

Reinventing the First Amendment in Wartime Philadelphia

AS AMERICA ENTERED WORLD WAR I in April 1917 “to keep the world safe for democracy,” the Wilson administration began a campaign to crush political dissent at home. The targets were leftist groups and individuals, such as the Socialist Party of America, anarchists, labor radicals (Wobblies), antidraft pacifists, and foreign-language newspapers. These had been the administration’s most outspoken antiwar critics, so it was no surprise when federal Justice Department agents used newly acquired war powers to investigate and jail war opponents and virtually shut down the opposition press. For many conservative, middle-class Americans, already feeling threatened by the many immigrants pouring into the country, political movements such as socialism, anarchism, and labor radicalism seemed un-American and even dangerous, dominated by foreigners, with alien, Marxist ideologies that could threaten republican values.

While such fears of foreign influence may have been exaggerated, the Wilson administration was well aware that the country’s vast immigrant populations could pose a problem as America prepared for war. Many came from homelands such as Germany and territories controlled by the Central Powers and would naturally feel sympathy and affection for their land of origin. The administration fretted that immigrants employed in munitions industries or drafted into the American military would be disloyal. Wilson would not tolerate dissent from recent immigrants or any other Americans who opposed the war for whatever reason, fearing that domestic opposition could hurt morale, weaken the nation’s resolve, and cause disaffection among members of the military.¹

The fears that gripped a nation played out in Philadelphia during the war years. Justice Department agents paid visits to the office of the

¹ M. J. Heale, *American Anticommunism: Combating the Enemy Within, 1830–1970* (Baltimore, 1990), 51; Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York, 1979), 27–28; Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime, From the Sedition Act of 1798 to the War on Terrorism* (New York, 2004), 138.

Philadelphia *Tageblatt*, a Socialist, German-language newspaper, which was running articles considered to be too pro-German at a time when America was at war with that country.² Agents came to suspect the newspaper office, at 107 North Sixth Street, was the nerve center of a nationwide conspiracy to publish pro-German propaganda, undermining the American war effort. There was even a report of a German agent in Mexico funneling “regular money contributions” to the paper to support the propaganda outlet.³ Meanwhile, the Philadelphia chapter of the Socialist Party of America conducted an aggressive leaflet campaign protesting wartime conscription. In keeping with the official position of the national party, the Philadelphia Socialists opposed the draft, opposed the war, and opposed Wilson. After war was declared, they stepped up their antidraft campaign, sending opposition leaflets to men who had just been inducted into the army.⁴ For federal agents posted in Philadelphia, the *Tageblatt* and the Socialists had gone too far. To rein in Socialists and members of other dissident groups nationwide, federal authorities used the new tools embodied in the Espionage Act of 1917 and the Sedition Act of 1918. Before the war was over the government prosecuted more than two thousand persons under the acts, resulting in the conviction of more than one thousand.⁵

For civil libertarians, the new Espionage Act and other new wartime measures raised troubling constitutional questions and created a First Amendment controversy not seen since the time of the Alien and Sedition Acts of 1798. It seemed inevitable that the constitutionality of the act would eventually come before the U.S. Supreme Court. Several of the first such espionage cases to reach the Court arose from events involving Socialists in wartime Philadelphia. Collectively, the espionage cases raised a fundamental question: when does political speech during wartime become so dangerous to the republic that the federal government becomes duty bound to suppress it? For the Supreme Court, it would become a question of finding the right balance between protecting the vital interests of a government to wage war and protecting the civil liberties

² Transcript, *United States v. Schaefer et al.*, Records of the U.S. District Court, Eastern District, Pennsylvania, National Archives and Records Administration, Mid Atlantic Region, Philadelphia (NARA-Mid Atlantic).

³ “*Tageblatt* Raid Discloses Plot,” *New York Times*, Sept. 12, 1917.

⁴ Transcript, *United States v. Schenck et al.*, Records of the U.S. District Court, Eastern District, Pennsylvania, NARA-Mid Atlantic.

⁵ Murphy, *World War I and the Origin of Civil Liberties*, 210–11.

of unpopular minorities who questioned the war by exercising their First Amendment rights to free speech. Even for Americans who supported the war, the suppression of war opponents seemed an assault on basic American democratic values. No one found the legal dilemma more vexing than Oliver Wendell Holmes, Supreme Court justice and Civil War veteran. "The question in every case," wrote Holmes, "is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."⁶ These words became the new legal litmus test for determining what was acceptable speech and for a time seemed to resolve the matter for many. But on examination, how does one determine what presents a clear and present danger? Does this formulation allow for a healthy, robust debate about going to war? Could citizens in a democracy with no intent to commit illegal acts honestly raise doubts and challenge government policies without fearing their speech or writings would get them arrested? What was to stop an overzealous prosecutor from finding perils where they did not exist? Even for Holmes, the question of what constituted a clear and present danger was not as cut and dried as he originally believed.⁷

Before the post-World War I espionage cases, the Supreme Court had never really defined what the wartime limits of speech, press, and assembly were under the First Amendment. This left it to the whims of the Congress, the executive branch, and the individual states to define those limits, which oftentimes came down on the side of repression.⁸ Before 1920, civil liberties as embodied in the First Amendment of the U.S. Constitution barely existed. Even the term *civil liberties* did not come into use until the war period.⁹ As journalist Walter Lippmann lamented in 1919 in the pages of the *Atlantic Monthly*, "The traditional liberties of speech and opinion rest on no solid foundation."¹⁰

The war years and beyond would prove to be an especially dark period for civil liberties in cities and towns across America. For stating publicly

⁶ *Schenck v. United States*, 249 U.S. 47 (1919).

⁷ Richard Polenberg, *Fighting Faiths: The Abrams Case, the Supreme Court, and Free Speech* (New York, 1987), 218–28.

⁸ David M. O'Brien, *Constitutional Law and Politics*, vol. 2, *Civil Rights and Civil Liberties* (New York, 1991), 344.

⁹ Murphy, *World War I and the Origin of Civil Liberties*, 154n.

¹⁰ Walter Lippmann, "The Basic Problem of Democracy: What Modern Liberty Means," *Atlantic Monthly*, Nov. 1919, 616.

that President Wilson was crooked and that the war was being fought to benefit Wall Street millionaires, Ves Hall of Montana was arrested and charged with espionage. For telling a young man not to enlist in the Army, stating "that it was all foolishness to send our boys over there to get killed by the thousands, all for the sake of Wall Street," a South Dakota farmer received a five-year prison sentence.¹¹ Antiwar activist Rose Pastor Stokes received a ten-year prison sentence for writing to a St. Louis newspaper that the government should not expect unqualified support for the war. "I am for the people and the government is for the profiteers," she wrote.¹² Eugene V. Debs, national leader of the Socialist Party, received a ten-year sentence after making a speech in Canton, Ohio, defending three jailed Socialists, telling a crowd that the imprisoned Socialists "have come to realize . . . that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world."¹³ These civil liberties issues played out in wartime Philadelphia as well among a handful of Socialists who would help to redefine the meaning of the First Amendment for the twentieth century.

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By the spring of 1917, war with Germany appeared unavoidable. In March, German U-boats sank three American merchant vessels caught in the restricted war zone around Britain. The imperial German government, at war with the Allied governments since 1914, had made good on a threat to resume unrestricted submarine warfare even if it meant sinking vessels of neutral countries like the United States. Two years earlier a U-boat sank the luxury liner *Lusitania* near the Irish coast, killing 1,200, including 128 Americans. As it appeared ever more likely that America would be drawn into the Great War, tolerance for dissent at home evaporated. "If there should be disloyalty," President Wilson warned, "it will be dealt with with a firm hand of stern repression." Members of organized peace groups, antiwar pacifists, and conscription opponents, who had been his outspoken critics during America's neutral period, now risked being labeled as traitors and German sympathizers if they continued to

¹¹ Murphy, *World War I and the Origin of Civil Liberties*, 130.

¹² *Ibid.*, 96.

¹³ Stone, *Perilous Times*, 196.

oppose the war. For the Wilson administration, the time for political debate had passed.¹⁴ America needed to mobilize and raise an army.

