranteed by the first amendment said at page 159:

Liberty and freedom of speech under the Constitution do not mean the unrestrained right to do or say what one pleases at all times under all circumstances \* \* \*. The very idea of government implies some imposition of restraint in the interest of the general welfare, peace, and good order.

See also—

*Ex Parte Jackson*, 96 U. S. 727.

In *People v. Most*, 171 N. Y., 423, at p. 432, the court, speaking of the constitutional guaranty of free speech said:

It places no restraint upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. It does not deprive the State of the primary right of self-preservation. It does not sanction unbridled license, nor authorize the publication of articles prompting the commission of murder or the overthrow of government by force. All courts

and commentators contrast the liberty of the press with its licentiousness, and condemn as not sanctioned by the constitution of any State, appeals designed to destroy the reputation of the citizen, the peace of society, or the existence of the Government. (Story on the Const. sec. 1878; Cooley on Constitutional Limitations, 518; Ordronaux on Constitutional Legislation, 237; Tiedeman on Police Powers, sec. 81.)

Seditious utterances or libel was a well-recognized common-law crime, and, therefore, outside the reach of the "abridgement" prohibited by the Constitution. The defendant asserts that the Sedition Law of 1798 was held to be unconstitutional and seeks to have the Espionage Act condemned as a revival of that discredited statute. But the clauses of the Espionage Act which are involved in this case bear no analogy whatever to the objectionable features of the old Sedition Law. That law sought to punish libelous attacks on the Government. The Espionage Act carefully avoids that pitfall. It does not seek to punish attacks on the Government, however malicious or libelous. The clauses of the Espionage Act for which this case is based relate to interference with the process of raising armies and represent an exercise by Congress of its constitutional power to raise armies.

But, as related to the question of the scope of the powers of Congress when the exercise of one of its powers may affect the freedom of speech or press, the fact that seditious utterances were, at common law, recognized as within the scope of lawful legis-



lative domain is pertinent. So, without the slightest admission of any analogy between the Sedition Law and the Espionage Act, we beg to deny the defendant's assertion that the former statute was generally held to be unconstitutional. The contrary is the truth.

*2 Story on the Constitution, 5th Ed.*, pages 643, 644, in commenting upon that statute says:

This act was immediately assailed as unconstitutional. Its constitutionality was deliberately affirmed by the courts of law and in a report made by a committee of Congress. It was denied by a considerable number of States, but affirmed by a majority.

Dean Roscoe Pound, of the Harvard law school, in an article in the Harvard Law Review of April 1916, page 640, entitled "Equitable Relief Against Defamation," being one of the articles contributed to that Review in celebration of the seventy-fifth birthday of Mr. Justice Holmes, discusses the subject of the relation of the freedom of the press to the right of injunctive relief against libel, referring particularly to the case of *Brandreth v. Lance*, 8 Paige 24. In the course of that discussion, at page 650 he gives the following summary of the scope of the constitutional guaranties:

We are brought, then, to the question which is the crux of the matter in this country, namely, what is an infringement of freedom of the press and freedom of speech, as guaranteed by the bills of rights in American constitutions? Historically these provisions

are connected with censorship of publications in England. At first this censorship was exercised by the Crown, later by the Star Chamber, and finally by Parliament, which provided for the censoring of all written publications down to 1694, when the statute for the time being expired and was not renewed. Writers of the end of the eighteenth century took this obsolescence of the censorship as declaratory of a natural or common-law principle of liberty of the press, as one of the rights of Englishmen. Accordingly our bills of rights guarantee freedom of speech and of publication as an individual natural right. Blackstone, whose views were generally accepted as common law in this country when the bills of rights were framed, holds that liberty of the press means simply the absence of restraints upon publication in advance as distinguished from liability, civil or criminal, for libelous or improper matter, when published. Story contends that it was intended to guarantee liberty of publishing the truth, with good motives and for proper ends, and approves a distinction between political publications, criticisms, and general discussions on the one hand and mere defamation of private individuals on the other hand. A third view is taken by Cooley. He considers that the bills of right guarantee "not only liberty to publish but complete immunity from legal censure and punishment for the publication so long as it is not harmful in its character, when judged by such standards as the law affords." In other words, printing

and speaking are to be subject to general rules of law, not to administrative censorship or arbitrary legislative restriction. The cases are most nearly in accord with this view.

Of the three doctrines as to the scope of liberty of publication, only Blackstone's would justify the position taken in *Brandreth v. Lance*, namely, that there can be no preventive judicial justice as against defamation; that as to writing and speaking, all legal action must necessarily come after the act. But this view is open to obvious criticism. For if liability for any sort of publication which the legislature chooses to penalize may be imposed upon the publisher after the act, the result may easily be to effectually prevent indirectly and so establish a censorship and evade the guaranty. Blackstone's doctrine has usually been criticised as not going far enough in securing against imposition of liability after publication upon arbitrary or unreasonable grounds. Equally it goes too far in denying to the law all power of restraint before publication. Although its best title to consideration is in the history of the subject, it goes beyond what history indicates as the main purpose, namely, freedom from a régime of general censorship and license of printing.

No very clear line is to be found in the decisions. Excepting *Brandreth v. Lance* and the cases following it, Blackstone's view has been urged chiefly in dicta. So far as imposition of liability after publication interferes with freedom of publication, four limitations



are well established: (1) The constitutional provision does not guarantee the liberty to intimidate by speech and writing. If this limitation may be enforced preventively as well as by penalty or damages, there is sufficient support for the cases presently to be noted, where publication incidental to or as part of an unlawful system of coercion or intimidation was enjoined. It will be seen that the only courts which clearly hold to the contrary in the latter case are those of Missouri and Montana. But the decisions in the former jurisdiction are not very consistent. Although in *Marx v. Watson*, 168 Mo. 133, the court held that the constitution protected a power to intimidate through publication, in *State v. McCabe*, 135 Mo. 450, it held that the constitution did not protect a creditor in the power to compel a debtor to pay a just debt by publishing that it was unpaid and injuriously affecting the debtor's credit—even if the publication were true. In *State v. Shepherd*, 177 Mo. 205, the same court seems to adopt Story's doctrine. (2) The constitution does not protect the citizen in publishing immoral or indecent matter, nor guarantee such publication against prohibition by the legislature. All the courts seem to agree to this. (3) It does not give immunity for contempt in interfering with the course of justice. All courts are agreed as to this, though as we have seen, the sole American decision is against enforcement of this limitation preventively to secure a litigant against unlawful interference with his

right to obtain justice in the courts by threatening or prejudicial publications. It may be noted that this question was involved in the earliest reported suit to enjoin a libel. (4) The constitutional provision does not preclude restrictions upon publication dangerous to the conduct of military operations in time of war. *Ex parte Vallandigham*, 1 Wall. 243. In the foregoing cases the legislature may prohibit publication and impose adequate penalties to enforce the prohibition. Except for the matter of trial by jury, to be considered presently, the difference between this course and the finding of a court that a threatened publication involves gross and palpable violation of private rights, for which damages would be no remedy, followed by a contempt proceeding in case of violation, is not very substantial. It can not be denied that for the most part these limitations may be reconciled with the doctrine that all preventive interference with publication is prohibited. But that doctrine makes the guaranties merely formal and unless the language of the bill of rights in a particular jurisdiction clearly adopts Blackstone's view, it might well be held that there are limitations on the guaranty, whether invoked against preventive or against remedial justice.

Surely the raising of the Army is an important part of military operations.

Coming to the judicial decisions on the Espionage Act itself, all courts, both District and Appellate, which have passed on the question at all, have

upheld the constitutionality of section 3, Title I, when interpreted, as by the trial court in the instant case.

See

*United States v. Prieth*, 251 Fed. R., 946.

