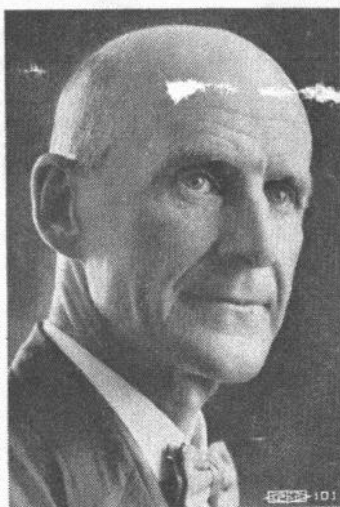


THE DEBS CASE

A COMPLETE HISTORY



EUGENE V. DEBS

Price 35 cents

THE NATIONAL SOCIALIST OFFICE
803 West Madison Street ::: Chicago, Illinois

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pamphlet

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EXPLANATION.

For those not familiar with legal procedure it should be said that it is necessary in presenting a case for review in the Supreme Court to file a printed record, which contains all the material evidence and all the many pages of formal statements which constitutes the ritualism of courts. With this it is necessary to file a brief containing the material points relied upon, with decisions of the courts bearing upon the contentions made. The brief in this case contains the evidence more fully than is the usual practice and in this copy for circulation the added address of Mr. Debs to the jury and his statement to the court: "Why sentence should not be passed upon him," and the statement of the court in passing sentence.

It will be noticed in this brief that we are not contending that the Espionage Law is unconstitutional, but that the method of applying it constitutes a violation of the constitution. It is the contention of the government attorneys that any language which would cause a man to DISAPPROVE a law or policy may incline him to disobey it, and *this* constitutes an offense. This construction destroys all right of argument, speech, writing, sign or symbol, pointing out the iniquities, the *vice*, and *injustice* of *proposed laws*, or existing laws, or proposed and existing policies, or the efficiency and value of public "service" departments.

If a jury or a court can speculate upon the effect of an address criticizing a government department or policy or law and punish the writer or speaker because it may affect and convince the mind of men who are in the service or about to enter it, then no matter how specious the plea or plausible the opinion of the courts to justify it, *civil liberty is dead*.

The courts whose power was feared so much by Thomas Jefferson, have, by their construction of this act, torn from the Federal Constitution the first amendment to the Bill of Rights. That lawyers and laymen may see the merit of our contention and the danger threatening we have issued this special edition for general distribution.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

No. 714.

EUGENE V. DEBS,
Plaintiff in Error.

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

In Error to District Court of the United States
for the Northern District of Ohio.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

(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).

SPÉECH 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 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 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 employees 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.

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 Many 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. Krafft*, 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. Pat-ten*, 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 violant 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.

* * * * *

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?

* * * * *

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 Cooley (*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."

It is our contention that Congress is without power to pass any act in the nature of a sedition act, therefore we enter into no detailed comparison of the present Espionage Act with the Sedition Law of 1797. Yet, since the same principle is involved, it is interesting to note the grounds upon which the eminent lawyers of that time contested the constitutional validity of that enactment. Although war with France was in preparation at that time, it was never argued that the power to control discussion existed as an incident of the war power. Mainly, in favor of the law, it was argued that the common law was part of the law of the United States, a contention long since disposed of. The most careful statement of the relation of the Sedition Law to the implied powers of Congress is that of James Madison, in his famous report of the Virginia Legislature (Elliott's Debates, IV; also, Virginia and Kentucky Resolutions, same volume).

* * * * *

In the *Milligan* case, 71 U. S. 2, this court made clear the unchanged status of the Bill of Rights during time of war. Quoting the eloquent language of Mr. Justice Davis:

“Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arrive, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with

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."

* * * * *

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-

ties 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 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. 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 repetition 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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ARGUMENT OF EUGENE V. DEBS.

MAY 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.

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 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.

I am charged in the indictment, first, that I did willfully cause and attempt to cause or incite insubordination, mutiny, disloyalty and refusal of duty within the military forces of the United States; that I did obstruct and attempt to obstruct the recruiting and enlistment service of the United States. I am charged also with uttering words intended to bring into contempt and disrepute the form of government of the United States, the Constitution of the United States, the military forces of the United States, the flag of the United States and the uniform of the army and navy.

The Court: Mr. Debs, permit me to say that the last charge which you have read to the jury has been withdrawn from their consideration by the court.

Mr. Debs: Pardon me. I was not aware of that.

The Court: I directed a verdict of "not guilty" as to that charge.

Mr. Debs: I am accused further of uttering words intended to procure and incite resistance to the United States and to promote the cause of the imperial German Government. * * *

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. There were two distinct reports. They vary somewhat but they are agreed upon all of the material statements embodied in that 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.

From what you heard in the address of 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 education, 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 form of government. 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 social democracy.

In the course of the speech that resulted in this indictment, I am charged with having expressed sympathy for Kate Richards O'Hare, for Rose Pastor Stokes, for Ruthenberg, Wagenknecht and Baker. I did express my perfect sympathy with these comrades of mine. I have known them for many years. I have every reason to believe in their integrity, every reason to look upon them with respect, with confidence and with approval.

Kate Richards O'Hare never uttered the words imputed to her in the report. The words are perfectly brutal. She is not capable of using such language. I know that through all of the years of her life she has worked in the interests of the suffering, struggling, poor, that she has consecrated all of her energies, all of her abilities, to their betterment. The same is true of Rose Pastor Stokes. Through all of her life she has been on the side of the oppressed and downtrodden. If she were so inclined she might occupy a place of ease. She might enjoy all of the comforts and pleasures of life.