In the days after the sinking of American shipping, the city of Philadelphia, like the nation at large, braced for war. On March 28, National Guard units were deployed to guard bridges and munitions plants throughout the state lest they be attacked by pro-German saboteurs.¹⁵ To show its support for the president, on March 31 the city staged a patriotic rally at Independence Square. The crowds, which spilled into nearby Washington Square, included thousands of schoolchildren, college students, and about one hundred gray-haired veterans of the Civil War.¹⁶

Despite the mobilization efforts and the surge of patriotism, Philadelphia Socialists, pacifists, and organized antiwar groups believed they could still avert war if they could just get the ear of the president. The Emergency Peace Federation, a nationwide coalition of antiwar groups, planned to stage a march on Washington on April 2, the day President Wilson was expected to ask Congress to declare war on Germany. A full-page ad, appearing in the *Evening Bulletin* on the same day as the massive Independence Hall rally, urged citizens to board a special Washington-bound train leaving Broad Street Station on April 2 at 7:18 a.m. with stops in West Philadelphia and Wilmington. The "Pacifists' Special," consisting of three coaches, carried several hundred men and women from the Philadelphia area. "Are you going to sit quietly at home and allow Congress to declare war?" the advertisement asked. "Compare the cost of the trip with the cost of one day of war. Can you afford to stay at home?"¹⁷

As part of its antiwar push, the Emergency Peace Federation planned to stage a widely advertised antiwar meeting at Philadelphia's Broad Street Theater at Broad and Spruce streets on Sunday evening, the night before the speech. But the meeting never took place. Shouting through a megaphone, Federation leader John B. Leeds, a Temple University professor, told about two thousand men and women gathered in front of the theater that they would not be permitted inside. The meeting had been canceled by order of William H. Wilson, director of public safety. Fearing

¹⁴ Ibid., 137–38.

¹⁵ William Bell Clark, "Philadelphia and the 28th Division," in *Philadelphia in the World War, 1914–1919* (New York, 1922), 97.

¹⁶ "Philadelphia Joins in Patriotic Rally at Liberty's Shrine," *Evening Bulletin*, Mar. 31, 1917.

¹⁷ "War Is Not Necessary," *Evening Bulletin*, Mar. 31, 1917; "Pacifists' Special Leaves; Several Hundred Aboard," *Evening Bulletin*, Apr. 2, 1917.

antipacifist demonstrators would disrupt the gathering, Wilson announced that such pacifist meetings would be banned through the current crisis. The next day he defended his position, explaining that he had stopped the meeting after examining the peace group's permit to hold the meeting "as a precaution against disorder." When asked if this amounted to repression of free speech, he replied, "I am thoroughly in favor of free speech but the action of the police will be governed solely by the investigation of permits as I have stated." The organizers of the banned meeting vowed to use the courts to appeal the police action, so that a judge could rule whether the police had the right to stop peace meetings.¹⁸ This initial clash between Philadelphia police and antiwar activists was not to be the last.

Despite the best efforts of peace groups to head off war, on April 2 President Wilson asked Congress not only to declare war on Germany, but also to impose a nationwide draft to augment the army and build up the navy to thwart the German U-boat attacks. Even before Congress imposed a draft, recruiting on the downtown streets of Philadelphia was brisk. On March 28, National Guard regiments began their recruiting campaigns.¹⁹ The Naval Coast Defense Reserve opened up recruiting stations throughout downtown Philadelphia, including in Independence Hall.²⁰ The crew of the battleship *Kansas*, docked in Philadelphia, set up a recruiting tent on the east plaza of Philadelphia's massive Victorian City Hall, while the crew from the battleship *Ohio* set up another recruiting stand inside City Hall's courtyard.²¹ The Marine Corps, meanwhile, erected a makeshift recruiting station under a hospital tent at the southwest corner of Broad and Arch streets. The press likened Marine Corps recruiters inside to carnival barkers trying to lure young prospects. "Well, boys, who'll be the first?" a recruiter yelled. "Who wants to join the U.S. Marine Corps? . . . Don't you know that the country is at war? . . . Come on, show your colors. Show your patriotism; nobody loves a submarine, why wait till there is conscription?"²²

The open-air recruiting drew protests as well as recruits. The *Bulletin* reported that "German sympathizers and pacifists," who had been mingling

¹⁸ "Police to Ban All Pacifist Meetings," *Evening Bulletin*, Apr. 2, 1917.

¹⁹ William Bell Clark, "Philadelphia's War Chronology," in *Philadelphia in the World War*, 28.

²⁰ "Independence Hall Recruiting Station," *Evening Bulletin*, Mar. 28, 1917.

²¹ "Philadelphia Crew Needed for *Kansas*," *Evening Bulletin*, Apr. 5, 1917; "Sailors Rout Pacifists about Recruit Stations," *Evening Bulletin*, Apr. 5, 1917.

²² "Rally to Marines! U.S. 'Barkers' Cry," *Evening Bulletin*, Apr. 7, 1917.

about recruiting stations, tried to dissuade men from enlisting. In one instance a well-dressed elderly woman forced her way into the battleship *Kansas* recruiting tent and shouted, "Peace, peace, peace: you are murderers," before making her escape past the crowds assembled around the tent. In another incident, the *Bulletin* reported "an elderly man, of Teutonic cast of countenance, was seen whispering to men in the crowd that surrounded the Ohio recruiting detail in the courtyard, but he quickly left when two husky sailors made their way towards him." Another offender was captured and made to kiss the American flag and was then driven off to the sounds of hoots and jeers.²³ A man who heckled a navy recruiting officer waving an American flag was jumped and beaten into unconsciousness by a crowd attending a recruiting meeting at an Arch Street theater. The crowd attacked the man after he reportedly yelled from the gallery, "Booie, booie, down with the rag." He was jailed after being treated for two black eyes, a smashed nose, cut cheek, and a battered head.²⁴

In the tense days after the president's speech, the nation worried about the loyalty of resident aliens. It was feared German sympathizers and saboteurs would attack obvious military targets, such as munitions factories, arsenals, steel plants, and railroad bridges. As a precaution, units of the First and Third Infantry Regiments of the Pennsylvania National Guard were deployed throughout the state to keep watch on such installations. On April 6, the day Congress formally declared war on Germany, Philadelphia's Mayor Thomas B. Smith released a proclamation in ten languages warning aliens to obey the law.²⁵

Then on April 10, the fears of many were realized. At 9:50 a.m. in Eddystone, Pennsylvania, an industrial suburb of Philadelphia, three explosions ripped apart two buildings of the Eddystone Ammunition Corporation, killing 121 men and women and injuring 300.²⁶ First rescuers to the scene reported finding bodies lying in blood and also body fragments scattered through the site. Many bodies were burned so badly they could not be identified. Others consisted of mere trunks with no arms or legs. Plant officials and government investigators immediately suspected the plant was blown up deliberately, possibly by enemy aliens. Twenty Philadelphia police detectives and federal Justice Department

²³ "Sailors Rout Pacifists about Recruit Stations."

²⁴ "Beaten for Hooting Flags," *Evening Bulletin*, Apr. 7, 1917.

²⁵ Clark, "Philadelphia's War Chronology," 28–29.

²⁶ *Ibid.*, 29.

agents pored over the site, while investigators followed leads involving persons who had been employed at the plant who were “guilty of disloyal talk, if not acts.”²⁷

The Eddystone explosion was not the first incident to raise suspicions about sabotage, nor the last. To give the president additional powers to deal with subversives and saboteurs, Congress introduced the so-called “spy bill.” The new legislation, which mostly dealt with wartime spying and military secrets, included provisions directly pertaining to free-speech issues. The bill that became known as the Espionage Act made it a crime, when the nation was at war, for any person to “make or convey false reports or false statements with intent to interfere” with the military success of the United States or “to promote the success of its enemies,” to “cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States,” or to “obstruct the recruiting or enlistments service of the United States.” One section made it a crime to send through the mail “matter advocating or urging treason, insurrection or forcible resistance to any law of the United States.”²⁸ Congress vigorously debated the measure up to its final passage in June. The administration had urged much stronger language dealing with dissent, including a press censorship provision. “Authority to exercise censorship over the press . . . is absolutely necessary to the public safety,” Wilson told Congress. This provision was defeated on May 31.²⁹ The Espionage Act, which became law on June 15, 1917, gave the Justice Department the power to investigate violations of the act, including draft resistance and failure to register. The investigative arm of the department consisted of U.S. attorneys appointed to various federal districts across the country and a few hundred special agents working for the Bureau of Investigation (BOI), the precursor to the FBI. In the years prior to America’s entry into the war, the federal government’s intelligence community was relatively small. To greatly augment the BOI’s investigative capabilities, the Justice Department used the services of the American Protective League (APL), an organization of volunteer spy catchers who helped the BOI identify draft dodgers, subversives, spies, and would-be saboteurs operating on American soil. In June 1917 the APL consisted of

²⁷ “100 to 150 Men and Girls Killed in Eddystone Explosion,” *Evening Bulletin*, Apr. 10, 1917; “Think Alien Plotters, Using Bomb, Caused Explosion That Killed 116,” and “2 Plot Suspects Nabbed in Camden,” *Evening Bulletin*, Apr. 11, 1917.

²⁸ Stone, *Perilous Times*, 151–52.

²⁹ *Ibid.*, 149.

six hundred locals across the country with a combined membership of 100,000. At its height its membership would reach 250,000.³⁰ When it became clear by 1918 that there were hardly any German saboteurs to be found, APL agents were redeployed to hunt down draft dodgers in various cities, including Philadelphia. Some overzealous members of the APL, believing they were deputy federal agents, accosted men of draft age demanding they produce draft cards and threatening arrest if they could not do so.³¹

Finally, in May, Congress enacted a draft to quickly raise an army over the protests of Socialists, anarchists, and anticonscription organizations across the nation. The new Espionage Act and the Selective Draft Act would put dissent, public protest, and radical political movements on a collision course with the Constitution. Much of this drama would play itself out during the next several months in Philadelphia, where the Constitution and the Bill of Rights were originally framed.