*United States v. Pierce*, 245 Fed. R., 878.

*O'Hare v. United States*, 253 Fed. R., 538.

No authority can be adduced for the defendant's contention that there is a constitutional right to obstruct by speech the exercise of the power to raise armies so long as the speaker does not urge a violation of law. If, as has been held by this court in the recent case of *Toledo Newspaper Co. v. United States*, 247 U. S., 402, punishment may constitutionally be meted out for a wilful obstruction of the administration of justice, it is difficult to see why the administration of the war powers of Congress is not entitled to the same protection. The events of 1917 showed that war may become as essential as justice to the preservation of our democratic form of government. If, as recently held by this court in *The Selective Draft Cases*, 245 U. S., 366, Congress has the power, for the waging of war which it deems justified, to deprive a man of his liberty, even of his life, for the purpose of raising an Army which it deems essential, surely, for this same purpose of raising an Army, Congress may require the citizen to refrain from a deliberate, wilful obstruction of the process of obtaining the requisite number of fighting men. It is only wilful obstruction which the statute



seeks to reach, and the court so told the jury in this case. The power of Congress to reach such wilful obstruction is inherent in the right of self-preservation, and, as stated by this court in *Turner v. Williams*, 194 U. S., 279, 294, "As long as human governments endure, they can not be denied the right of self-preservation." To the defendant's contention that he has the constitutional right to obstruct the raising of the Army, so long as he restricts himself to speech or press, this court might well give the answer which it gave to the similar contention put forward in the *Toledo Newspaper Co. v. United States*, supra:

We might well pass the proposition by, because to state it is to answer it, since it involves in its very statement the contention that the freedom of the press is the freedom to do wrong with impunity and implies the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including that of the press, depends. The same guarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom therefore does not and can not be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and talk them, that right, as every other right in human society, is subject to the restrictions which separate right from wrong doing.

CONCLUSION.

The judgment of the court below should be affirmed.

JOHN LORD O'BRIAN,  
*The Special Assistant to the  
Attorney General for War Work.*

ALFRED BETTMAN,  
*Special Assistant to the Attorney General.*

JANUARY, 1919.

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## Allocution & Legacy



# DEBS'

## ADDRESS TO THE JURY

...AND...

Statement to the Court.



Published by  
**NATIONAL OFFICE SOCIALIST PARTY**  
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# P R E F A C E

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On September 12th, Eugene V. Debs, one of the foremost American Socialists, was convicted of having violated the Espionage law in a speech delivered at Canton, Ohio, June 16th. On September 14th, Debs was sentenced to ten years in prison.

The trial took place at Cleveland, Ohio. Debs was defended by Seymour Stedman and William A. Cunnea of Chicago, Joseph Sharts of Dayton and Morris Wolf of Cleveland. The case was tried before Federal Judge Westenhaver. At the close of the Government's case Debs refused to allow any witnesses to be put on in his defense and through his chief counsel, Stedman, announced that he would plead his own cause to the jury.

The case was appealed to the Supreme Court of the United States to test the constitutionality of those sections of the Espionage law under which the indictment was returned. Debs is at liberty on bonds of ten thousand dollars pending final action by the higher court. The cost of appealing the case will run into thousands of dollars and every Socialist is urged to raise such sums as he can and forward them to Oliver C. Wilson, Room 405, 803 West Madison Street, Chicago, Ill.

The speech to the jury and the address to the court herein printed are somewhat abridged. All those parts relative to the war have been left out. This has been done because with the case now pending before the Supreme Court, we have no desire to print anything that is brought into question by the appeal.

The parts of the speech to the jury and the address to the court herein given are presented to indicate the attitude of the defendant on the subject of free speech and free press and on social, economic and political questions.

## DEBS' ARGUMENT TO THE JURY

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**M**ay it please the court, and gentlemen of the jury:

For the first time in my life I appear before a jury in a court of law to answer to an indictment for crime. I am not a lawyer. I know little about court procedure, about the rules of evidence or legal practice. I know only that you gentlemen are to hear the evidence brought against me, that the court is to instruct you in the law, and that you are then to determine by your verdict whether I shall be branded with criminal guilt and be consigned, perhaps to the end of my life, in a felon's cell.

Gentlemen, I do not fear to face you in this hour of accusation, nor do I shrink from the consequences of my utterances or my acts. Standing before you, charged as I am with crime, I can yet look the court in the face, I can look you in the face, I can look the world in the face, for in my conscience, in my soul, there is festering no accusation of guilt.

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Permit me to say in the first place that I am entirely satisfied with the court's ruling. I have no fault to find with the assistant district attorney or with the counsel for the prosecution.

I wish to admit the truth of all that has been testified to in this proceeding. I have no disposition to deny anything that is true. I would not, if I could, escape the results of an adverse verdict. I would not retract a word that I have uttered that I believe to be true to save myself from going to the penitentiary for the rest of my days.

Gentlemen, you have heard the report of my speech at Canton on June 16th, and I submit that there is not a word in that speech to warrant the charges set out in the indictment. I admit having delivered the speech. I admit the accuracy of the speech in all of its main features as reported in this proceeding.

In what I had to say there my purpose was to educate the people to understand something about the social system in which we live and to prepare them to change this system by perfectly peaceable and orderly means into what I, as a Socialist, conceive to be a real democracy.

From what you heard in the address of the counsel for the prosecution, you might naturally infer that I am an advocate of force and violence. It is not true. I have never advocated violence in any form. I always believed in educa-

tion, in intelligence, in enlightenment, and I have always made my appeal to the reason and to the conscience of the people.

I admit being opposed to the present social system. I am doing what little I can, and have been for many years, to bring about a change that shall do away with the rule of the great body of the people by a relatively small class and establish in this country an industrial and social democracy.

When great changes occur in history, when great principles are involved, as a rule the majority are wrong. The minority are right. In every age there have been a few heroic souls who have been in advance of their time, who have been misunderstood, maligned, persecuted, sometimes put to death. Long after their martyrdom monuments were erected to them and garlands were woven for their graves.

This has been the tragic history of the race. In the ancient world Socrates sought to teach some new truths to the people, and they made him drink the fatal hemlock. It has been true all along the track of the ages. The men and women who have been in advance, who have had new ideas, new ideals, who have had the courage to attack the established order of things, have all had to pay the penalty.

A century and a half ago when the American colonists were still foreign sub-

jects, and when there were a few men who had faith in the common people and believed that they could rule themselves without a king, in that day to speak against the king was treason. If you read Bancroft or any other standard historian, you will find that a great majority of the colonists believed in the king and actually believed that he had a divine right to rule over them..... But there were a few men in that day who said, "We don't need a King. We can govern ourselves." And they began an agitation that has been immortalized in history.

Washington, Adams, Paine—these were the rebels of their day. At first they were opposed by the people and denounced by the press.....But they had the moral courage to stand erect and defy all the storms of detraction; and that is why they are in history, and that is why the great respectable majority of their day sleep in forgotten graves.

At a later time there began another mighty agitation in this country. It was against an institution that was deemed a very respectable one in its time, the institution of chattel slavery..... All of the organized forces of society, all of the powers of government upheld chattel slavery in that day. And again a few advanced thinkers appeared. One of them was Elijah Lovejoy.....Elijah Lovejoy was murdered in cold blood at



Alton, Illinois, in 1837 simply because he was opposed to chattel slavery—just as I am opposed to wage slavery. When you go down the Mississippi river and look up at Alton, you see a magnificent white shaft erected there in memory of a man who was true to himself and his convictions of right and duty unto death.

It was my good fortune to personally know Wendell Phillips. I heard the story of his persecution from his own eloquent lips just a little while before they were silenced in death.