Instead of this, she has renounced them all. She has taken her place among the poor, and there she has worked with all of her ability, all of her energy, to make it possible for them to enjoy a little more of the comfort of life. * * *

I said that if these women whom I have known all of these years—that if they were criminals, if they ought to go to the penitentiary, then I too am a criminal, and I too ought to be sent to prison. I have not a word to retract—not one. I uttered the truth. I made no statement in that speech that I am not prepared to prove. If there is a single falsehood in it, it has not been exposed. If there is a single statement in it that will not bear the light of truth, I will retract it. I will make all of the reparation in my power. But if what I said is true, and I believe it is, then whatever fate or fortune may have in store for me I shall preserve inviolate the integrity of my soul and stand by it to the end.

When I said what I did about the three comrades of mine who are in the workhouse at Canton, I had in mind what they had been ever since I have known them in the service of the working class. I had in mind the fact that these three workingmen had just a little while before had their hands cuffed and were strung up in that prison house for eight hours at a time until they fell to the floor fainting from exhaustion. And this because they had refused to do some menial, filthy services that were an insult to their dignity and their manhood.

I have been accused of expressing sympathy for the Bolsheviks of Russia. I plead guilty to the charge. I have read a great deal about the Bolsheviks of Russia that is not true. I happen to know of my own knowledge that they have been grossly misrepresented by the press of this country. Who are these much-maligned revolu-

tionists of Russia? For years they had been the victims of a brutal Czar. They and their antecedents were sent to Siberia, lashed with a knout, if they even dreamed of freedom. At last the hour struck for a great change. The revolution came. The Czar was overthrown and his infamous regime ended. What followed? The common people of Russia came into power, the peasants, the toilers, the soldiers, and they proceeded as best they could to establish a government of the people.

District Attorney Wertz: If the court please, I would like to ask the court to instruct the defendant that his arguments are to be confined to the evidence in the case. There isn't any evidence in this case about the Bolsheviki at all or the Russian revolution.

The Court: I think I will permit the defendant to proceed in his own way. Of course, you are not a lawyer, Mr. Debs. The usual rule is that the remarks of counsel should be confined to the testimony in the case, but it does not forbid counsel from making references to facts or matters of general public history or notoriety by way of illustrating your arguments and comments upon the testimony in the case. So I will permit you to proceed in your own way.

Mr. Debs: Thank you. It may be that the much-despised Bolsheviki may fail at last, but let me say to you that they have written a chapter of glorious history. It will stand to their eternal credit. The leaders are now denounced as criminals and outlaws. Let me remind you that there was a time when George Washington, who is now revered as the father of his country, was denounced as a disloyalist, when Sam Adams, who is known to us as the father of the American Revolution, was condemned as an incendiary, and Patrick Henry, who delivered that inspired and inspiring ora-

tion, that aroused the colonists, was condemned as a traitor.

They were misunderstood at the time. They stood true to themselves, and they won an immortality of gratitude and glory. * * *

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.

I have been accused of having obstructed 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 man, even to save my own.

Men talk about holy wars. There are none. Let me remind you that it was Benjamin Franklin who said, "There never was a good war or a bad peace."

Napoleon Bonaparte was a high authority upon the subject of war. And when in his last days he was chained to the rock at St. Helena, when he felt the skeleton hand of death reaching for him, he cried out in horror, "War is the trade of savages and barbarians."

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 any one else or at the command of any power on earth?

Twenty centuries ago there was one appeared upon earth we know as the Prince of Peace. He issued a command in which I believe. He said, "Love one another." He did not say, "Kill one another," but "Love one another." He espoused the cause of the suffering poor—just as Rose Pastor Stokes did, just as Kate Richards O'Hare did—and the poor heard him gladly. It was not long before he aroused the ill-will and the hatred of the usurers, the money changers, the profiteers, the high priests, the lawyers, the judges, the merchants, the bankers—in a word, the ruling class. They said of him just what the ruling class says of the Socialist today, "He is preaching dangerous doctrine. He is inciting the common rabble. He is a menace to peace and order." And they had him arraigned, tried, convicted, condemned, and they had his quivering body spiked to the gates of Jerusalem.

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 same penalty.

A century and a half ago, when the American colonists were still foreign subjects, 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. They had been taught to believe that to say a word against the king, to question his so-called divine right, was sinful. There were ministers opened their Bibles to prove that it was the patriotic duty of the people to loyally serve and support the king. 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. You can remember that it was Franklin who said to his compeers, "We have now to hang together or we'll hang separately bye and bye." And if the Revolution had failed, the revolutionary fathers would have been executed as felons. But it did not fail. Revolutions have a habit of succeeding, when the time comes for them. The revolutionary forefathers were opposed to the form of government in their day. They were opposed to the social system of their time. They were denounced, they were condemned. 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. The world does not know they ever lived.

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. It became all-powerful. It controlled the president, both branches of Congress, the Supreme Court, the press and, to a very large extent the pulpit. All of the organized forces of society, all the pow-

ers of government, upheld chattel slavery in that day. And again a few rebels appeared. One of them was Elijah Lovejoy. Elijah Lovejoy was as much despised in his day as are the leaders of the I. W. W. in our day. Elijah Lovejoy was murdered in cold blood in 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 in part, at least, from his own eloquent lips just a little while before they were silenced in death.

William Lloyd Garrison, Garrett Smith, Thaddeus 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 and producing masses who are gradually becoming conscious of their interest, 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.