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During the summer of 1917, Philadelphia, like the nation at large, lived up to its reputation as the “workshop of the world” and mobilized for war. A revitalized Cramp shipyard built torpedo boat destroyers, Midvale Steel turned out three-, four-, and five-inch guns for destroyers, and Baldwin Locomotive Works retooled to make artillery shells and railroad gun mounts.³² Once the Selective Draft Act was in place, local city draft boards began inducting troops to meet draft quotas and supply soldiers to the National Army. Amid all this frenzied preparation for war, the Socialist Party of Philadelphia pursued a different agenda. Working out of a storefront office at 1326 Arch Street in the heart of the city’s downtown, party workers continued an anticonscription campaign that would keep them busy through the summer. In accord with the national policies of the Socialist Party, the Philadelphia chapter had printed thousands of anticonscription circulars, for even before America entered the war, the Socialist Party opposed it. Founded in 1901, the party represented a

³⁰ Murphy, *World War I and the Origin of Civil Liberties*, 89–90.

³¹ Harold Melvin Hyman, *To Try Men’s Souls: Loyalty Tests in America History* (Berkeley and Los Angeles, 1959), 289–90.

³² “Ask Exemption of 3,500 Midvale Men,” *Evening Bulletin*, Aug. 27, 1917; “Deny War Plants Harbor Slackers,” *Evening Bulletin*, Aug. 28, 1917; Russell F. Weigley, ed., *Philadelphia: A 300-Year History* (New York, 1982), 558.

coalescence of several early socialist factions, populists, and militant labor union movements. Adopting Marxist principles, the party opposed capitalism while it fought to improve the condition of the workingman. It supported workers' compensation, wage increases and hour reductions, child labor restrictions, safer workplaces, women's suffrage, and the right of workers to organize and to strike. Its progressive social agenda won the party many followers, particularly in midwestern states. During the war years, immigrants living in large American cities came to dominate the party, particularly because of its antiwar position. By 1904, the Socialists were the third largest party in America. In 1917 the party had about 80,000 members, which would expand to 110,000 by 1919.³³

Ironically, the Philadelphia chapter of the Socialist Party, working out of its Arch Street storefront near Broad Street, found itself surrounded by military recruiting offices. The army recruiting station was at 1229 Arch Street, the navy's was at 1310 Arch Street, and the Marine Corps's was at 1409 Arch Street, all within a short walk from party headquarters.³⁴ The presence of the Socialist Party bookstore window, which prominently displayed socialist book titles, literature, and propaganda such as antiwar cartoons, was particularly offensive to a marine lieutenant colonel, who wrote a letter of complaint to the Philadelphia Police Department in April. He specifically complained of the antiwar cartoons, which he found "distinctively inflammatory." He believed the cartoons together with the socialist book titles had a "detrimental effect" on recruiting efforts and should be "eliminated from the public gaze."³⁵

Neither the presence of the military recruiting offices, nor the public displays of patriotism that overtook the city seemed to deter the Socialists. After the selective service law went into effect in June, it became clear that the intent of the local party was to do exactly what the marine lieutenant colonel clearly feared. The Socialist Party executive committee, meeting weekly in the back room of its headquarters, discussed ways to repeal the new conscription law at the national level through legislation and at the local level through an aggressive, grassroots campaign. In order to finance an anticonscription campaign, the committee

³³ Heale, *American Anticommunism*, 65; Stone, *Perilous Times*, 142.

³⁴ "Rally to Marines! U.S. 'Barkers' Cry"; "Recruiting Today Was Briskest Yet," *Evening Bulletin*, Apr. 9, 1917.

³⁵ Letter to Philadelphia Police Department, box 39, folder 3, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals, RG 118, NARA-Mid Atlantic.

sent out appeals to local branch committees to recruit party members and “reliable sympathizers” to raise funds and also “to distribute literature to force publicity and overcome police frame ups.” During its summer campaign to end conscription, the Philadelphia Socialist Party faced persistent police harassment.³⁶

During early July, as the city set up draft boards to meet local induction quotas, Philadelphia police arrested Socialists in two separate incidents for distributing antidraft pamphlets and for conducting a “seditious” meeting. The *Public Ledger* reported that on Thursday evening, July 5, thirty Socialists, “led by a German, invaded West Philadelphia” to circulate antidraft literature door-to-door. That evening, the Socialists, who canvassed around Fifty-fifth and Race streets, were vilified, attacked, and beaten. The trouble began when a young woman approached Frank Moos, who was sitting on his porch, and handed him a leaflet. “She spoke in broken English and asked me if I expected to go to war if drafted,” he said. “When I told her I did, she began a tirade on the president and I ordered her off the porch. She called me a coward and a tool of the capitalists.” Moos went into his house to call the police. When he came back out of his house to chase the woman, he saw other neighbors giving chase to two other women. One lobbed an empty milk bottle at her pursuers. Missing its intended targets, the bottle nearly hit children playing on a lawn. Moos said he later witnessed his neighbors near Race Street pelting the Socialists with bricks and stones. According to the *Public Ledger*, “the female Socialists scratched, bit and kicked and used hat pins as they lunged right and left in an effort to ward off the mob.” Before the disturbance could be contained, some three thousand citizens in an area along Race Street stretching from Fifty-third to Fifty-eighth streets converged on thirty Socialists bearing only leaflets. “Had the police not arrived when they did, someone would surely have been killed,” Moos concluded.³⁷

Police arrested thirteen Socialists and charged them with treason and inciting to riot. The others fled the scene to escape capture. The next day, the arrested Socialists, who were mostly in their twenties, attended a bail hearing before a magistrate named Stevenson and a crowd of angry onlookers. As part of the proceedings, Stevenson wanted to know who

³⁶ Socialist Party of Philadelphia, executive committee minutes, June 18, 1917, box 40, folder 4, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals.

³⁷ “Mob of 3000 Attacks Socialists Who Serve Anti-Draft Circulars,” *Public Ledger*, July 6, 1917.

among the prisoners was an American citizen or held first citizenship papers and who was not naturalized. After each case was heard, the crowd attending the hearing yelled its approval. Towards the end of the proceedings, the crowd became so agitated that all the police attached to the Sixty-first and Thompson streets station had to be mobilized to protect the prisoners. It was reported that a police lieutenant, station house sergeants, and several policemen "battled for the safety of the Socialists." Nine of those held were born in Russia, and Casper Oberstadt, age fifty-nine, the leader of the group, was born in Germany. Four Socialists reportedly told the magistrate they were not American citizens and had no intention of becoming citizens. In response, Stevenson said "they were a fine class of people to try and tell Americans how to act." "Let them stay in Russia!" shouted voices from the crowd.³⁸

In another incident on Friday night, a policeman arrested forty-nine Socialists at the point of a gun after hearing them talk about overthrowing the U.S. government. Officer Joseph L. Miller infiltrated an anticonscription meeting conducted by members of the Young People's Socialist Society in Taylor Hall at Seventh and Dickinson streets. Speaking mostly Yiddish and Russian, members ranted against selective service and at one point vigorously cheered the release of young men who had been arrested on anticonscription charges. When the chairman asked if there was any further business to conduct before closing the meeting, Officer Miller stood up suddenly and said: "Yes. There is further business for all of you down at the station house." Members responded with shouts of "throw him out the window. He is a traitor," and many gathered around Miller shaking their fists. "The first person who moves gets this," Miller said as he placed his hand on his revolver and moved towards a stairway and signaled for a dozen uniformed and plainclothes officers, who came running up the steps.³⁹ The Socialists quietly submitted to arrest without incident, spending the night at three different station houses.

Those arrested were charged with unlawful assembly. By Sunday, a magistrate released the prisoners after federal authorities decided not to prosecute. As the *Bulletin* reported, "federal agents appeared to take the view that the self-appointed prophets and propagandists who permitted themselves to be rounded up like sheep, when Joseph Miller . . . found them babbling against patriotic service, were irresponsible and relatively

³⁸ "13 Socialists Held on Treason Charge," *Evening Bulletin*, July 6, 1917.