William Lloyd Garrison, Garret Smith, Thadeus Stevens—these leaders of the abolition movement, who were regarded as monsters of depravity, were true to the faith and stood their ground. They are all in history. You are teaching your children to revere their memories, while all of their detractors are in oblivion.

Chattel slavery disappeared. We are not yet free. We are engaged in another mighty agitation today. It is as wide as the world. It is the rise of the toiling masses who are gradually becoming conscious of their interests, their power, as a class, who are organizing industrially and politically, who are slowly but surely developing the economic and political power that is to set them free. They are still in the minority, but they have learned how to wait, and to bide their time.

From the beginning of the war to this day, I have never, by word or act, been guilty of the charges that are embraced in this indictment. If I have criticised, if I have condemned, it is because I have believed myself justified in doing so under the laws of the land. I have had precedents for my attitude. This country has been engaged in a number of wars, and every one of them has been condemned by some of the most eminent men in the country. The war of the revolution was opposed. The Tory press denounced its leaders as criminals and outlaws.

The war of 1812 was opposed and condemned; the Mexican war was bitterly condemned by Abraham Lincoln, Charles Sumner, Daniel Webster and Henry Clay. These men denounced the President, they condemned his administration; and they said that the war was a crime against humanity. They were not indicted; they were not tried for crime. They are honored today by all of their countrymen. The war of the rebellion was opposed and condemned. In 1864 the Democratic Party met in convention at Chicago and passed a resolution condemning the war as a failure. What would you say if the Socialist Party were to meet in convention today and condemn the present war as a failure? You charge us with being disloyalists and traitors. Were the democrats of

1864 disloyalists and traitors because they condemned the war as a failure?

I believe in the constitution of the United States. Isn't it strange that we Socialists stand almost alone today in defending the constitution of the United States? The revolutionary fathers who had been oppressed under king rule understood that free speech and free press and the right of free assemblage by the people were the fundamental principles of democratic government. The very first amendment to the constitution reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

That is perfectly plain English. It can be understood by a child. I believe the revolutionary fathers meant just what is here stated—that congress shall make no law abridging the freedom of speech or of the press, or of the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

That is the right that I exercised at Canton on the 16th day of last June; and for the exercise of that right, I now



have to answer to this indictment. I believe in the right of free speech, in war as well as in peace. I would not, under any circumstances, gag the lips of my bitterest enemy. I would under no circumstances suppress free speech. It is far more dangerous to attempt to gag the people than to allow them to speak freely of what is in their hearts.

I have told you that I am no lawyer, but it seems to me that I know enough to know that if Congress enacts any law that conflicts with this provision in the Constitution, that law is void. If the Espionage law finally stands, then the Constitution of the United States is dead. If that law is not the negation of every fundamental principle established by the Constitution, then certainly I am unable to read or to understand the English language.

Now, in the course of this proceeding you, gentlemen, have perhaps drawn the inference that I am Pro-German in the sense that I may have sympathy with the imperial government of Germany. My father and mother were born in Alsace. They loved France with a passion that is holy. They understood the meaning of Prussianism, and they hated it with all their hearts. I did not need to be taught to hate Prussian militarism. I knew from them what a hateful, what an oppressive, what a brutalizing thing it was and is. I cannot imagine how anyone can suspect that for one moment I could have the slightest sympathy with

such a monstrous thing. I have been speaking and writing against it practically all my life. I know that the Kaiser incarnates all there is of brute force and murder.....

With every drop of blood in my veins I despise Kaiserism, and all that Kaiserism expresses and implies. I have my sympathy with the struggling, suffering people everywhere. It does not make any difference under what flag they were born, or where they live, I have sympathy with them all. I would, if I could establish a social system that would embrace them all.

And now, gentlemen of the jury, I am not going to detain you too long..... I cannot take back a word. I cannot repudiate a sentence. I stand before you guilty of having made this speech..... I do not know, I cannot tell, what your verdict may be; nor does it matter much, so far as I am concerned.

Gentlemen, I am the smallest part of this trial. I have lived long enough to appreciate my own personal insignificance in relation to a great issue, that involves the welfare of the whole people. What you may choose to do to me will be of small consequence after all. I am not on trial here. There is an infinitely greater issue that is being tried today in this court, though you may not be conscious of it. American institutions are on trial here before a court of American citizens. The future will tell.

And now, your honor, permit me to return my hearty thanks for your patient consideration. And to you, gentlemen of the jury, for the kindness with which you have listened to me.

My fate is in your hands. I am prepared for your verdict.

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## STATEMENT TO THE COURT

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After motion for a new trial had been overruled, Debs was asked if he had anything to say before sentence was passed upon him. His statement to the court was as follows with the exception of those parts which have been omitted as stated in the preface:

Your honor, years ago I recognized my kinship with all living beings, and I made up my mind that I was not one bit better than the meanest of earth. I said then, I say now, that while there is a lower class, I am in it.... while there is a soul in prison, I am not free.

I listened to all that was said in this court in support and justification of this law, but my mind remains unchanged. I look upon it as a despotic enactment in flagrant conflict with democratic principles and with the spirit of free institutions.

I have no fault to find with this court or with the trial. Everything in connection with this case has been conducted upon a dignified plane, and in a respectful and decent spirit.....



Your honor, I have stated in this court that I am opposed to the social system in which we live; that I believe in a change—but by perfectly peaceable and orderly means.

Let me call your attention to the fact this morning that in this system 5% of our people own and control two-thirds of our wealth; 65% of the people, embracing the working class who produce all wealth, have but 5% to show for it.

Standing here this morning, I recall my boyhood. At fourteen, I went to work in the railroad shops; at sixteen, I was firing a freight engine on a railroad. I remember all the hardships, all the privations, of that earlier day, and from that time until now, my heart has been with the working class. I could have been in Congress long ago. I have preferred to go to prison.

In the struggle—the unceasing struggle—between the toilers and producers and their exploiters, I have tried, as best I might, to serve those among whom I was born, and with whom I expect to share my lot to the end of my days.

I am thinking this morning of the men in the mills and factories; I am thinking of the women who, for a paltry wage, are compelled to work out their lives; of the little children who, in this system, are robbed of their childhood, and in their early, tender years, are seized in the remorseless grasp of mammon, and

forced in the industrial dungeons, there to feed the machines while they themselves are being starved body and soul. I can see them dwarfed, diseased, stunted, their little lives broken, because in this high noon of our twentieth century civilization money is still so much more important than human life. Gold is God and rules the affairs of men. The little girls, and there are a million of them in this country—this the most favored land beneath the bending skies, a land in which we have vast areas of rich and fertile soil, material resources in inexhaustible abundance, the most marvelous productive machinery on earth, millions of eager workers ready to apply their labor to that machinery to produce an abundance for every man, woman and child—and if there are still many millions of our people who are the victims of poverty, whose lives are a ceaseless struggle all the way from youth to age, until at last death comes to their rescue and stills the aching heart, and lulls the victims to dreamless sleep, it is not the fault of the Almighty, it can't be charged to nature; it is due entirely to an outgrown social system that ought to be abolished not only in the interest of the working class, but in the interest of a higher humanity.

When I think of these little children—the girls that are in the textile mills of all description in the east, in the cotton

factories of the south—when I think of them at work in a vitiated atmosphere, when I think of them at work when they ought to be at play or at school, when I think that when they do grow up, if they live long enough to approach the marriage state, they are unfit for it. Their nerves are worn out, their tissue is exhausted, their vitality is spent. They have been fed to industry. Their lives have been coined into gold. Their offspring are born tired. That is why there are so many failures in modern life.

Your honor, the 5% of the people that I have made reference to constitute that element that absolutely rules our country. They privately own all our necessities. They wear no crowns; they wield no sceptres; they sit upon no thrones; and yet they are our economic masters and political rulers.