It is because I happen to be in this minority that I stand in your presence today, charged with crime. It is because I believe as the revolutionary fathers believed in their day, that a change was due in the interests of the

people, that the time had come for a better form of government, an improved system, a higher social order, a nobler humanity and a grander civilization. This minority that is so much misunderstood and so bitterly maligned, is in alliance with the forces of evolution, and as certain as I stand before you this afternoon, it is but a question of time until this minority will become the conquering majority and inaugurate the greatest change in all of the history of the world. You may hasten the change; you may retard it; you can no more prevent it than you can prevent the coming of the sunrise on the morrow. * * *

My friend, the assistant prosecutor, doesn't like what I had to say in my speech about internationalism. What is there objectionable to internationalism? If we had internationalism there would be no war. I believe in patriotism. I have never uttered a word against the flag. I love the flag as a symbol of freedom. I object only when that flag is prostituted to base purposes, to sordid ends, by those who, in the name of patriotism, would keep the people in subjection.

I believe, however, in a wider patriotism. Thomas Paine said, "My country is the world. To do good is my religion." Garrison said, "My country is the world and all mankind are my countrymen." That is the essence of internationalism. I believe in it with all of my heart. I believe that nations have been pitted against nations long enough in hatred, in strife, in warfare. I believe there ought to be a bond of unity between all of these nations. I believe that the human race consists of one great family. I love the people of this country, but I don't hate the people of any country on earth—not even the Germans. I refuse to hate a human being because he happens to be born in some other country.

Why should I? To me it does not make any difference where he was born or what the color of his skin may be. Like myself he is the image of his creator. He is a human being endowed with the same faculties, he has the same aspirations, he is entitled to the same rights, and I would infinitely rather serve him and love him than to hate him and kill him.

We hear a great deal about human brotherhood,—a beautiful and inspiring theme. It is preached from a countless number of pulpits. It is vain for us to preach of human brotherhood while we tolerate this social system in which we are a mass of warring units, in which millions of workers have to fight one another for jobs, and millions of business men and professional men have to fight one another for trade, for practice—in which we have individual interests and each is striving to care for himself alone without reference to his fellow men. Human brotherhood is yet to be realized in this world. It never can be under the capitalist-competitive system in which we live.

Yes; I was opposed to the war. I am perfectly willing, on that count, to be branded as a disloyalist, and if it is a crime under the American law punishable by imprisonment for being opposed to human bloodshed, I am perfectly willing to be clothed in the stripes of a convict and to end my days in a prison cell.

If my friends, the attorneys, had known me a little better they might have saved themselves some trouble in procuring evidence to prove certain things against me which I have not the slightest inclination to deny, but rather, upon the other hand, I have a very considerable pride in.

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 re-statement. 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 re-statement. 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. That 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. * * *

Now, the Republican and Democratic parties hold their conventions from time to time. They revise their platforms and their declarations. They do not repudiate previous platforms. Nor is it necessary. With the change of conditions these platforms are outgrown and others take their places. I was not in the convention, but I believed in that platform. I do today. But from the beginning of the war to this day, I have never, by word or act, been guilty of the charges that are em-

braced in this indictment. If I have criticised, if I have ever 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 opposed, 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. And that is what they were under the divine right of a king to rule men.

The War of 1812 was opposed and condemned; the Mexican War was bitterly condemned by Abraham Lincoln, by Charles Sumner, by Daniel Webster and by Henry Clay. That war took place under the Polk administration. 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 the 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 that 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 biggest 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 do not go as far as Wendell Phillips did. Wendell Phillips said that the glory of free men is that they trampled unjust laws under their feet. That is how they repealed them. If a human being submits to having his lips sealed, to be in silence reduced to vassalage, he may have all else, but he is still lacking in all that dignifies and glorifies real manhood.

Now, notwithstanding this fundamental provision in the national law, Socialists' meetings have been broken up all over this country. Socialist speakers have been arrested by hundreds and flung into jail, where many of them are lying now. In some cases not even a charge

was lodged against them, guilty of absolutely no crime except the crime of attempting to exercise the right guaranteed to them by the Constitution of the United States.

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.

(To the Court): Your Honor, I don't know whether I would be in order to quote from a book I hold in my hand, called "The New Freedom," by Woodrow Wilson, president of the United States.

The Court: I will grant you that permission.

Mr. Debs: I want to show the gentlemen of the jury, if I can, that every statement I made in my Canton speech is borne out in this book by Woodrow Wilson, called "The New Freedom." It consists of his campaign speeches while a candidate for the presidency. Of course he uses different language than I did, for he is a college professor. He is an educated gentleman. I never had a chance to get an education. I had to go to work in my childhood. I want to show you that the statement made by Rose Pastor Stokes, for which she has been convicted, and the approval of which has brought condemnation upon me, is substantially the same statement as made by Mr. Wilson when he was a candidate for the presidency of the United States.

(Reading): "Today, when our government has so far passed into the hands of special interests; today, when

the doctrine is implicitly avowed that only select classes have the equipment necessary for carrying on government; today, when so many conscientious citizens, smitten with the scene of social wrong and suffering, have fallen victims to the fallacy that benevolent government can be meted out to the people by kind-hearted trustees of prosperity and guardians of the welfare of dutiful employes,—today, supremely, does it behoove this nation to remember that a people shall be saved by the power that sleeps in its own deep bosom, or by none; shall be renewed in hope, in conscience, in strength, by waters welling up from its own sweet, perennial springs.”

* * * * *

So this government has passed into the hands of special interests. Rose Pastor Stokes' language is somewhat different. Instead of "special interests" she said "profiteers." She said that a government that was for the profiteers could not be for the people, and that as long as the government was for the profiteers, she was for the people. That is the statement that I endorsed, approved and believed in with all my heart. The president of the United States tells us that our government has passed into the control of special interests. When we Socialists make the same contention, we are branded as disloyalists, and we are indicted as criminals. But that is not all, nor nearly all.

(Reading): "There are, of course, Americans who have not yet heard that anything is going on. The circus might come to town, have the big parade and go, without their catching a sight of the camels or a note of the calliope. There are people, even Americans, who never move themselves or know that anything else is moving."