³⁹ "Police Take 49 Socialists for Defiance of U.S.," *Public Ledger*, July 8, 1917.

harmless." All of the arrested were aliens. T. Henry Walnut, the assistant U.S. district attorney who represented the federal government at the hearing, reminded them of that fact and warned that "you are aliens and that if occasion arose you would be the first to claim the protection of our courts. . . . The government has been tolerant in the past. Now, I warn you, it is prepared to take definite and drastic action."⁴⁰

In editorials appearing days after the arrests of the Socialists, the *Public Ledger* and the *Bulletin* sided with the government. In response to the arrests of Socialists attacked by a mob for distributing antidraft literature, the *Public Ledger* condemned mob violence but believed that the citizen outrage that turned violent was understandable. Constitutional free-speech guarantees, the paper contended, were limited during national emergencies. The Socialists "take their stand upon the right of the individual to express his opinion—a right which no one disputes in ordinary circumstances, but which is and must be limited by considerations of public welfare and national safety," the editorial stated. "With intemperate and seditious speech, calculated to embarrass the Government, to provoke disorder, even to paralyze the conduct of hostilities, there can be no compromise." The paper implied that the presence of the antiwar Socialists in West Philadelphia provoked the violent reaction.⁴¹ In an editorial appearing after the release of the Young People's Socialist Society members, the *Bulletin* pointed to their release as an example of the tolerance of the American government. "There is no ban on free speech or a free press in this country," the editorial argued, "but there never was a right possessed by an individual citizen to preach sedition, or to give aid and comfort to an enemy, when this nation is at war, by agitation which is calculated to undermine, or obstruct, the military preparation on the part of the government for national defense."⁴²

The police and public harassment of Socialists and their anticonscription campaign continued through the summer. On the night of August 7, Socialists distributing antidraft literature, once again in West Philadelphia, were, once again, attacked by a mob. Men and women distributing literature near the Sixth Regiment Armory at Forty-first Street and Mantua Avenue aroused the ire of "a large group of young men" in

⁴⁰ "52 Socialists Held for Seditious Talk," *Evening Bulletin*, July 7, 1917; "Socialist Agitators Freed," *Evening Bulletin*, July 9, 1917.

⁴¹ "Arousing the Mob Spirit," *Public Ledger*, July 8, 1917.

⁴² "Fair Warning," *Evening Bulletin*, July 9, 1917.

the vicinity. A half-dozen “girls . . . escaped the fury of the mob by running.” According to a newspaper account, the Socialists were rescued from the mob by infantrymen stationed at the armory and policeman Milton Skeen. More police quickly arrived to quell a potential riot. Six men were arrested, taken to the police station house, followed by a jeering crowd, and were charged with distributing “treasonable” literature.⁴³

The circular the Philadelphia Socialist Party distributed during the summer months to the displeasure of so many was called “Long Live the Constitution of the United States.” It began by quoting the Thirteenth Amendment to the Constitution prohibiting slavery and then went on to compare the new draft law to enslavement. “When you conscript a man and compel him to go abroad to fight against his will,” it argued, “you violate the most sacred right of personal liberty, and substitute for it what Daniel Webster called ‘despotism in its worst form.’ A conscript is little better than a convict. He is deprived of his liberty and of his right to think and act as a free man. . . . He is forced into involuntary servitude. He is deprived of the protection given him by the Constitution of the United States. He is deprived of all freedom of conscience in being forced to kill against his will.” Finally, the circular urged all citizens who shared this anticonscription opinion to write their congressmen to call for the repeal of the conscription law. It encouraged citizens to come to the Socialist Party headquarters and sign a petition for the act’s repeal.⁴⁴

When police began arresting Socialists for distributing the circular, Henry John Nelson, an attorney representing the Socialist Party, brought the circular to the U.S. Attorney’s Office to determine whether it violated any federal statutes, such as the new Espionage Act. Federal Justice Department officials reviewed the circular and concluded it passed legal muster; it did not exhort readers to do anything illegal.⁴⁵ Philadelphia police and Pennsylvania courts, however, seemed to take a different view. As a legal strategy, Nelson wondered whether an early trial in a state court would test the legality of the police arrests. “We would like to have the matter threshed out in the Pennsylvania courts,” Nelson told the press. “If we are right in our contention and win the test case, this indiscriminate arresting of Socialists for distributing leaflets will stop.”⁴⁶ In January 1918

⁴³ “6 Socialist Anti-Draft Agitators Rescued from Angry Mob of Soldiers,” *Philadelphia Inquirer*, Aug. 8, 1917.

⁴⁴ Transcript, *United States v. Schenck et al.*

⁴⁵ Ibid.

⁴⁶ “Police Arrest 49 Socialists; Local Organ Suppressed,” *Philadelphia Inquirer*, July 8, 1917.

Nelson got his wish when eight of the thirteen Socialists arrested in West Philadelphia on July 5 for distributing antidraft leaflets were prosecuted by the Commonwealth of Pennsylvania for “unlawfully endeavoring to persuade persons from entering service of the United States.”

A number of those arrested for antidraft activities may have belonged to Socialist Party foreign-language federations, which came to play a prominent role within the party. By late August, federal authorities were monitoring the activities of the Lithuanian Socialist Federation of America, a foreign-language affiliate of the American Socialist Party. The Lithuanian Socialists published their official journal, the *Weekly Kova*, meaning the struggle, from their offices at 229 North Sixth Street. In concert with their English-speaking comrades across town, the Lithuanian Socialists began circulating an anticonscription circular of their own in Lithuanian around August 24. The circular, entitled “Let Us Not Go to the Army,” urged aliens who took out first naturalization papers to disappear to avoid induction into the new National Army. “Since the government has enacted the compulsory conscription law against the will of the people,” the circular argued, “a protest alone against this law is insufficient. To such a law enacted against our will and the Constitution of the United States, we must not submit. Those who are called to the army should endeavor by all possible means to exempt themselves. If that is impossible and if it is impossible to escape, then, rather than enter the army—go to prison. To the intelligent workingman the garb of the convict is by far more honorable than the uniform of the murderous soldier.” The Lithuanian Socialist Federation reportedly mailed the circulars to men inducted into the National Army.⁴⁷

Philadelphia police also kept a close watch on the People’s Council of America for Democracy and Peace. The People’s Council was a national organization representing a loose alliance of antiwar Socialists, pacifist groups, and the Central Federated Union, a Socialist-sponsored union movement that opposed the more conservative, prowar American Federation of Labor. The group called for the repeal of conscription and a defense of civil liberties. The People’s Council maintained close ties with trade unions and set up local branch organizations known as Workmen’s Councils.⁴⁸ On Saturday, July 21, the People’s Council staged

⁴⁷ “Lithuanian Paper Raided; Editorial Writer Accused,” *Evening Bulletin*, Dec. 7, 1917; *Stilson v. United States*, 250 U.S. 583 (1919).

⁴⁸ Page Smith, *America Enters the World: A People’s History of the Progressive Era and World War I* (New York, 1985), 545; Murphy, *World War I and the Origin of Civil Liberties*, 144.

a meeting at the Arch Street Theater, at Sixth and Arch streets, which came close to being raided by the Philadelphia police after Jacob Panken, chairman of the Workmen's Council, attempted to address an audience of about eight hundred Socialists on the subject of war and labor. "Germany is demanding peace, and the only reason we are at war is because it is the President's war," he began. "Where are we going to make the world safe? In New York, where men are being sentenced to 90 days for distributing the Declaration of Independence? In Philadelphia, where the postmaster general is arrogating to himself the duty of keeping from the mails newspapers against which there is no charge?" At this point, Detective Thomas Hilan interrupted the speech, shouting "we don't want any more talking against the government." With encouragement from the audience Panken tried to continue, while Hilan called for police backup. Just as police were about to raid the meeting, however, Assistant U.S. Attorney T. Henry Walnut, who was in the audience, confronted Detective Hilan, insisting that Panken had not said anything in violation of law. Hilan called off the raid, returned to the back of the theater, and resumed taking notes. Panken resumed his speech, but modified it considerably. "He received a wild ovation" after finishing, the *Public Ledger* reported.⁴⁹

Members of the People's Council confronted police at the Arch Street Theater again on the night of August 24 with far different results. As members attempted to stage a "peace meeting," they were beaten by sailors and marines before being arrested. Trouble erupted when police told members of the People's Council they could not hold their meeting, and, according to meeting organizers, refused to allow them to announce to the waiting crowd of more than eight hundred that the widely advertised meeting was canceled. Instead, police attempted to disperse them. Just as police in patrol wagons arrived to arrest and remove the pacifists, a crowd of sailors and marines got off trolleys and rushed the hundreds who had assembled to hear the speeches, according to a newspaper account. Pacifists arrested were charged with breaching the peace.⁵⁰

Two days later, the police permitted the group to restage the meeting at the Arch Street Theater. Although a group of visiting sailors was in the vicinity, according to a newspaper report, there was no repeat of violence. While police were present, they did not interfere with the meeting. Justice department agents, who also attended the meeting, took notes. People's

⁴⁹ "U.S. Attorney Averts Raid at Anti-War Rally," *Public Ledger*, July 22, 1917.

⁵⁰ "Pacifists' Arrest Rapped at Hearing," *Evening Bulletin*, Aug. 25, 1917.