I believe, your honor, in common with all Socialists, that this nation ought to own and control its industries. I believe, as all Socialists do, that all things that are jointly needed and used ought to be jointly owned—that industry, the basis of life, instead of being the private property of the few and operated for their enrichment, ought to be the common property of all, democratically administered in the interest of all.

John D. Rockefeller has today an income of sixty million dollars a year, five million dollars a month, two hundred thousand dollars a day. He does



not produce a penny of it. I make no attack on Mr. Rockefeller personally. I do not in the least dislike him. If he were in need and it were in my power to serve him, I should serve him as gladly as I would any other human being. I have no quarrel with Mr. Rockefeller personally, nor with any other capitalist. I am simply opposing a social order in which it is possible for one man who does absolutely nothing that is useful to amass a fortune of hundreds of millions of dollars, while millions of men and women who work all of the days of their lives secure barely enough for an existence.

This order of things cannot always endure. I have registered my protest against it. I recognize the feebleness of my effort, but, fortunately, I am not alone. There are multiplied thousands of others who, like myself, have come to realize that before we may truly enjoy the blessings of civilized life, we must reorganize society upon a mutual and co-operative basis; and to this end we have organized a great economic and political movement that spreads over the face of all the earth.

There are today upwards of sixty millions of Socialists, loyal, devoted, adherents to this cause, regardless of nationality, race, creed, color or sex. They are all making common cause. They are all spreading the propaganda of the new social order. They are waiting, watching

and working through all the weary hours of the day and the night. They are still in the minority. They have learned how to be patient and to abide their time. They feel—they know, indeed,—that the time is coming, in spite of all opposition, all persecution, when this emancipating gospel will spread among all the peoples, and when this minority will become the triumphant majority and, sweeping into power, inaugurate the greatest change in history.

In that day we will have the universal commonwealth.... the harmonious co-operation of every nation with every other nation on earth.

Your honor, in a local paper yesterday there was some editorial exultation about my prospective imprisonment. I do not resent it in the least. I can understand it perfectly. In the same paper there appears an editorial that has in it a hint of the wrong to which I have been trying to call attention. (Reading)

“A Senator of the United States receives a salary of \$7,500 — \$45,000 for the six years for which he is elected. One of the candidates for Senator from a state adjoining Ohio is reported to have spent through his committee \$150,000 to secure the nomination. For advertising he spent \$35,000, for printing \$30,000; for traveling expenses, \$10,000 and

the rest in ways known to political managers."

The theory is that public office is as open to a poor man as to a rich man. One may easily imagine, however, how slight a chance one of ordinary resources would have in a contest against this man who was willing to spend more than three times his six year's salary merely to secure a nomination. Were these conditions to hold in every state, the Senate would soon become again what it was once held to be—a rich man's club.

Campaign expenses have been the subject of much restrictive legislation in recent years, but it has not always reached the mark. The authors of primary reform have accomplished some of the things they set out to do, but they have not yet taken the bank roll out of politics."

They will never take it out of politics, they never can take it out of politics, in this system.

Your honor, I wish to make acknowledgment of my thanks to the counsel for the defense. They have not only defended me with exceptional legal ability, but with a personal attachment and devotion of which I am deeply sensible, and which I can never forget.

Your honor, I ask no mercy and I plead for no immunity. I realize that



finally the right must prevail. I never more clearly comprehended than now the great struggle between the powers of greed on the one hand and upon the other the rising hosts of freedom.

I can see the dawn of a better day for humanity. The people are awakening. In due course of time they will come to their own.

When the mariner, sailing over tropic seas, looks for relief from his weary watch, he turns his eyes toward the southern cross, burning luridly above the tempest-vexed ocean. As the midnight approaches, the southern cross begins to bend, and the whirling worlds change their places, and with starry finger-points the Almighty marks the passage of time on the dial of the universe, and though no bell may beat the glad tidings, the look-out knows that the midnight is passing—that relief and rest are close at hand.

Let the people take heart and hope everywhere, for the cross is bending, the midnight is passing, and joy cometh with the morning.

“He’s true to God who’s true to man;  
wherever wrong is done,  
To the humblest and the weakest,  
’neath the all-beholding sun.  
That wrong is also done to us, and  
they are slaves most base,  
Whose love of right is for themselves  
and not for all their race.”

Your honor, I thank you, and I thank all of this court for their courtesy and their kindness, which I shall remember always.

I am prepared to receive your sentence.

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# EUGENE V. DEBS DIES AFTER LONG ILLNESS

**Socialist Leader Succumbs to  
Heart Ailments After Month  
in Illinois Sanitarium.**

**ONCE LEADER OF RAIL UNION**

**He Led Pullman Strike in 1895—  
Served Nearly Three Years in  
Prison for Opposing War.**

*Special to The New York Times.*

CHICAGO, Oct. 20.—Heart disease that had afflicted Eugene V. Debs, apostle of socialism, for 25 years, caused his death early this evening at the Lindlahr Sanitarium in Elmhurst, Ill., where he had been for a month, following a physical breakdown.

Death came peacefully after a four-day fight, during most of which he lay in a state of coma.

At his bedside when he passed away were his wife, Katherine, his brother, Theodore, and his sisters, Mrs. John Heintz of Terre Haute, Ind., and Mrs. C. O. Mailloux of New York, besides Socialist leaders, including William H. Henry, the Executive Secretary of the party.

A sudden turn for the worse in his condition came Saturday and in the evening he lapsed slowly into coma. Only once after that did he recover consciousness. This was on Sunday morning.

Smiling weakly at Mrs. Debs, he motioned for paper and a pencil and in wavering lines he scrawled the words of Henley's "Invictus," which he had often told friends inspired him through his whole life:

It matters not how strait the gate,  
How charged with punishment the scroll,  
I am the master of my fate,  
I am the captain of my soul.

As he wrote the last words his pencil dropped from his fingers. Mrs. Debs took it reverently and said that the family would preserve the paper as his last utterance.

Messages of condolence began coming to the family almost as soon as the news of the leader's death was flashed over the country. Victor Berger, a fellow Socialist, eulogized him as "a great American."

Public funeral services will be held in Terre Haute tomorrow or Saturday. The body will be cremated in Indianapolis.

## **Led Famous Pullman Strike.**

Eugene Victor Debs, five times Socialist candidate for President of the United States, was born in Terre Haute, Ind., on Nov. 5, 1855, one of a family of ten children. His parents were Jean Daniel Debs and Marguerite Marie Betterich, natives of Colmar, Alsace, who settled in the United States in 1849.

At the age of 38 Debs, an unknown labor leader, organized the American Railway Union and directed and won a strike against the Great Northern Railway Company in 1894. The following year, as President of the American Railway Union, he leaped into nationwide fame overnight by assuming charge of the sympathetic strike against the Pullman Company. By his mandate twenty railroads were tied up, industry in every part of the nation was paralyzed, traffic piled up and President Cleveland finally ordered out troops to guard the trains and broke the strike.

Debs was arrested, charged with conspiracy and acquitted, but was later rearrested on a charge of contempt of court for violating an injunction and served six months in the Woodstock (Ill.) Jail. He served another term in prison during the war, when he was convicted of obstructing the draft. He died before he could make a final test of his contention that his term in a Federal prison did not deprive him of his voting rights. At the suggestion of Morris Hillquit, his counsel, he registered in Terre Haute and the election board made no objection. He hoped that he would be permitted to vote, as Attorney General John G. Sargent had notified Mr. Hillquit that the Attorney General's office had never expressed an opinion on whether the conviction of Debs deprived him of his rights of citizenship.