Just one other quotation. (Reading): "For a long time this country of ours has lacked one of the institutions which freemen have always and everywhere held fundamental. For a long time there has been no sufficient opportunity of counsel among the people; no place and method of talk, of exchange of opinion, of parley. Communities have outgrown the folk-moot and the town-meeting. Congress, in accordance with the genius of the land, which asks for action and is impatient of words,—Congress has become an institution which does its work in the privacy of committee rooms and not on the floor of the chamber; a body that makes laws,—a legislature; not a body that debates,—not a parliament. Party conventions afford little or no opportunity for discussion; platforms are privately manufactured and adopted with a whoop. It is partly because citizens have foregone the taking of counsel together that the unholy alliances of bosses and Big Business have been able to assume to govern for us.

"I conceive it to be one of the needs of the hour to restore the processes of common counsel, and to substitute them for the processes of private arrangement which now determine the policies of cities, states, and nation. We must learn, we freemen, to meet, as our fathers did, somehow, somewhere, for consultation. There must be discussion and debate, in which all freely participate."

Well, there has been something said in connection with this about profiteering—in connection with this indictment.

(To the Court): Would it be in order for me to read a brief statement, showing to what extent profiteering has been carried on during the last three years?

The Court: No. There would be no consensus of opinion or agreement upon that statement. It is a matter that is not really in the case, and when you go to compile a statement, you are then undertaking to assume something without producing evidence to substantiate it.

Mr. Debs: Now, in the course of this proceeding you, gentlemen, have perhaps drawn the inference that I am pro-German, in the sense that I have any 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 any one could 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 of my life. I know that the Kaiser incarnates all there is of brute force and of murder. And yet I would not, if I had the power, kill the Kaiser. I would do to him what Thomas Paine wanted to do to the king of England. He said, "Destroy the king, but save the man."

The thing that the Kaiser embodies and incarnates, called militarism, I would, if I could, wipe from the face of the earth,—not only the militarism of Germany, but the militarism of the whole world. I am quite well aware of the fact that the war now deluging the world with blood was precipitated there. Not by the German people, but by the class that rules, oppresses, robs and degrades the German people. President Wilson has repeatedly said that we were not making war on the Ger-

man people, and yet in war it is the people who are slain, and not the rulers who are responsible for the war. * * *

With every drop in my veins I despise kaiserism, and all that kaiserism expresses and implies. I have sympathy with the suffering, struggling 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. It is precisely at this point that we come to realize that there is a reason why the peoples of the various nations are pitted against each other in brutal warfare instead of being united in one all-embracing brotherhood.

War does not come by chance. War is not the result of accident. There is a definite cause for war, especially a modern war. The war that began in Europe can readily be accounted for. For the last forty years, under this international capitalist system, this exploiting system, these various nations of Europe have been preparing for the inevitable. And why? In all these nations the great industries are owned by a relatively small class. They are operated for the profit of that class. And great abundance is produced by the workers; but their wages will only buy back a small part of their product. What is the result? They have a vast surplus on hand; they have got to export it; they have got to find a foreign market for it. As a result of this these nations are pitted against each other. They are industrial rivals—competitors. They begin to arm themselves to open, to maintain the market and quickly dispose of their surplus. There is but the one market. All these nations are competitors for it, and sooner or later every war of trade becomes a war of blood.

Now, where there is exploitation there must be some form of militarism to support it. Wherever you find exploitation you find some form of military force. In a smaller way you find it in this country. It was there long before war was declared. For instance, when the miners out in Colorado entered upon a strike about four years ago, the state militia, that is under the control of the Standard Oil Company, marched upon a camp, where the miners and their wives and children were in tents,—and, by the way, a report of this strike was issued by the United States Committee on Industrial Relations. When the soldiers approached the camp at Ludlow, where these miners, with their wives and children, were, the miners, to prove that they were patriotic, placed flags above their tents, and when the state militia, that is paid by Rockefeller and controlled by Rockefeller, swooped down upon that camp, the first thing they did was to shoot those United States flags into tatters. Not one of them was indicted or tried because he was a traitor to his country. Pregnant women were killed, and a number of innocent children slain. This in the United States of America,—the fruit of exploitation. The miners wanted a little more of what they had been producing. But the Standard Oil Company wasn't rich enough. It insisted that all they were entitled to was just enough to keep them in working order. There is slavery for you. And when at last they protested, when they were tormented by hunger, when they saw their children in tatters, they were shot down as if they had been so many vagabond dogs.

And while I am upon this point let me say just another word. Workingmen who organize, and who sometimes commit overt acts, are very oftentimes condemned by those who have no conception of the conditions under which they live. How many men are there, for instance,

who know anything of their own knowledge about how men work in a lumber camp—a logging camp, a turpentine camp? In this report of the United States Commission on Industrial Relations you will find the statement proved that peonage existed in the State of Texas. Out of these conditions springs such a thing as the I. W. W.—when men receive a pittance for their pay, when they work like galley slaves for a wage that barely suffices to keep their protesting souls within their tattered bodies. When they can endure the conditions no longer, and they make some sort of a demonstration, or perhaps commit acts of violence, how quickly are they condemned by those who do not know anything about the conditions under which they work!