Council members used the occasion to protest the draft and condemn military training schools.⁵¹

The summer draft-resistance campaigns came at a time when Philadelphia draft-board officials were trying to meet their expected draft quotas and contribute qualified men to the new National Army. Socialists and pacifists only complicated Wilson administration measures to deal with draft dodgers, otherwise known as slackers. By one estimate, 300,000 men evaded the draft during the war.⁵² Many simply failed to register for the draft, while others registered but did not appear for their induction physical when summoned. A district in Chicago reported that of 345 men called, 139 did not appear. In Cleveland, 2,500 did not appear in the month of August alone. In New York City, 70 percent of the men who appeared filed exemption claims.⁵³ On August 24, the *Bulletin* reported that nearly 1,500 Philadelphia draftees who registered for the draft on June 5 failed to report to local draft boards for their induction physicals after receiving a summons.⁵⁴

Draft resistance and exemption claims would make the task of quickly raising an army through the summer of 1917 all the more daunting. The city of Philadelphia alone was charged with supplying the National Army with an initial contingent of more than fourteen thousand draftees, making it necessary to hurriedly assemble a vast local bureaucracy to accomplish the task.⁵⁵ To process draftees, the city created fifty-one local draft boards, which roughly followed political wards and which were staffed by city election officials.⁵⁶ Congress enacted the Selective Draft Act on May 18, 1917, and fixed June 5, 1917, as national registration day. On this date all males between the ages of twenty-one and thirty inclusive were required to register. They filled out registration forms listing their names, addresses, ages, occupations, and why, if applicable, they should not be considered for the draft and were then issued green cards bearing a number used to determine the order in which eligible men would be

⁵¹ "Draft Opponents Barred in Camden Pack Rally Here," *Philadelphia Inquirer*, Aug. 27, 1917.

⁵² Stone, *Perilous Times*, 137n.

⁵³ James Weinstein, *The Decline of Socialism in America, 1912–1925* (New York, 1967), 136–37.

⁵⁴ "Ruling Requested on Army Slackers," *Evening Bulletin*, Aug. 24, 1917.

⁵⁵ Colonel J. Frank Barber, "Philadelphia and the 79th Division," in *Philadelphia in the World War*, 135.

⁵⁶ "The Work of the Draft Boards," in *Philadelphia in the World War*, 126–27.

drafted in a lottery.⁵⁷ By September 1, draft boards across the country were expected to deliver the first 30 percent of drafted men to national cantonments.⁵⁸

Many men of draft age tried to avoid military service legally by filing for draft exemptions, hampering the work of local draft boards trying to meet initial draft quotas. Men could be excused from service for physical disabilities or family dependency. In the latter case, drafted men would have to claim their families were entirely dependent on the income of their labor working in civilian jobs. The local press reported that the majority of exemption claims were based on dependency grounds. In early August, the *Inquirer* reported that about half of drafted men in Philadelphia passed their physical examinations, but about three out of every five men filed exemption claims. Single men were to be drafted first, prompting many unmarried men to rush to the altar to avoid military service. The *Public Ledger* reported in August that several local draft boards, which needed ten times more exemption forms than had been originally provided, quickly ran out.⁵⁹

The problems of draft-board officials were compounded in neighborhoods dominated by recent European immigrants. Subjects of Germany and aliens without first citizenship papers were exempted from the draft.⁶⁰ Many draftees from Philadelphia's downtown Italian colony appearing before a draft board at Seventh and Carpenter streets fell under this category. Out of 4,400 available men, some "2,700 [were] of alien birth and most of these [were] Italians," the *Inquirer* reported. To complicate matters, many of the draft-age men in the Italian district admitted to draft-board officials that they had come to the United States to avoid military service in their European countries of origin.⁶¹

Exemption filers included not only individuals, but major military contractors, such as Baldwin Locomotive, Cramp Shipyards, and Midvale Steel. Baldwin, Remington Arms Company, and Eddystone Ammunition Corporation, for instance, wanted exemptions collectively for 7,800

⁵⁷ Ronald Schaffer, *America in the Great War: The Rise of the War Welfare State* (New York, 1991), 176.

⁵⁸ "Work of the Draft Boards," 127.

⁵⁹ "Draft Boards Here to Block Attempts of Service Dodgers," *Philadelphia Inquirer*, Aug. 8, 1917; Schaffer, *America in the Great War*, 177; "Claims Exhaust Draft Blanks," *Public Ledger*, Aug. 15, 1917.

⁶⁰ Murphy, *World War I and the Origin of Civil Liberties*, 123n.

⁶¹ "Draft Boards Here to Block Attempts of Service Dodgers."

workers, who, the companies claimed, were indispensable.⁶² Other military contractors made similar pleas to local appeals boards. If the men were drafted, the contractors said, they could not meet production quotas for such vital military hardware as torpedo boats, guns, and artillery. Such companies were also forced to deny charges that the sons of wealthy families were seeking employment with them in order to avoid military service.⁶³

Draft boards tried to reduce the number of exemption claims as much as possible, while the Wilson administration stepped up efforts to root out draft resisters. As part of the draft process, the administration requested newspapers to publish the names of men who were examined, passed, and rejected. Justice Department officials hoped this information would help draft boards and good, patriotic Americans track and identify slackers. In Philadelphia, newspapers such as the *Bulletin* published a regular column listing Philadelphia draftees who had passed their induction physicals and were certified by local draft boards as ready for military service. According to the draft legislation, men who failed to report to local draft boards for their induction physicals would automatically become members of the National Army and their names would be handed over to the Department of Justice. The department was then authorized to find and arrest them as deserters and hand them over to military authorities.⁶⁴

In defiance of the government's antislacker efforts, the Socialist Party of Philadelphia continued undaunted to press its anticonscription campaign through the summer. In fact, the party found the listing of draftee names in local newspapers like the *Bulletin* to be quite useful. For an organization like the Socialist Party, which was trying to reach inducted soldiers, the *Bulletin* listings were as good as a targeted mailing list. At a meeting of the Socialist Party executive committee, members agreed on August 13 to print up fifteen thousand copies of a new anticonscription circular, which it would mail to draftees listed in the newspaper who had just passed their induction physicals.⁶⁵ Conveniently, the *Bulletin* listed not only names, but home mailing addresses.

The text of the new circular, entitled "Assert Your Rights," was printed

⁶² "Ask Exemption of 7,800 War Workers," *Evening Bulletin*, Aug. 23, 1917.

⁶³ "Deny War Plants Harbor Slackers."

⁶⁴ "Ruling Requested on Army Slackers."

⁶⁵ Transcript, *United States v. Schenck et al.*

on the reverse side of the earlier circular, "Long Live the Constitution of the United States." Citing the First and Ninth Amendments of the Constitution, the circular argued that the new Selective Draft Act was unconstitutional because it violated the rights of individuals who opposed war based on religious convictions and infringed on rights retained by citizens of the individual states. The balance of the circular was an impassioned plea to oppose wartime conscription.⁶⁶

The Socialist Party mailed envelopes containing the circular to draftees by the end of August 1917. Shortly after they were mailed, Samuel O. Wynne, Philadelphia's post office inspector, began receiving complaints from post office station superintendents and individual addressees. In response, he ordered superintendents to identify and hold all such letters and send them to his office. More than six hundred letters were intercepted. A few of the draftees, like Louis M. Passarello, John Ruhe, and Henry J. Kohler, also brought the letters to the attention of the inspector and the U.S. Attorney's Office.⁶⁷

Kohler contacted Francis Fisher Kane, U.S. attorney for the eastern district. As U.S. attorney, Kane was responsible for enforcing the new Espionage Act and prosecuting would-be offenders in his jurisdiction. Kane was already all too familiar with the Philadelphia Socialist Party. Earlier that summer his office reviewed the text of the party's "Long Live the Constitution of the United States" circular and did not find anything in the text that violated the act.⁶⁸ This latest circular, however, told draftees receiving the notice, in the government's legal opinion, to violate the law and resist the conscription law. The government based this opinion, in part, on its interpretation of a particular sentence, which read: "In lending tacit or silent consent to the conscription law, and in neglecting to assert your rights, you are (whether unknowingly or not) helping to condone and support a most infamous and insidious conspiracy to abridge and destroy the sacred and cherished rights of a free people." Several weeks earlier, Postmaster General Albert Burleson had barred the Philadelphia Socialist Party newspaper from the mails. According to the *Bulletin*, Charles T. Schenck, party general secretary and paper's publisher, had "continually harangued American militarism and American czardom . . . but [had] never had a word to say against German militarism or ruthless-

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

ness, not even at the time of the sinking of the *Lusitania*.”⁶⁹

After finding the circular treasonable and a violation of the Espionage Act, federal agents wasted little time. On Tuesday, August 28, agents with the Department of Justice and the post office inspector raided the offices of the Socialist Party, armed with a search warrant and an arrest warrant for Charles T. Schenck, party general secretary. The alleged purpose of the raid was to foil “a well-organized plot to foment sedition among men selected for the National Army.”⁷⁰ When agents entered the Socialist Party bookstore, they first encountered Clara Abramowitz, a young store clerk, who told the agents that Schenck would be back in a few minutes. Roughly eight or ten young men were already meeting in the back room. When Schenck arrived, agents told him he was under arrest and whatever he said could be used against him. They then asked Schenck to help them find specific records and the circulars that sparked the raid. While the agents searched, Schenck phoned his attorney, who advised him to say nothing to the agents. The federal raiders seized about sixteen thousand circulars and other papers and books, including the party’s minute book.⁷¹ Agents arrested Schenck, Abramowitz, Edward H. Wanamacher, of the executive committee, and Alexander MacLeod for violating the Espionage Act. The men were jailed until they could raise bail, but Abramowitz was granted bail and released. When Abramowitz was permitted to sign her own bail bond, she reportedly said, “Oh thanks. I will be back to work in the morning.” Abramowitz, employed at party headquarters as a clerk and stenographer, denied having any knowledge of the circulars.⁷²

MacLeod, who allegedly admitted distributing hundreds of circulars and was also one of the pacifists arrested the previous Friday when police broke up a meeting of the People’s Council in front of the Arch Street Theatre, had trouble raising bail.⁷³ The next day, a Mary Dorsey McMurtrie, a suffragist and fellow member of the People’s Council (described in the press as a “society woman”), entered the \$2,500 bail on his behalf because although not a Socialist herself, she sympathized with the party’s ideals.⁷⁴

⁶⁹ “Treason Is Charged to Raid Prisoners,” *Evening Bulletin*, Aug. 29, 1917.