## **Idolized by Thousands.**

Idolized by scores of thousands as the spiritual voice of Socialists and lovers of mankind in every land, Debs attracted great crowds wherever he spoke. His religious fervor and winning personality won him many votes, even from those who disagreed with his views. In 1912 he obtained nearly 1,000,000 votes as a candidate for the Presidency.

The career of Debs was punctuated by mass demonstrations. Upon his release from Woodstock Jail 100,000 men and women gave him a reception in Chicago. In 1903 he spoke in Madison Square Garden and was unable to proceed for twenty-one minutes because of the wild demonstration for him. Fifty thousand followers welcomed him home to Terre Haute on his release from Atlanta in 1921.

At the age of 14 Debs worked in the railroad shops of Terre Haute and two years later became a fireman on the Terre Haute & Indianapolis Railroad. He remained there for three years and then went to work as a grocery clerk.

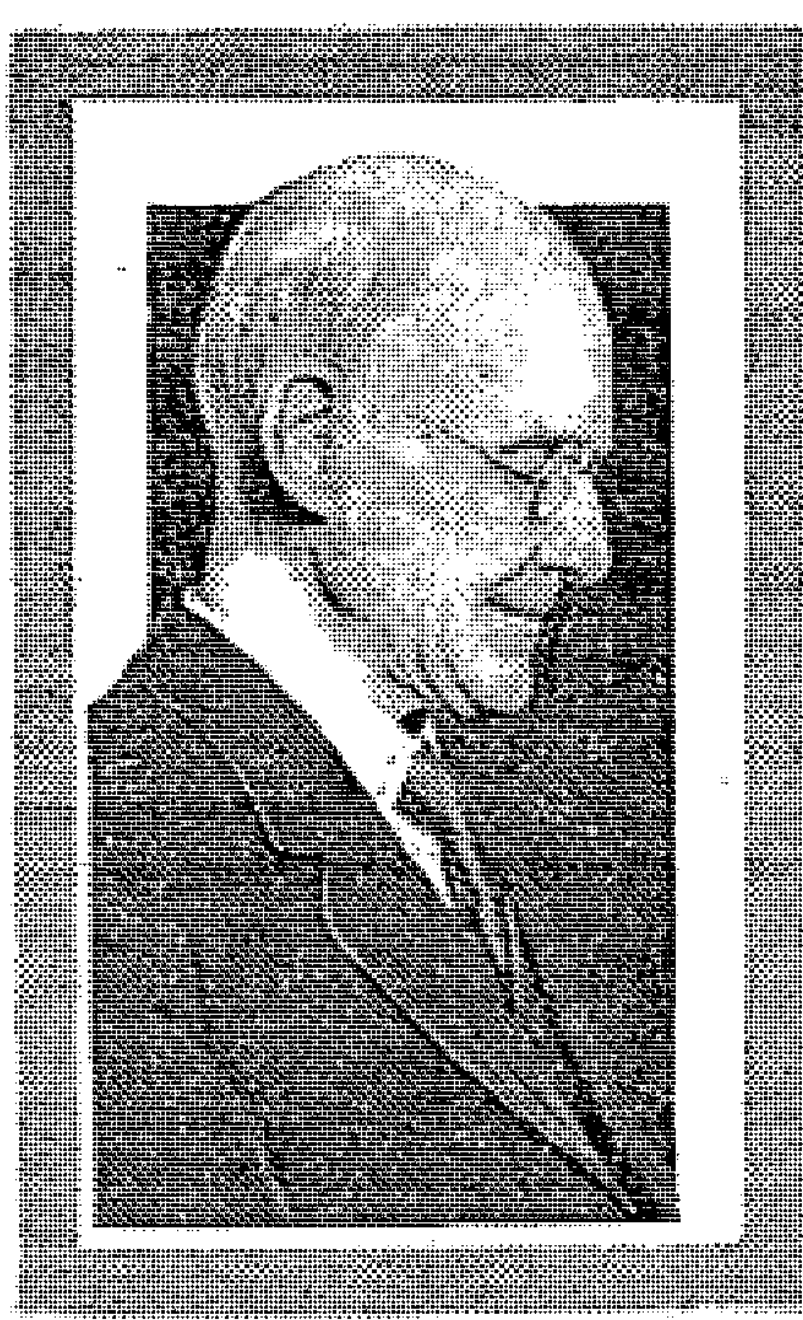
He was largely self-educated. Writing of this period of his life David Karsner, a biographer, says:

"While a mere boy firing a switch engine at night he managed to attend school half a day each day, sleeping the mornings and attending school afternoons. From his meager earnings he bought an encyclopedia on the installment plan, one volume each month, and began to read and study history and literature and to devote himself to grammar and composition. The revolutionary history of the United States and France stirred him deeply and their heroes and martyrs became his idols. Thomas Paine, he says, towered above them all, and a thousand times since he has found strength and inspiration in the words of Paine: 'These are the times that try men's souls.'"

"Of the intensiveness of his early studies he says that from the time he began to read with a serious mind, feeling keenly his lack of knowledge, he observed the structure and studied the composition of every paragraph and every sentence, and, when one appeared striking to him because of the perfection of style or phrasing, he would read it a second time or perhaps commit it to memory."

He specialized in reading the orations of what he termed "men who spoke in advance of their time." Patrick Henry was a favorite subject commit it to memory."

His interest in labor problems impelled him in 1875 to leave the grocery



Wide World Photos.

**EUGENE V. DEBS,**  
who died yesterday in Illinois.

and enter the local lodge of the Brotherhood of Locomotive Firemen as a charter member, having previously taken part in the organization of the Brotherhood of Railway Brakemen, now the Brotherhood of Railroad Trainmen. His political career began when he was elected City Clerk of Terre Haute in 1879 for four years. In 1885 he was elected to the Indiana Legislature.

In 1880 Debs was elected Grand Secretary and Treasurer of the Brotherhood of Locomotive Firemen and editor of the Firemen's Magazine. He served in this capacity until he became President in 1893 of the American Railway Union, an industrial organization. The eighteen days' strike against the Great Northern Railway in April, 1894, was considered a victory for industrial unionism, in which Debs believed heart and soul.

In June of the same year the Pullman Company employees struck against a wage reduction and the American Railway Union called a sympathetic strike. President Cleveland sent troops to Chicago to stop rioting and bloodshed and became involved in a controversy with Governor George P. Altgeld, who protested against the presence of Federal troops.

Debs and three others were indicted on charges of conspiracy. They were defended by Clarence S. Darrow, who gave up a lucrative corporation practice on becoming interested in the case. The conspiracy case was dropped because of the illness of a juror, but subsequently Debs was sentenced to six months in jail for violation of an injunction.

## **Became Socialist in Jail.**

It was in Woodstock Jail that Debs became a Socialist. He read Karl Marx's "Capital," presented to him by Victor L. Berger. However, his new political belief was still embryonic, for in 1896 he took the stump for William Jennings Bryan. In 1897 he announced himself a full-fledged Socialist and in that year he took part in the formation of the Social-Democratic Party.

Debs soon became a prolific writer, lecturer and organizer. In 1900 he was nominated for President and received 96,116 votes. In 1904 he received 402,321 votes, and this was more than doubled four years later when he polled 897,011 votes; in 1912 he received nearly 1,000,000 votes. The same number backed him when he ran for the fifth time while locked up in an Atlanta cell for obstructing the draft.

Debs's sentence of ten years' imprisonment was caused by his criticism of the Government's part in the war in a speech made in Canton, Ohio, in 1918. At his trial he admitted the charges against him, declaring he would not retract a word he had uttered to save himself from going to the penitentiary for the rest of his days.

Before sentence was passed on him Debs said to the Court, "Your Honor, years ago I recognized my kinship with all living beings, and I made up my mind that I was not one bit better than the meanest of earth. I said then, and I say now, that while there is a lower class I am in it; while there is a criminal element I am of it; while there is a soul in prison I am not free."