Five gentlemen of distinction, among them Professor John Graham Brooks, of Harvard university, said that a word that so fills the world as the I. W. W. must have something in it. It must be investigated. And they did investigate it, each along their own lines, and I wish it were possible for every man and woman in this country to read the result of their investigation. They tell you why and how the I. W. W. was instituted. They tell you, moreover, that the great corporations, such as the Standard Oil Company, such as the Coal Trust, and the Lumber Trust, have, through their agents, committed more crimes against the I. W. W. than the I. W. W. have ever committed against them. * * *

I was asked not long ago if I was in favor of shooting our soldiers in the back. I said, "No, I would not shoot them in the back. I wouldn't shoot them at all. I would not have them shot." Much has been made of a statement that I declared that men were fit for something better than slavery and cannon fodder. I made the statement. I make no attempt to deny it. I meant

exactly what I said. Men are fit for something better than slavery and cannon fodder; and the time will come, though I shall not live to see it, when slavery will be wiped from the earth, and when men will marvel that there ever was a time when men who called themselves civilized rushed upon each other like wild beasts and murdered one another, by methods so cruel and barbarous that they defy the power of man to describe. I can hear the shrieks of the soldiers of Europe in my dreams. I have imagination enough to see a battlefield. I can see it strewn with the legs of human beings, who but yesterday were in the flush and glory of their young manhood. I can see them at even-tide, scattered about in remnants, their limbs torn from their bodies, their eyes gouged out. Yes, I can see them, and I can hear them. I have looked above and beyond this frightful scene. I think of the mothers who are bowed in the shadow of their last great grief—whose hearts are breaking. And I say to myself, "I am going to do the little that lies in my power to wipe from this earth that terrible scourge of war."

If I believed in war I could not be kept out of the first line trenches. I would not be patriotic at long range. I would be honest enough, if I believed in bloodshed, to shed my own. But I do not believe that the shedding of blood bears any actual testimony to patriotism, or leads a country to civilization. On the contrary, I believe that warfare, in all of its forms, is an impeachment of our social order, and a rebuke to our much vaunted Christian civilization.

And now, gentlemen of the jury, I am not going to detain you too long. I wish to admit everything that has been said respecting me from this witness chair. I wish to admit everything that has been charged against me

except what is embraced in the indictment which I have read to you. I cannot take back a word. I can't repudiate a sentence. I stand before you guilty of having made this speech. I stand before you prepared to accept the consequences of what there is embraced in that 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 the verdict.

* * * * *

After four hours' "deliberation" the jury returned a verdict of guilty.

MR. DEBS' STATEMENT 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, 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.

If the law under which I have been convicted is a good law, then there is no reason why sentence should not be pronounced upon me. 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—with just one exception. Your Honor, my sainted mother inspired me with a reverence for womanhood that amounts to worship. I can think with disrespect of no woman; and I can think with respect of no man who can. I resent the manner in which the names of two noble women were bandied with in this court. The levity and the wantonness in this instance were absolutely inexcusable. When I think of what was said in this connection, I feel that when I pass a woman, even though it be a sister of the street, I should take off my hat and apologize to her for being a man.

Your Honor, I have stated in this court that I am opposed to the form of our present government; that I am opposed to the social system in which we live; that I believed in the change of both—but by perfectly peaceable and orderly means.

Let me call your attention to the fact this morning that in this system five per cent of our people own and control two-thirds of our wealth; sixty-five per cent of the people, embracing the working class who produce all wealth, have but five per cent 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. The choice has been deliberately made. I could not have done otherwise. I have no regret.

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, with whom I expect to share my lot until 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 into 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, and their hopes blasted, 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 in 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 life is 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 victim 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 a higher interest of all 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 our modern life.

Your Honor, the five per cent of the people that I have made reference to constitute that element that absolutely rules our country. They privately own all our public necessities. They wear no crowns; they wield sceptres; they sit upon no thrones; and yet they are our economic masters and our political rulers. They control this government and all of its institutions. They control the courts.

And your Honor, if you will permit me, I wish to make just one correction. It was stated here that I had charged that all federal judges are crooks. The charge is absolutely untrue. I did say that all federal judges are appointed through the influence and power of the capitalistic class and not the working class. If that statement is not true, I am more than willing to retract it.

If the five per cent of our people who own and control all of the sources of wealth, all of the nation's industries, all of the means of our common life, it is they who declare war; it is they who make peace; it is they who control our destiny. And so long as this is true, we can make no just claim to being a democratic government—a self-governing people.

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 upon 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 spread over the face of all the earth.

There are today upwards of sixty million 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 night. They are still in the minority. They have learned how to be patient and 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 commonweath—not the destruction of the nation, but, on the contrary, the harmonious co-operation of every nation with every other nation on earth. In that day war will curse this earth no more.

I have been accused, your Honor, of being an enemy of the soldier. I hope I am laying no flattering unction to my soul when I say that I don't believe the soldier has a more sympathetic friend than I am. If I had my way

there would be no soldier. But I realize the sacrifices they are making, your Honor. I can think of them. I can feel for them. I can sympathize with them. That is one of the reasons why I have been doing what little has been in my power to bring about a condition of affairs in this country worthy of the sacrifices they have made and that they are now making in its behalf.

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 this morning 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 years' 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 men's club."

"Campaign expenditures 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 never will 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. 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 of 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 upon the dial of the universe, and though no bell may beat the glad tidings, the lookout 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, for their kindness, which I shall remember always.

I am prepared to receive your sentence.

United States of America }
 vs.
 Eugene V. Debs. }

WESTHAVER, J.: The defendant in this case has had a trial, so far as I am able to judge, in entire conformity to all of the rules of the American and English law provided for the protection and safety of the lowest as well as the highest individual. It has been a part of my purpose, so far as I could, to see that he had that kind of a trial. It is needless to say that he has had the advantage of counsel, able and devoted counsel, in the preparation of his defense and in the presentation of his case to the jury. They have performed their duty in a manner worthy of the best traditions of the American and English bars. The Court wishes to thank them for the manner in which they performed that duty, both to the defendant and to the Court.

The result of that trial, conducted in a way that has been found adequate throughout the ages to preserve the liberty of all English and American people, is the finding of the defendant guilty.