⁷⁰ *Ibid.*

⁷¹ Transcript, *United States v. Schenck et al.*

⁷² “Treason Is Charged to Raid Prisoners.”

⁷³ *Ibid.*

⁷⁴ “Society Woman Aids Treason Defendant,” *Evening Bulletin*, Aug. 30, 1917.

Late that afternoon after the raid, a crowd, which included soldiers and marines talking about “treason” and “slackers,” gathered outside the Socialist Party bookstore. A police detail remained for the rest of the afternoon to stop crowds from gathering in front of the store. During the night, a sign was placed across the bookstore window reading, “The Peoples Press, Suppressed by the Post Office, Help Us in Our Fight, Subscribe Here Now.” The next day, several hundred demonstrators gathered outside the store. For a time, it appeared the demonstrators would soon turn into an angry mob ready to attack Socialists inside. Reportedly, a middle-aged man, followed by four soldiers, rushed into the building, “shouting that they would ‘clean the vipers out of the building.’” They were joined by several civilians. Socialist Party members ordered them to leave the premises. Just as it appeared the mob would destroy the bookstore and party offices, police arrived to quell a near riot.⁷⁵

Because of their anticonscription leaflet campaign, the city’s Socialist activists were used to dealing with harassment from the Philadelphia police. Party minutes from the spring and summer of 1917 record advice to party workers to stay within city ordinances as they distributed leaflets to prevent the Police Department “from framing up false charges against us such as ‘inciting to riot,’ and ‘disorderly conduct.’”⁷⁶ Despite such admonitions, party workers had been subject to arrest all summer. Typically, Socialists arrested for distributing leaflets were jailed awaiting an arraignment hearing or pending the raising of bail. But the banning of the party’s newspaper from the mails and the subsequent arrest of Socialists, both based on provisions of the new federal espionage law, marked a turning point. The party had now entered uncharted legal waters. To mount a defense, the party turned to Henry John Nelson, a Philadelphia attorney who had represented the Socialist Party for ten years. Nelson was himself a Socialist and an associate of the National Civil Liberties Bureau of the American Union Against Militarism. The AUAM, one of the better-known antiwar groups, was founded in 1915 to oppose American military preparedness during the nation’s neutral period and by 1917 was opposing military draft legislation. The group supported a conscription law that made provisions for conscientious objectors,

⁷⁵ “Agents Continue Probe of Anti-War Propaganda Here,” *Philadelphia Inquirer*, Aug. 30, 1917; “Treason Is Charged to Raid Prisoners.”

⁷⁶ Socialist Party of Philadelphia, executive committee minutes, June 4, 1917, July 2, 1917, box 40, folder 4, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals.

including persons with religious and moral convictions, and even political objectors, such as German Americans who did not want to face fellow countrymen on a battlefield. The conscription bill that did pass allowed exemptions only for “well recognized religions and sects” and made no provisions for political objectors. In response, the AUAM set up a committee, the Civil Liberties Bureau, to lobby on behalf of conscientious objectors.⁷⁷ In Philadelphia, Nelson and his associate Henry J. Gibbons, also affiliated with the Civil Liberties Bureau, spent the next several years defending the Philadelphia branch of the Socialist Party and the *Tageblatt* (the voice of socialism among German-speaking newspaper readers) against espionage law violations. In addition to his legal defense work, Nelson, a Spanish-American War veteran and former newspaperman, somehow found time to run for the office of Philadelphia district attorney, heading a slate of Socialist Party candidates running for local offices in the fall election. Despite its legal predicaments, the party was unbowed. As part of the Socialist campaign platform, the party pledged to oppose war and militarism, “to procure the repeal of the conscription and censorship laws, to maintain the freedom of speech and press.” The platform condemned the suppression of the official organ of Philadelphia Socialism, the *Peoples Press*. The paper “has been denied the privilege of the mails and if they dared go farther now the authorities would try to prevent its being printed altogether,” the platform warned. In a section of the platform entitled “Constitutional Rights and Liberties” the party attacked the Philadelphia Police Department for abridging civil liberties. When the platform was printed, the party reported that one hundred of its “comrades have suffered the persecution of arrest . . . what is the crime that these men have been guilty of? The crime of agitating for the repeal of a law which admittedly is opposed by large numbers of people—the conscription law.”⁷⁸

By the end of an eventful summer, Philadelphia Socialists, remaining steadfastly opposed to war and conscription, seemed to be swimming against a tide of patriotism overtaking a nation about to enter a catastrophic world war. On September 1, the city mounted a farewell parade

⁷⁷ Diane Garey, *Defending Everybody: A History of the American Civil Liberties Union* (New York, 1998), 21, 33, 34, 35.

⁷⁸ Socialist Party of Philadelphia, Executive Committee, “The War of Humanity, Socialist Party Campaign Book,” box 40, folder 2, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals.

to honor the 1,500 drafted men and volunteers scheduled to ship out to their various cantonments during the next several weeks. Despite a persistent rain, a half million Philadelphians lined both sides of Broad Street, the city's main north-south artery, to cheer on the newly minted soldiers marching in the parade. The parade could hardly go unnoticed for the Socialists as the governor of Pennsylvania and other dignitaries mounted a reviewing stand at Broad and Arch streets, just a few steps from the Socialist Party headquarters.⁷⁹

* * *

Such outward expressions of patriotism and support for soldiers marching off to war accompanied a growing suspicion of so-called hyphenated Americans in general and German Americans in particular. By midsummer, suspicions and fears of German American disloyalty began to verge on panic.

In Philadelphia, nothing fueled this panic more than the writings of the *Tageblatt*, the German-language newspaper that had become a continuing source of irritation to federal authorities. At a time when the nation was raising and training an army that would one day face German soldiers in the trenches on the western front, the *Tageblatt* was publishing articles that seemed to applaud German victories and take comfort in allied defeats. Even after Congress declared war on Germany in April 1917, the *Tageblatt* continued to run editorials and news copy that in the government's opinion appeared to sympathize with Germany.

On April 3, the day after the president asked Congress for a declaration of war, the *Tageblatt* blamed America for the impending war and defended Germany's program of unrestricted submarine warfare.⁸⁰ The paper appeared to soften its hard-line position in the next day's edition, claiming in an editorial that two years worth of anti-German propaganda appearing in the American press had worked to draw the United States into a war with Germany. The paper pledged support for the American cause, if only halfheartedly: "Can more be asked of us? Can it be asked that we should grow enthusiastic for a war that for us is a war of brothers? Shall it be supposed that we ought to see with enthusiasm our sons march

⁷⁹ "View of the Parade with Which Philadelphia Honored Its Sons Going to War," *Evening Bulletin*, Sept. 1, 1917; "Philadelphia Today Honors Its Drafted in Splendid Parade," *Philadelphia Inquirer*, Sept. 1, 1917.

⁸⁰ "German Newspaper Asks Fealty to U.S.," *Evening Bulletin*, Apr. 3, 1917.

out to kill or to cripple the sons of our brothers?"⁸¹

The *Tageblatt* continued to harbor sympathies with Germany through the summer months. In a July 7 story headlined "The Failure of Recruiting," the paper claimed that it was widely reported in the American press that the U.S. military was having problems meeting its recruiting goals. An August 6 story headlined "Yankee Bluff" quoted a German professor who scoffed at the notion that America was prepared to raise an army of ten million men and mass produce one hundred thousand airships. In a September 6 story, the paper reported "An extraordinary percentage of suicides in Pershing's army [had] been officially reported to the War Department." The "extraordinary percentage" amounted to four suicides out of twelve reported deaths.⁸²

Founded in 1877 by German immigrants who were followers of the Social Democratic Party of Germany (SPD), the Philadelphia *Tageblatt* had long been a voice of organized labor and socialism for its German American working-class readers living in the city. In 1917, the paper was owned by the Brewery Workers' Union, one of a number of German union locals affiliated with the United German Trades (UGT). The UGT not only represented German union locals, but was also the focus of a web of German socialist institutions, which included the *Tageblatt*, three labor lyceums, German singing societies, and the German branch of the Socialist Party of America.⁸³ While the *Tageblatt* maintained close ties with the American Socialist Party in 1914, its sympathies towards the German war effort brought it into conflict with antiwar American Socialists in 1917. The *Tageblatt* position could be explained in part by its affinity with the Social Democratic Party of Germany, which the paper held up as a model for American socialism. When war broke out in Europe, the SPD rallied behind the German government in lockstep with many other European socialist parties, which also rallied behind their respective governments. Nationalism clearly trumped international socialism and its antiwar position.⁸⁴

As an anti-German panic began to build during the summer months, a Justice Department agent, V. A. Hajek, paid a visit to the *Tageblatt* sometime in August. Hajek wanted to determine whether *Tageblatt*

⁸¹ "Tageblatt Tones down War Stand," *Evening Bulletin*, Apr. 4, 1917.