Debs served a few months in Moundsville (W. Va.) Penitentiary and was then transferred to Atlanta. His friends began a campaign for his pardon, but President Wilson refused every plea to release him. It was not until Christmas, 1923, after he had served nearly three years, that his sentence was commuted by President Harding.

## **Cheered by Atlanta Prisoners.**

As the doors of the Atlanta prison closed behind the Socialist leader when he was released on Christmas Day, 1921, a roar of cheers swept out from the prisoners. Debs raised his hat in one hand and his cane in the other and waved back at them. He continued to wave while they kept on cheering until he reached the gates, where a battery of movie cameras was in action.

Reaching Terre Haute on Dec. 28, he was met by red fire, blaring bands and fully 50,000 men, women and children. As soon as he set foot on the station platform he was lifted on the shoulders of his welcomers and carried to an automobile.

On leaving Atlanta Debs announced his determination to work for the release of all political prisoners. His work in their behalf and his advancing age overtaxed his strength and caused him to suffer a nervous breakdown.

Debs was not very active politically after his release. He came to New York in 1925, however, to campaign for Norman Thomas, Socialist candidate for Mayor, and made a number of speeches.

Efforts were frequently made to have him restored to citizenship, but it was said that his refusal to make a personal request for a full pardon that would restore him to citizenship prevented such action.

## **Refuses to Admit Guilt.**

"Under no circumstances will I apply for a pardon," he said. "I made no defense when I was tried because I felt I had committed no crime. If I should apply for pardon it would be in my eyes an acknowledgment that I was wrong when I stood my ground for the right of free speech in the United States."

In April of this year, when he returned to this country after a visit to Bermuda, he was doubtful about being admitted because of the loss of his citizenship. The immigration authorities offered no objections to his entering, however.

On his return from Bermuda Mr. Debs spent practically all of his time at his home in Terre Haute until he went to the sanitarium.



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# EUGENE V. DEBS AND THE ENDURANCE OF SOCIALISM

*Half man, half myth, Debs turned a radical creed into a deeply American one.*



**By Jill Lepore**

February 11, 2019



*Debs ran for  
President five times,  
captivating crowds by  
the tens of  
thousands.* Photograph  
from Fotosearch / Getty

Eugene Victor Debs left school at the age of fourteen, to scrape paint and grease off the cars of the Vandalia Railroad, in Indiana, for fifty cents a day. He got a raise when he was promoted to fireman, which meant working in the locomotive next to the engineer, shovelling coal into a firebox—as much as two tons an hour, sixteen hours a day, six days a week. Firemen, caked in coal dust, blinded by wind and smoke, had to make sure that the engine didn't explode, an eventuality they weren't always able to forestall. If they were lucky, and lived long enough, firemen usually became engineers, which was safer than being a switchman or a brakeman, jobs that involved working on the tracks next to a moving train, or racing across its top, in any weather, at the risk of toppling off and getting run over. All these men reported to the conductors, who had the top job, and, on trains owned by George Mortimer Pullman, one of the richest men in the United States, all of them—the engineers, the firemen, the brakemen, the switchmen, and even the scrapers—outranked the porters. Pullman porters were almost always black men, and ex-slaves, and, at the start, were paid nothing except the tips they could earn by bowing before the fancy passengers who could afford the sleeping car, and who liked very much to be served with a shuffle and a grin, Dixie style.

Every man who worked on the American railroad in the last decades of the nineteenth century became, of necessity, a scholar of the relations between the rich and the poor, the haves and the have-nots, the masters and the slaves, the riders and the ridden upon. No student of this subject is more important to American history than Debs, half man, half myth, who founded the American Railway Union, turned that into the Social Democratic Party, and ran for President of the United States five times, including once from prison.

Debs, who wrote a lot about manliness, always said that the best kind of man

was a sand man. “‘Sand’ means grit,” he wrote in 1882, in *Firemen’s Magazine*. “It means the power to hold on.” When a train stalled from the steepness of the incline or the weight of the freight, railroad men poured sand on the tracks, to improve the grip of the wheels. Men need sand, too, Debs said: “Men who have plenty of ‘sand’ in their boxes never slip on the path of duty.” Debs had plenty of sand in his box. He had, though, something of a morbid fear of ashes. Maybe that’s a fireman’s phobia, a tending-the-engine man’s idea of doom. In prison—having been sentenced, brutally, to ten years of hard time at the age of sixty-three—he had a nightmare. “I was walking by the house where I was born,” he wrote. “The house was gone and nothing left but ashes . . . only ashes—ashes!” The question today for socialism in the United States, which appears to be stoking its engines, is whether it’s got enough sand. Or whether it’ll soon be ashes, only ashes, all over again.

Debs was born in Terre Haute, Indiana, in 1855, seven years after Marx and Engels published “The Communist Manifesto.” His parents were Alsatian immigrants who ran a small grocery store. Debs worked for the railroads a little more than four years. In the wake of the Panic of 1873, he lost his job at Vandalia and tramped to East St. Louis looking for work; then, homesick, he tramped back to Terre Haute, where, in 1875, he took a job as a labor organizer, and, later, as a magazine editor, for the Brotherhood of Locomotive Firemen. He hung his old scraper on the wall, part relic, part badge, part talisman, of his life as a manual laborer.

Debs was a tall man, lanky and rubbery, like a noodle. He had deep-set blue eyes and lost his hair early, and he talked with his hands. When he gave speeches, he leaned toward the crowd, and the veins of his temples bulged. He



was clean-shaven and favored bow ties and sometimes looked lost in crumpled, baggy suits. He had a way of hunching his shoulders that you often see, and admire, in tall men who don't like to tower over other people. In a new book, "Eugene V. Debs: A Graphic Biography" (Verso), drawn by Noah Van Sciver and written by Paul Buhle and Steve Max, Debs looks like an R. Crumb character, though not so bedraggled and neurotic.

People could listen to him talk for hours. "Debs! Debs! Debs!" they'd cry, when his train pulled into a station. Crowds massed to hear him by the tens of thousands. But even though Debs lived until 1926, well into the age of archival sound, no one has ever found a recording of his voice. When Nick Salvatore wrote, in his comprehensive biography, "Eugene V. Debs: Citizen and Socialist," in 1982, "His voice ran a gamut of tones: mock whisper to normal conversation to full stentorian power," you wonder how he knew. Debs could speak French and German and was raised in the Midwest, so maybe he talked like the Ohio-born Clarence Darrow, with a rasp and a drawl. Some of Debs's early essays and speeches have just been published in the first of six volumes of "The Selected Works of Eugene V. Debs" (Haymarket), edited by Tim Davenport and David Walters. Really, he wasn't much of a writer. The most delightful way to hear Debs is to listen to a recording made in 1979 by Bernie Sanders, in an audio documentary that he wrote and produced when he was thirty-seven years old and was the director of the American People's Historical Society, in Burlington, Vermont, two years before he became that city's mayor. In the documentary—available on YouTube and Spotify—Sanders, the Brooklyn-born son of a Polish Jew, performs parts of Debs's most famous speeches, sounding, more or less, like Larry David. It is not to be missed.