I appreciate what has been said both by the defendant and by counsel as to the part which the Court has taken in the conduct of the trial. I presided not long ago at another trial in which somewhat of the same arguments and reasons were urged as reasons why the jury should not convict the defendant, notwithstanding the evidence pointed to a plain commission of acts, overt acts, made criminal by the law of the land. Counsel then said that the trial had been fair and that the Court had conducted the proceedings in strict conformity to the law. Yet I cannot but remember that upon the rostrum and in the official organs and pamphlets of the adherents of the defendants who thus spoke in the court rooms, language

was used about the trial and the jury and the Court and the participants in the trial somewhat analogous to the language used by the defendant here in his speech at Canton. I trust that this will not be the future history of this case and of this trial, in the light of what has been said by defendants and counsel here in Court.

Personally, I claim for myself as tender a heart and as warm a sympathy for the down-trodden and oppressed as the defendant does. •

Personally, I have punished no man out of a desire for vindictiveness, or a feeling of revenge.

My conception of the law and of the theory why punishment is inflicted and exacted is, not in order to avenge upon an individual defendant some offense which he has committed against society, but punishment is imposed, according to my conception, in order that the community may be protected against a repetition of similar offenses.

If there was nothing to be considered here in this case except the merits or the demerits of the individual defendant, the duty of the Court would be plain, and it would be discharged in a way somewhat different from that which my conception of my duty requires and impels me to discharge it in this instance.

I have sat upon this bench since the outbreak of this war, and have participated in the administration of the law.

I have been called upon to impose sentence after sentence upon persons who have been brought to the bar of this Court since the outbreak of this war who have offended, and who persist in offending, because of the activities of Mr. Debs and other persons who construe their duty towards society and towards their fellowman as he construes his duty. I sympathize with those people,

and they are people that the defendant does not see, and apparently with which he appears to have, as it seems to me, not the proper amount of sympathy.

I must admit that at times I have felt it difficult to refrain from a strong feeling that I should like to place before the bar of this Court the real offenders in place of those poor, misguided, ignorant, mostly foreign-born persons now resident in the United States, who have been led into their criminal attitude against society, and who have had themselves branded upon the records of the Court as criminals, and who have served terms in the workhouse, because they listened to the leadership and the guidance of persons expressing sentiments such as have been expressed here in this court room this morning.

I see those persons.

The Jury has passed upon the language and words and public utterances of the defendant. The Jury has found the intent with which they were uttered. The Jury found, under the instructions of the Court, that the only natural, and reasonably probable tendency and effect of that language was to cause the hearers and listeners thereof to disregard their duty so far as they were members of the military forces of the United States, to obstruct the recruiting and enlistment service of the United States, and to stir up, encourage and provoke resistance to the United States and to promote the cause of its enemies.

It is, I must say, without intending to reflect upon the intelligence or character of the defendant, a remarkable self-delusion which leads him to believe that when, in a speech as incendiary in character, as violent and vituperative in language, as that upon which he has been indicted and upon which he was found guilty, he is serving

the cause of the down-trodden and the oppressed, or that he is endeavoring to usher in a better day for humanity.

That, however, is in a way aside from that which I am called upon to do in the performance of my duty.

I am a conservator of peace. I hold a commission under the Government of the United States. I do not know whether the defendant in the course of his life has taken an oath to support the Constitution of the United States and to defend it against all enemies, foreign and domestic. I was called upon to take that oath a great many times, and it is an oath that I take seriously, and I trust that some of the foreign born who have been present at this trial take seriously that obligation and the oath to support and defend the Constitution of the United States against all enemies foreign and domestic.

The United States is a nation. It has a right to defend itself. It has a right to defend its national existence against all enemies foreign and domestic, and in defending itself, it has the right to the allegiance of all of those who, by birth or by naturalization, owe that allegiance to the United States as a nation, and who are burdened with the obligation to defend it against all enemies foreign and domestic.

In a time of war, when that nation is defending its life against foreign enemies, the domestic enemy would undertake to strike from the hand of its defender the sword with which the life of the nation is being defended; and that is the practical, actual condition which confronts the country, and which was confronting the country on the 16th day of June, 1918, when the defendant here made his speech in the City of Canton in the State of Ohio.

To me it is a marvel that the defendant has no conception of that condition or of that state of facts when

he stood here and addressed the Jury and as he stands here and addresses the Court. His mind is so constituted that it passes through all those facts as some scientists say the fourth dimension passes through the walls of this court room without taking any note of the existence of those walls.

I can't assume that attitude, and I can't neglect to do my whole duty in the light of that state of facts. The defendant's position before the Court here this morning, as announced to me, while I may appreciate his sincerity, I may admire his courage, but I cannot help but wish that his mind took better note of the facts as they are in this age and in this life; but notwithstanding that, his position here before the Court this morning is: "If this law is a just law or a righteous law, then there is no reason why I should not be punished." That means: "I am guilty of having violated this law; I am guilty of having intentionally violated this law; but I claim for myself, because it is not a righteous and a just law, a power of dispensation whereby I dispense myself and all my followers and all the persons whom my words can reach and influence from any obligation to observe that law at this time."

Call it by whatever name you choose, that is anarchy pure and simple, and it is not, according to all my reading and understanding, socialism. But I pass that with these comments.