⁸² Transcript, *United States v. Schaefer et al.*

⁸³ Russell A. Kazal, *Becoming Old Stock: The Paradox of German-American Identity* (Princeton, NJ, 2004), 202.

⁸⁴ Kazal, *Becoming Old Stock*, 154–55; Weinstein, *Decline of Socialism*, 119.

editors and officers were American citizens. Louis Werner, editor-in-chief of the paper, reportedly refused to disclose any information and instead angrily referred the agent to the newspaper's attorney, Henry John Nelson, and, according to Hajek, told him that "if he ever entered the *Tageblatt* a second time he would be thrown out the window."⁸⁵

The feisty Louis Werner, who was sixty-seven in 1917, had been a fixture at the *Tageblatt* for years. Werner wrote many of the newspaper's editorials and handled news about the war in Europe. His rather sardonic opinion pieces and foreign news reporting set the tone for the small, struggling, foreign-language daily, attracting the unwelcome attention of Justice Department agents. Born in Biebrich in southern Germany, Werner emigrated to America and joined the *Tageblatt* in 1880, only a few years after the paper's founding. He worked first in the business office and then transferred to the editorial department when his English improved, eventually becoming editor, and finally editor-in-chief. Along the way he became a naturalized citizen and raised a family in Philadelphia. When his health began to fail he shifted much of the workload to the paper's managing editor, Martin Darkow. Born in Riga in the western part of Russia, near the German border, Darkow, who turned fifty-nine in 1917, was a German immigrant who settled in Philadelphia and raised a family but never became a naturalized citizen.⁸⁶ A press account would later call him an "alien enemy" who was still a subject of the Kaiser.⁸⁷

The newspaper was owned by the Philadelphia *Tageblatt* Publishing Association, which obtained a charter as a Pennsylvania corporation in 1878. At Werner's urging, in 1911, the Brewery Workers' Union assumed a controlling interest in the *Tageblatt* association through the purchase of shares in order to block a hostile takeover bid by the Socialist Party. It was at this time that the paper elected Peter Schaefer as president of the *Tageblatt* association and Paul Vogel, treasurer. Schaefer, a naturalized citizen from Bavaria, Germany, drove a beer wagon for a time and then became business agent of the Beer Drivers Union of Philadelphia, and member of the local executive board of the Brewery Workers. Vogel, a naturalized citizen who was originally from southern Germany, was secretary of Brewery Workers' Union No. 5. In 1914, the Brewery Workers

⁸⁵ "Tageblatt Editors under \$50,000 Bail," *Evening Bulletin*, Sept. 14, 1917.

⁸⁶ Transcript, *United States v. Schaefer et al.*

⁸⁷ "Tageblatt Editors Held in \$20,000 Bail," *Evening Bulletin*, Sept. 17, 1917.

took a first mortgage on the *Tageblatt* building to help the paper through some financial difficulties.⁸⁸

The *Tageblatt* (meaning daily news) was a broadsheet consisting of eight pages of news, editorials, and advertising. The *Tageblatt* along with the *Sontagblatt* (Sunday news) circulated among a German-speaking readership. In Philadelphia, German American enclaves were scattered mostly in neighborhoods north of the city center, such as Brewerytown, Northern Liberties, Kensington, and new neighborhoods such as Olney.⁸⁹ The Brewerytown neighborhood, in particular, centered at Thirty-third and Thompson streets, featured a heavy concentration of German breweries.

Because the paper could not afford to contract with a news wire service, articles appearing in the *Tageblatt* were usually “lifted” from other German- and English-language newspapers appearing the day before, and, in the case of the English-language articles, translated in time to make the next edition of the paper. As part of a daily routine, editors would clip stories from competing German-language papers, such as the Philadelphia *Demokrat*, the New York *Staates Zeitung*, or the New York *Volks Zeitung*, and English-language papers, such as the *Philadelphia Public Ledger*, and paste them on sheets of paper. These would then be altered somewhat so they would not appear to be taken directly from another uncredited source.⁹⁰

Before war broke out in Europe in 1914, the paper’s news columns were devoted mostly to local news. Quite naturally, once war broke out, the paper’s German American readership wanted the paper to provide war news from a German perspective. To federal Justice Department agents, however, this “German perspective” read more like pro-German propaganda, smacking of treason. Agents who had been investigating the paper through the summer months decided they had enough cause to make arrests when an article appeared in the paper on Sunday, September 9, describing a practical way to communicate with Germany by using the U.S. mails through an intermediary in Stockholm, Sweden. On the afternoon of September 10, U.S. marshals and agents of the Postal Service raided the *Tageblatt* office on Sixth Street armed with a blanket warrant for the arrest of six men associated with the Philadelphia *Tageblatt*

⁸⁸ Transcript, *United States v. Schaefer et al.*

⁸⁹ Kazal, *Becoming Old Stock*, see map 1.1.

⁹⁰ Transcript, *United States v. Schaefer et al.*

Publishing Association charged with treason and violations of the Espionage Act. These were Peter Schaefer, president; Paul Vogel, treasurer; Herman Lemke, business manager; Louis Werner, editor-in-chief; Martin Darkow, managing editor; and Waldemar Alfredo, an editorial writer. When agents arrived, they only found Lemke on the premises, where he was immediately arrested. Darkow was arrested later when he appeared for work.⁹¹ The others named in the warrant surrendered to federal authorities during the next few days. Schaefer and Vogel were attending a union convention in Cincinnati when they learned they were wanted for treason. Authorities dropped the charges against Alfredo a few days later when they determined he was not an editorial writer, but merely an occasional contributor of humorous verse. After his arrest, Lemke said he never did anything treasonous. "I don't have anything to do with what goes in the paper," he said. "Sometimes, I don't even read it."⁹²

In addition to arresting Lemke and Darkow, agents "confiscated all books, files, manuscripts, and other properties, which required an auto truck to carry away," the *New York Times* reported in a front-page story. James F. Cortelyou, chief post office inspector, had his men stuff seized books and files into mail bags, while Special Agent Frank L. Garbarino of the Justice Department had his men collect manuscripts, telegrams, and cablegrams and place them in boxes. News of the raid quickly swept through the neighborhood. Hundreds of bystanders began to gather outside the *Tageblatt* building watching authorities cart away evidence.⁹³

As federal investigators sifted through the evidence, they alleged that editors grossly distorted news of the war or simply made it up. "While the *Tageblatt* editors were drawing on their imagination to manufacture German victories and American distress, food scarcity, military impotence and disaster, the official information sent to the paper by the United States government departments was thrown into the wastepaper baskets," the *New York Times* reported. Investigators suspected that the newspaper office was the nerve center of a nationwide conspiracy involving other German-language newspapers to publish pro-German propaganda,

⁹¹ "2 More Arrests of *Tageblatt* Editors," *Evening Bulletin*, Sept. 11, 1917; "Philadelphia *Tageblatt* Editor Seized on Treason Charge and Paper Confiscated," *New York Times*, Sept. 11, 1917.

⁹² "*Tageblatt* Editors under \$50,000 Bail"; "Philadelphia *Tageblatt* Editor Seized on Treason Charge and Paper Confiscated."