Debs began his political career as a Democrat. In 1879, when he was only

twenty-three, he was elected city clerk of Terre Haute, as a Democrat; the city's Democratic newspaper called him "one of the rising young men of Terre Haute," and the Republican paper agreed, dubbing him "the blue-eyed boy of destiny." Debs looked back on these days less fondly. "There was a time in my life, before I became a Socialist, when I permitted myself as a member of the Democratic party to be elected to a state legislature," he later said. "I have been trying to live it down. I am as much ashamed of that as I am proud of having gone to jail." Throughout his life, he believed in individual striving, and he believed in the power of machines. "A railroad is the architect of progress," he said in a speech at the Grand Lodge of the Brotherhood of Locomotive Firemen in 1877, the year the President of the United States sent federal troops to crush a railroad workers' strike. The firemen's brotherhood was less a labor union than a benevolent society. "The first object of the association is to provide for the widows and orphans who are daily left penniless and at the mercy of public charity by the death of a brother," Debs explained. At the time, he was opposed to strikes. "Does the brotherhood encourage strikers?" he asked. "No—brotherhood."

For a long time, Debs disavowed socialism. He placed his faith in democracy, the franchise, and the two-party system. "The conflict is not between capital and labor," he insisted. "It is between the man who holds the office and the man who holds the ballot." But in the eighteen-eighties, when railroad workers struck time and time again, and as many as two thousand railroad men a year were killed on the job, while another twenty thousand were injured, Debs began to wonder whether the power of benevolence and fraternity was adequate protection from the avarice and ruthlessness of corporations backed up by armed men. "The strike is the weapon of the oppressed," Debs wrote in 1888. Even then he didn't talk about socialism. For Debs, this was

Americanism, a tradition that had begun with the American Revolution. “The Nation had for its cornerstone a strike,” he said. He also spent some time with a pencil, doing sums. Imagine, he wrote in an editorial, that a grandson of Cornelius Vanderbilt started out with two million dollars—a million from his grandfather and another million from his father. “If a locomotive fireman could work 4,444 years, 300 days each year, at \$1.50 per day,” Debs went on, “he would be in a position to bet Mr. Vanderbilt \$2.50 that all men are born equal.”

In 1889, Debs argued for an industrial union, a federation of all the brotherhoods of railroad workers, from brakemen to conductors, as equals. Samuel Gompers wanted those men to join his far less radical trade union, the American Federation of Labor, which he’d founded three years earlier, but in 1893 Debs pulled them into the American Railway Union. Soon it had nearly a hundred and fifty thousand members, with Debs, at its head, as their Moses. That’s what got him into a battle with George Pullman, in 1894, and landed him, for the first time, in prison, where he read “Das Kapital.”

Debs once said that George Pullman was “as greedy as a horse leech,” but that was unfair to leeches. In the aftermath of the Panic of 1893, Pullman slashed his workers’ wages by as much as fifty per cent and, even though they lived in housing he provided, he didn’t cut rents or the price of the food he sold them. Three thousand workers from the Pullman Palace Car Company, many of them American Railway Union members, had already begun a wildcat strike in May of 1894, a month before the A.R.U.’s first annual meeting, in Chicago. As Jack Kelly recounts, in “The Edge of Anarchy: The Railroad Barons, the Gilded Age, and the Greatest Labor Uprising in



America” (St. Martin’s), Debs hadn’t wanted the A.R.U. to get involved, but the members of his union found the Pullman workers’ plight impossible to ignore, especially after nineteen-year-old Jennie Curtis, who’d worked in the Pullman sewing department for five years, upholstering and making curtains, addressed the convention. Curtis explained that she was often paid nine or ten dollars for two weeks’ work, out of which she paid Pullman seven dollars for her board and two or three more for rent. “We ask you to come along with us,” she told Debs’s men, because working for Pullman was little better than slavery. After hearing from her, the A.R.U. voted for a boycott, refusing “to handle Pullman cars and equipment.”

That Curtis had a voice at all that day was thanks in part to Debs, who had supported the admission of women to the A.R.U. He also argued for the admission of African-Americans. “I am not here to advocate association with the negro, but I am ready to stand side by side with him,” he told the convention. But, by a vote of 112 to 110, the assembled members decided that the union would be for whites only. If two votes had gone the other way, the history of the labor movement in the United States might have turned out very differently.

Black men, closed out of the A.R.U., formed the Anti-Strikers Railroad Union, to fill positions opened by striking whites. If working on a Pullman car was degrading, it was also, for decades, one of the best jobs available to African-American men. Its perks included safe travel at a time when it was difficult for black people to make their way between any two American cities without threat or harm. George Pullman’s company was the nation’s single largest employer of African-American men. Thurgood Marshall’s father was a Pullman porter. The A.R.U. vote in 1894 set back the cause of labor for

decades. The Brotherhood of Sleeping Car Porters achieved recognition from the Pullman Company only in 1937, after years of organizing by A. Philip Randolph.

The Pullman strike of 1894, one of the single biggest labor actions in American history, stalled trains in twenty-seven states. Debs's American Railway Union all but halted transportation by rail west of Detroit for more than a month—either by refusing to touch Pullman cars or by actively unhitching them from the trains. Whatever Debs's initial misgivings about the boycott, once his union voted for it he dedicated himself to the confrontation between “the producing classes and the money power.” In the end, after a great deal of violence, George Pullman, aided by President Grover Cleveland, defeated the strikers. Pursued by a U.S. Attorney General who had long served as a lawyer for the railroads, Debs and other A.R.U. leaders were indicted and convicted of violating a federal injunction to stop “ordering, directing, aiding, assisting, or abetting” the uprising. The U.S. Supreme Court upheld Debs's conviction. He and seven other organizers were sentenced to time behind bars—Debs to six months, the others to three—and served that time in Woodstock, Illinois, in a county jail that was less a prison than a suite of rooms in the back of the elegant two-story Victorian home of the county sheriff, who had his inmates over for supper every night.

“The Socialist Conversion” is the title of the half-page panel depicting these six months in “Eugene V. Debs: A Graphic Biography.” It shows Debs in a prisoner's uniform, seated at a desk in a bare room, with a beady-eyed, billy-club-wielding prison guard looking on from the doorway, while a cheerful man in a suit, carrying “The Communist Manifesto,” approaches Debs, his speech bubble reading “This is a present from the Socialists of Milwaukee to you.”

Very little of this is true. Debs's time in jail in Woodstock was remarkably comfortable. He ran the union office out of his cell. He was allowed to leave jail on his honor. "The other night I had to lock myself in," he told the New York *World* reporter Nellie Bly, when she went to interview him. "There was no sign of the prisoner about Mr. Debs' clothes," Bly reported. "He wore a well-made suit of grey tweed, the coat being a cutaway, and a white starched shirt with a standing collar and a small black and white scarf tied in a bow-knot." The Milwaukee socialist Victor Berger did bring Debs a copy of Marx's "Das Kapital." And Debs and his fellow labor organizers dedicated most of their daily schedule to reading. "I had heard but little of Socialism" before the Pullman strike, Debs later claimed, insisting that the reading he did in jail brought about his conversion. But it's not clear what effect that reading really had on him. "No sir; I do not call myself a socialist," he told a strike commission that year. While in jail, he turned away overtures from socialists. And when he got out, in 1895, and addressed a crowd of more than a hundred thousand people who met him at the train station in Chicago, he talked about "the spirit of '76" and the Declaration of Independence and the Constitution, not Marx and Engels.

The next year, Debs endorsed the Presidential candidate William Jennings Bryan, running on both the Democratic and the People's Party tickets. Only after Bryan's loss to William McKinley, whose campaign was funded by businessmen, did Debs abandon his devotion to the two-party system. The people elected Bryan, it was said, but money elected McKinley. On January 1, 1897, writing in the *Railway Times*, Debs proclaimed himself a socialist. "The result of the November election has convinced every intelligent wageworker that in politics, per se, there is no hope of emancipation from the degrading curse of wage-slavery," he wrote. "I am for socialism because I am for



humanity. . . . Money constitutes no proper basis of civilization.”