I regret that I have been called upon to say as much as I have said. I have always felt averse to taking advantage of the position which I occupy, when anybody is called before me for sentence, to indulge in any remarks at all. I have perceived it to be my duty to not add either to the humiliation or to the mortification of any one upon whom I must pass sentence. Least of all

do I regard that as an occasion when I should indulge in the expression or dissemination of any personal views of my own. I am moved to do this, however, on this occasion by the invitation, as it were, of the defendant himself. I do not regard the idealism of the defendant as expressed by himself as any higher, purer, or nobler, than the ideals and idealism of the thousands upon thousands of young men that I have seen marching down the streets of Cleveland to defend the Constitution and the laws of their country, and its flag, and I can't understand the state of mind of any one who claims any right to dispense anybody from observing any of the laws of the land made for the protection of the public peace in safety while those young men are defending the national life against the common enemy. Any one who strikes the sword from the hand of those young men, either by causing any other young man to refuse to do his duty, that is, to go readily and freely when called to serve by their side, or any one who causes obstruction to the recruiting service by enticing or preventing any other young man from going when duty calls to take his place by their side, such a one does just as much injury and just as much wrong to our country and to each one of those young man as if he were a soldier in the ranks of the German army and would shoot down one of those young men at the front.

Now, in this case, the judgment of this Court will be that under the third count of the indictment the defendant be confined in the penitentiary at Moundsville, West Virginia, for a term of ten years; that under the fourth count of the indictment he be confined to the penitentiary at Moundsville for a term of ten years; that under the seventh count of this indictment he be confined to the penitentiary at Moundsville for a term of ten years; the

sentences upon these three counts to run concurrently and not cumulatively.

The defendant will be remanded into the custody of the Marshal.

Mr. Stedman: If your Honor please, in regard to bail?

The Court: Let us have your petition for error.

The Court: All right. I will dispose of it all at once. On the question of bail, I made an announcement at the end of the hearing or trial that if the motion for a new trial was overruled, I would grant a writ of error, and that I would exercise my discretion favorably to admitting the defendant to bail pending the proceedings on the writ of error. I intimated that because of the attitude of the defendant both before and after and during the trial, I felt that the bail ought to be conditional, and there ought to be the usual conditions that go in the bail bonds.

Mr. Stedman: I might say that we discussed that proposition the other evening and, so far as that is concerned, we have no doubt whatever that what my client agrees to, he will do. That is one thing I am ready to vouch for. And we rather assume that eliminating every reference to the war would probably meet that condition, and, with that in mind, I would like to have it specified, of course, but I assume in speaking on the industrial conditions would not be what your Honor has in mind?

The Court: Well, I would not undertake to censor any speeches or declaration that defendant makes, nor undertake to intimate in advance what he should or should not speak, or what would or would not be within or without the law. It is quite apparent, Mr. Stedman, to the Court that punishment is not a restraining influence so far as the defendant is concerned.

Mr. Stedman: No; but his word is.

The Court: I will accept your statement that that is true, and I have no reason to think otherwise. I am inclined to think that if the property of his friends was put in jeopardy it might have an influence which would restrain him to endeavor at least to comply with the law.

* * * * *

The Court: There is another condition that is usually in the bail bond, Mr. Stedman, that I want you to remember in this connection. Every bail bond requires the defendant to remain within the jurisdiction of the Court.

Mr. Stedman: Yes.

The Court: And not to depart without it without leave of Court. The jurisdiction of this Court is the Northern District of Ohio. I would consent to leave for him to depart without the northern district of Ohio to go to and remain at home, wherever that may be, and where his ordinary business occupation is, but I would not give him leave to depart without the jurisdiction of the Court to conduct a speaking tour of the country. Now, I will fix the bail bond at \$10,000.00, to be given conditioned as required by law. I will give permission to leave the northern district of Ohio only to go to and remain at the home of the defendant.

Mr. Stedman: Well, if he keeps within the understanding which we have in reference to the character of the speech, do you feel that that could not be permitted? I mean where he does not discuss the war at all and simply makes the lecture eliminating that completely.

The Court: Do you realize, Mr. Stedman, and does the defendant realize, that he has been convicted of a grievous crime against the laws of this country, that he is under sentence, that he has no Constitutional right to be out on bail pending error proceedings to reverse that sen-

tence, and that it is an exercise of the discretion of the Court in his favor?

Mr. Stedman: Yes.

Mr. Stedman: I think the same sureties are here who were on before.

The Court: The Clerk found them sufficient, I believe, and that is for the clerk to determine. That may be taken care of in the Clerk's office.

You may adjourn court.

* * * * *

THE UNITED STATES SUPREME COURT
DECISION.

SUPREME COURT OF THE UNITED STATES.

No. 714.—OCTOBER TERM, 1918.

Eugene V. Debs, Plaintiff in Error, } In Error to the District
vs. } Court of the United
The United States of America. } States for the North-
[March 10, 1919.] } ern District of Ohio.

Mr. Justice HOLMES delivered the opinion of the Court.

This is an indictment under the Espionage Act of June 15, 1917, c. 30, § 3, as amended by the Act of May 16, 1918, c. 75, § 1, 40 Stat.—. It has been cut down to two counts, originally the third and fourth. The former of these alleges that on or about June 16, 1918, at Canton, Ohio, the defendant caused and incited and attempted to cause and incite insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States and with intent so to do delivered, to an assembly of people, a public speech, set forth. The fourth count alleges that he obstructed and attempted to obstruct the recruiting and enlistment service of the United States and to that end and with that intent delivered the same speech, again set forth. There was a demurrer to the indictment on the ground that the status is unconstitutional as interfering with free speech, contrary to the First Amendment, and to the several counts as insufficiently stating the supposed offence. This was overruled, subject to exception. There were other exceptions to the admission of evidence with which we shall deal. The defendant was found guilty and was sentenced to ten years' imprisonment.

onment on each of the two counts, the punishment to run concurrently on both.