That June, at the annual meeting of the American Railway Union, Debs founded the Social Democracy of America party. When it splintered, within the year, Victor Berger and Debs joined what became the Social Democratic Party, and then, in 1901, the Socialist Party of America. For Debs, socialism meant public ownership of the means of production. “Arouse from your slavery, join the Social Democratic Party and vote with us to take possession of the mines of the country and operate them in the interest of the people,” he urged miners in Illinois and Kansas in 1899. But Debs’s socialism, which was so starry-eyed that his critics called it “impossibilism,” was decidedly American, and had less to do with Karl Marx and Communism than with Walt Whitman and Protestantism. “What is Socialism?” he asked. “Merely Christianity in action. It recognizes the equality in men.”

The myth of Debs’s Christlike suffering and socialist conversion in the county jail dates to 1900; it was a campaign strategy. At the Social Democratic Party convention that March, a Massachusetts delegate nominated Debs as the Party’s Presidential candidate and, in his nominating speech, likened Debs’s time in Woodstock to the Resurrection: “When he came forth from that tomb it was to a resurrection of life and the first message that he gave to his class as he came from his darkened cell was a message of liberty.” Debs earned nearly ninety thousand votes in that year’s election, and more than four times as many when he ran again in 1904. In 1908, he campaigned in thirty-three states, travelling on a custom train called the Red Special. As one story has it, a woman waiting for Debs at a station in Illinois asked, “Is that Debs?” to which another woman replied, “Oh, no, that ain’t Debs—when Debs comes out you’ll think it’s Jesus Christ.”

“This is our year,” Debs said in 1912, and it was, in the sense that nearly a million Americans voted for him for President. But 1912 was also socialism’s year in the sense that both the Democratic and the Republican parties embraced progressive reforms long advocated by socialists (and, for that matter, populists): women’s suffrage, trust-busting, economic reform, maximum-hour and minimum-wage laws, the abolition of child labor, and the direct election of U.S. senators. As Debs could likely perceive a couple of years later, when the Great War broke out in Europe, 1912 was to be socialism’s high-water mark in the United States. “You may hasten Socialism,” he said, “you may retard it, but you cannot stop it.” Except that socialism had already done most of what it would do in the United States in those decades: it had reformed the two major parties.

Debs was too sick to run in 1916. The United States declared war on Germany in April, 1917; the Bolshevik Revolution swept Russia that November. Debs spoke out against the war as soon as it began. “I am opposed to every war but one,” he said. “I am for that war with heart and soul, and that is the world-wide war of the social revolution. In that war I am prepared to fight in any way the ruling class may make necessary, even to the barricades.” Bernie Sanders recorded this speech for his 1979 documentary. And, as a member of the Senate, Sanders said it again. “There is a war going on in this country,” he declared on the floor of the Senate in 2010, in a speech of protest that lasted more than eight hours. “I am not referring to the war in Iraq or the war in Afghanistan. I am talking about a war being waged by some of the wealthiest and most powerful people against working families, against the disappearing and shrinking middle class of our country.”

After Debs, socialism endured in the six-time Presidential candidacy of his

successor, Norman Thomas. But it endured far more significantly in Progressive-era reforms, in the New Deal, and in Lyndon Johnson's Great Society. In the decades since Ronald Reagan's election in 1980, many of those reforms have been undone, monopolies have risen again, and income inequality has spiked back up to where it was in Debs's lifetime. Socialism has been carried into the twenty-first century by way of Sanders, a Debs disciple, and by way of the utter failure of the two-party system. Last summer, a Gallup poll found that more Democrats view socialism favorably than view capitalism favorably. This brand of socialism has its own obsession with manliness, with its "Bernie bros" and allegations by women who worked on Sanders's 2016 Presidential campaign of widespread sexual harassment and violence. Sanders's campaign manager, Jeff Weaver, recently addressed some of these charges: "Was it too male? Yes. Was it too white? Yes." Hence the movement's new face, and new voice: the former Sanders campaign worker Alexandria Ocasio-Cortez.

Debs wrote its manifesto, but there's a certain timidity to the new socialism. It lacks sand. In 1894, one Pullman worker stated the nature of the problem: "We are born in a Pullman house, fed from the Pullman shops, taught in the Pullman school, catechized in the Pullman Church, and when we die we shall go to the Pullman Hell." We live in Amazon houses and eat Amazon groceries and read Amazon newspapers and when we die we shall go to an Amazon Hell. In the meantime, you can buy your Bernie 2020 hats and A.O.C. T-shirts on . . . Amazon.

**D**ebs was arrested in Cleveland in 1918, under the terms of the 1917 Espionage Act, for a speech protesting the war that he had given two



weeks earlier, on June 16th, in Canton, Ohio. “DEBS INVITES ARREST,” the *Washington Post* announced. Most of the nation’s newspapers described him as a dictator or a traitor, or both. And, because what he had said was deemed seditious, newspapers couldn’t print it, and readers assumed the worst. But the speech was vintage Debs, from its vague blandishments and programmatic promises—“We are going to destroy all enslaving and degrading capitalist institutions and re-create them as free and humanizing institutions”—to its astute observations and forceful repetitions: “The working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war.”

Debs was one of thousands of socialists jailed during the First World War and the Red Scare that followed, when the Justice Department effectively tried to outlaw socialism. His defense attorney compared him to Christ—“You shall know him by his works”—and called no one to the stand but Debs, who, during a two-hour oration, talked less about socialism than about the First Amendment. “I believe in free speech, in war as well as in peace,” Debs told the court. “If the Espionage Law stands, then the Constitution of the United States is dead.”

The socialist Max Eastman, watching him speak that day, described Debs’s growing fervor. “His utterance became more clear and piercing, and it made the simplicity of his faith seem almost like a portent,” Eastman wrote. But it’s the speech Debs gave during his sentencing that would be his best-remembered address, his American creed: “While there is a lower class, I am in it; while there is a criminal element, I am of it; while there is a soul in prison, I am not free.”

After being sentenced to ten years, he was taken, by train, from Cleveland to a prison in West Virginia, where he was held for two months before being transferred to the much harsher Atlanta Federal Penitentiary. On the wall of a cell that he shared with five other men, he hung a picture of Jesus, wearing his crown of thorns. Refusing to ask for or accept special treatment, he was confined to his cell for fourteen hours a day and was allotted twenty minutes a day in the prison yard. He wore a rough denim uniform. He ate food barely fit to eat. He grew gaunt and weak.

Debs came to think about the men he met in prison the way he'd once thought about men he'd worked with on the railroad. "A prison is a cross section of society in which every human strain is clearly revealed," he wrote in a memoir called "Walls and Bars." But, if the railroad was a model of hierarchy, prison was a model of equality: "We were all on a dead level there."

He became an American folk hero, a champion of free speech. In his "from the jail house to the White House" campaign, in 1920, he earned nearly a million votes running for President as Convict No. 9653. But a vote for Debs in 1920 was not a vote for socialism; it was a vote for free speech.

Convict No. 9653 refused to ask for a pardon, even as he grew sicker, and leaner, and weaker. His reputation as a twentieth-century Christ grew. (Kurt Vonnegut's much beset narrator in "Hocus Pocus" says, "I am so powerless and despised now that the man I am named after, Eugene Debs, if he were still alive, might at last be somewhat fond of me.") His supporters began holding Free Debs rallies. President Woodrow Wilson refused to answer calls for amnesty. Warren Harding finally released him, on Christmas Day, 1921. Debs never recovered. He lived much of what remained of his life in a sanatorium. In

1925, he said that the Socialist Party was “as near a corpse as a thing can be.” He died the next year.

Debs understood capitalism best on a train, socialism best in prison. One of the last letters he wrote was to the judge who had sentenced him in 1918, asking whether his conviction had left him disenfranchised or whether he still had the right to vote. ♦

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