The main theme of the speech was socialism, its growth, and a prophecy of its ultimate success. With that we have nothing to do, but if a part or the manifest intent of the more general utterances was to encourage those present to obstruct the recruiting service and if in passages such encouragement was directly given, the immunity of the general theme may not be enough to protect the speech. The speaker began by saying that he had just returned from a visit to the workhouse in the neighborhood where three of their most loyal comrades were paying the penalty for their devotion to the working class—these being Wagenknecht, Baker and Ruthenberg, who had been convicted of aiding and abetting another in failing to register for the draft. *Ruthenberg v. United States*, 245 U. S. 480. He said that he had to be prudent and might not be able to say all that he thought, thus intimating to his hearers that they might infer that he meant more, but he did say that those persons were paying the penalty for standing erect and for seeking to pave the way to better conditions for all mankind. Later he added further eulogies and said that he was proud of them. He then expressed opposition to Prussian militarism in a way that naturally might have been thought to be intended to include the mode of proceeding in the United States.

After considerable discourse that it is unnecessary to follow, he took up the case of Kate Richards O'Hare, convicted of obstructing the enlistment service, praised her for her loyalty to socialism and otherwise, and said that she was convicted on false testimony, under a ruling that would seem incredible to him if he had not had some experience with a Federal Court. We mention this passage

simply for its connection with evidence put in at the trial. The defendant spoke of other cases, and then, after dealing with Russia, said that the master class has always declared the war and the subject class has always fought the battles—that the subject class has had nothing to gain and all to lose, including their lives; that the working class, who furnish the corpses, have never yet had a voice in declaring war and have never yet had a voice in declaring peace. ‘You have your lives to lose; you certainly ought to have the right to declare war if you consider a war necessary.’ The defendant next mentioned Rose Pastor Stokes, convicted of attempting to cause insubordination and refusal of duty in the military forces of the United States and obstructing the recruiting service. He said that 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; that she had said no more than the speaker had said that afternoon; that if she was guilty so was he, and that he would not be cowardly enough to plead his innocence; but that her message that opened the eyes of the people must be suppressed, and so after a mock trial before a packed jury and a corporation tool on the bench, she was sent to the penitentiary for ten years.

There followed personal experiences and illustrations of the growth of socialism, a glorification of minorities, and a prophecy of the success of the international socialist crusade, with the interjection that “you need to know that you are fit for something better than slavery and cannon fodder.” The rest of the discourse had only the indirect though not necessarily ineffective bearing on the offences alleged that is to be found in the usual contrasts between capitalists and laboring men, sneers at the advice to cultivate war gardens, attribution to plutocrats of the high price of coal, &c., with the implication running

through it all that the working men are not concerned in the war, and a final exhortation "Don't worry about the charge of treason to your masters; but be concerned about the treason that involves yourselves." The defendant addressed the jury himself, and while contending that his speech did not warrant the charges said "I have been accused of obstructing the war. I admit it. Gentlemen, I abhor war. I would oppose the war if I stood alone." The statement was not necessary to warrant the jury in finding that one purpose of the speech, whether incidental or not does not matter, was to oppose not only war in general but this war, and that the opposition was so expressed that its natural and intended effect would be to obstruct recruiting. If that was intended and if, in all the circumstances, that would be its probable effect, it would not be protected by reason of its being part of a general program and expressions of a general and conscientious belief.

The chief defenses upon which the defendant seemed willing to rely were the denial that we have dealt with and that based upon the First Amendment to the Constitution, disposed of in *Schenck v. United States*, ante. His counsel questioned the sufficiency of the indictment. It is sufficient in form. *Frohwerk v. United States*, ante. The most important question that remains is raised by the admission in evidence of the record of the conviction of Ruthenberg, Wagenknecht and Baker, Rose Pastor Stokes, and Kate Richards O'Hare. The defendant purported to understand the grounds on which these persons were imprisoned and it was proper to show what those grounds were in order to show what he was talking about, to explain the true import of his expression of sympathy and to throw light on the intent of the address, so far as the present matter is concerned.

There was introduced also an 'Anti-war Proclamation and Program' adopted at St. Louis in April, 1917, coupled with testimony that about an hour before his speech the defendant had stated that he approved of that platform in spirit and in substance. The defendant referred to it in his address to the jury, seemingly with satisfaction and willingness that it should be considered in evidence. But his counsel objected and has argued against its admissibility, at some length. This document contained the usual suggestion that capitalism was the cause of the war and that our entrance into it 'was instigated by the predatory capitalists in the United States.' It alleged that the war of the United States against Germany could not "be justified even on the plea that it is a war in defense of American rights or American 'honor'." It said "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 all modern history there has been no war more unjustifiable than the war in which we are about to engage." Its first recommendation was, "continuous, active, and public opposition to the war, through demonstrations, mass petitions, and all other means within our power." Evidence that the defendant accepted this view and this declaration of his duties at the time that he made his speech is evidence that if in that speech he used words tending to obstruct the recruiting service he meant that they should have that effect. The principle is too well established and too manifestly good sense to need citation of the books. We should add that the jury were most carefully instructed that they could not find the defendant guilty for advocacy of any of his opinions unless the words used had as their natural tendency and reasonably probable effect to obstruct the recruiting service, &c.,

and unless the defendant had the specific intent to do so in his mind.

Without going into further particulars we are of the opinion that the verdict on the fourth count, for obstructing and attempting to obstruct the recruiting service of the United States, must be sustained. Therefore it is less important to consider whether that upon the third count, for causing and attempting to cause insubordination, &c., in the military and naval forces, is equally impregnable. The jury were instructed that for the purposes of the statute the persons designated by the Act of May 18, 1917, registered and enrolled under it, and thus subject to be called into the active service, were a part of the military forces of the United States. The Government presents a strong argument from the history of the statutes that the instruction was correct and in accordance with established legislative usage. We see no sufficient reason for differing from the conclusion but think it unnecessary to discuss the question in detail.

Judgment affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.

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