⁹³ "Philadelphia *Tageblatt* Editor Seized on Treason Charge and Paper Confiscated."

undermining the American war effort.⁹⁴ Agents reported that the minute books of the paper's board of directors disclosed that two directors complained that newspaper editorials "were not revolutionary enough."⁹⁵ After the war began, they alleged, the paper employed a "German censor" in its editorial department, who helped the staff maintain the correct pro-German and anti-American tone. The day after the raid, the government disclosed it had reason to believe the paper received regular cash payments from a German agent in Mexico. By Wednesday, however, two days after the raid, the government admitted there was no evidence to support this charge.⁹⁶

By Friday, U.S. Attorney Kane was already presenting evidence before a grand jury in United States District Court, seeking indictments for the five. The court galleries were packed with onlookers, many of whom sympathized with those arrested. Counsel for the five tried, unsuccessfully, to limit the government's case to a single man, Louis Werner, arguing there was no evidence to bring a case against the other editors and officers of the *Tageblatt*. The government countered that the officers, "if they cared to, could have changed the policy of the paper, which, according to the evidence was un-American."⁹⁷ The five were indicted for knowingly, willfully, and unlawfully making and conveying "false reports with intent to promote the success of the enemies of the United States, to wit, the said Imperial German government." Separately, Werner and Darkow were also charged with treason. On September 21, 1917, the *Tageblatt* was barred from the mail when Postmaster General Burleson revoked its second-class mailing privileges.⁹⁸

After his arrest, Werner published a farewell editorial in the *Tageblatt*, in which he denied ever having written anything that could be considered treasonable:

On the contrary, the readers of the paper have been consistently urged to submit themselves to the laws of the country and obey them. They were especially exhorted to obey the selective service law and to prepare for military service, even at the risk of being forced to kill their own brothers. My crime consists of being a pacifist. I am not a traitor to my country, to

⁹⁴ "Tageblatt Raid Discloses Plot," *New York Times*, Sept. 12, 1917.

⁹⁵ "2 More Arrests of Tageblatt Editors."

⁹⁶ "Tageblatt Raid Discloses Plot"; "Editors to Surrender," *New York Times*, Sept. 13, 1917.

⁹⁷ "Tageblatt Editors under \$50,000 Bail."

⁹⁸ "Tageblatt Barred in Mails," *Evening Bulletin*, Sept. 22, 1917.

the country of my children, and never dreamt of being one. I never took sides with Germany against the United States, but I confess freely that I am a partisan of Germany as against her European and Asiatic enemies. I do not feel myself obliged to be loyal to England, Italy and Montenegro; neither do I acknowledge that this is a war between democracy and autocracy. The Czar of Russia, the Mikado of Japan and the absolute monarch of Siam would otherwise have been on the other side. I trust the fairness of my American fellow citizens.⁹⁹

The same week that the *Tageblatt* editors and officers were arrested, the Senate passed the Trading with the Enemy Act, which included a provision intended to suppress seditious writings in German-language newspapers. The measure called on the German press to publish an English-language translation next to any news columns reporting on matters “respecting the government of the United States, or of any nation with which Germany is at war, its policies, international relations, the state or conduct of war.”¹⁰⁰ The act, which Congress enacted on October 6, 1917, stipulated that all foreign-language newspapers obtain prior approval from the postmaster general before mailing translated materials about the war.¹⁰¹

Senator William King of Utah wrote the German-press provision into the Senate’s version of the bill. “The American people are amazed at the existence of these vipers in their midst,” King contended. “These newspapers preach disloyalty to the country; they are doing what they can to make the war unpopular; they are trying to stir up revolt and sedition in the United States and to lead astray people who otherwise would be loyal.”¹⁰² A *Bulletin* editorial said the German press had not generally displayed a notable anti-American bias and that the government had shown a large degree of tolerance, noting it had not censored German papers any more than it did any other foreign-language publication. Without naming the Trading with the Enemy Act, the *Bulletin* stated that whatever hardship the German press now suffered, it had “been brought upon them by the deliberate policy of notable members of their group.” The government could not be expected to “tolerate a paper, like the local *Tageblatt*, for instance, openly advising its readers of means of

⁹⁹ “*Tageblatt* Editors Held in \$20,000 Bail.”

¹⁰⁰ “Senate Puts Curb on German Press,” *New York Times*, Sept. 13, 1917.

¹⁰¹ Stone, *Perilous Times*, 589n.

¹⁰² “Senate Puts Curb on German Press.”

circumventing necessary war measures of restraint. Nor [was] it consistent with the interests of this nation that any publication [should] be permitted to circulate false reports as to military operations or to distort news, by direct statement or intimation, always to the disadvantage and discredit of American arms.”¹⁰³

The *Tageblatt* raid and the Trading with the Enemy Act legislation were responses to growing anti-German hysteria in Philadelphia and the country at large. Communities tried to eradicate outward signs of German culture. Sauerkraut became liberty cabbage. Symphony orchestras removed German music from their programs. Public schools removed German language programs from their curricula.¹⁰⁴ In December 1917, the Philadelphia school board, after receiving many protests, agreed to review German language textbooks for passages that seemed to sympathize with the current German cause. With scissors in hand, public school censors cut objectionable “pro-German” pictures and paragraphs from German textbooks. But this hardly ended the matter.¹⁰⁵ Responding to pressure, on May 14, the board voted unanimously to end German studies in the city’s high schools at the end of the spring term. For good measure, Mayor Smith suspended all city advertising in German-language newspapers.¹⁰⁶

Fears of the German language and culture inevitably blossomed into fears of the German people. The Committee on Public Information, the Wilson administration propaganda agency, and patriotic groups encouraged Americans to believe their German American neighbors could be spies and saboteurs. By December 1917, the *Bulletin* began running a regular column correcting “pro German falsehoods circulated by propagandists in an effort to aid the Kaiser.” The column encouraged readers to hand over to the Department of Justice the names of persons they believed to be pro-German agents. “German agents infest the United States, spreading the poison of such malicious lies . . . their object is to breed disloyalty and to terrorize,” the paper claimed.¹⁰⁷ Philadelphians of German background could expect to be watched by federal agencies such

¹⁰³ “The German Language Press,” *Evening Bulletin*, Sept. 12, 1917.

¹⁰⁴ Kazal, *Becoming Old Stock*, 176.

¹⁰⁵ “German Text Books Shelved in Schools,” *Evening Bulletin*, Dec. 11, 1917; “Slash Me und Gott out of Text Books,” *Evening Bulletin*, Dec. 24, 1917.

¹⁰⁶ Kazal, *Becoming Old Stock*, 179.

¹⁰⁷ “Lies Nailed,” *Evening Bulletin*, Dec. 24, 1917.

as the Bureau of Investigation, by employers, and by neighbors.¹⁰⁸ In the fall of 1917, the Wilson administration required German aliens fourteen years old and older to register and forbid them to move without permission. Philadelphia police registered 6,481 German aliens by early 1918.¹⁰⁹ Philadelphians of German ancestry were expected to demonstrate their loyalty, or at the very least to keep any antiwar opinions to themselves. One way to demonstrate loyalty was to buy a Liberty Bond. Those who did not buy bonds, or who expressed pro-German sentiments, could lose their jobs or be turned into police or BOI investigators by their neighbors.¹¹⁰ Outward expressions of German identity were especially discouraged. Ethnic Americans needed to redefine themselves as “one hundred percent Americans.”¹¹¹

Besides German Americans, other ethnic Americans came under government scrutiny. In a scene that would be a replay of similar raids on the Philadelphia Socialist Party headquarters and *Tageblatt* office, on December 7, 1917, agents raided the newspaper office of the *Weekly Kova*, the official organ of the Lithuanian Socialist Federation, which had circulated a leaflet advising recently arrived aliens to do whatever they could do legally or otherwise to avoid induction into the National Army back in August. The government believed that Joseph V. Stilson, the paper's editorial writer, was responsible for the allegedly seditious literature and arrested him for Espionage Act violations. Justice Department agents and a post office inspector also seized books, letters, manuscripts, and files from the newspaper office. Stilson was later tried and convicted for Espionage Act crimes. Stilson, represented by Henry John Nelson, ultimately appealed his conviction to the Supreme Court.¹¹²

On December 17, ten days after the raid on the Lithuanian Socialist Federation, Charles T. Schenck and members of the Philadelphia Socialist Party's executive committee were put on trial at the federal building at Ninth and Chestnut streets. In a three-count indictment issued in September 1917, defendants Schenck, Charles Sehl, Elizabeth Baer, Jacob H. Root, and William J. Higgins were charged with conspiracy to violate provisions of the Espionage Act. They were charged under

¹⁰⁸ Kazal, *Becoming Old Stock*, 179.

¹⁰⁹ Ibid., 181; “6,481 Enemy Aliens Registered in City,” *Evening Bulletin*, Feb. 14, 1918.

¹¹⁰ Kazal, *Becoming Old Stock*, 184–85.

¹¹¹ Ibid., 275.

¹¹² *Stilson v. United States*; “Lithuanian Paper Raided; Editorial Writer Accused.”

count one with conspiracy to cause insubordination, disloyalty, mutiny, and refusal of duty in the military, and with obstructing military recruiting when the United States was at war. They were charged under count two with conspiracy to use the U.S. mail to distribute matter that violated the nonmailable provision of the Espionage Act. Under count three, they were charged with willfully, knowingly, and unlawfully using the mails and the post office services to distribute circulars "calculated to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States." Interestingly, the other Socialist Party workers arrested on the day of the government raid on the party's headquarters, MacLeod, Abramowitz, and Wanamacher, were not named in this particular indictment. Abramowitz, the young clerk, however, was called as a government witness.¹¹³

The case against the five named defendants in *United States v. Schenck et al.* hinged on the contents of the Socialist Party minute book seized in the August 28 raid. According to the minutes, the executive committee, consisting of the defendants, directed Schenck during August 1917 to have printed fifteen thousand leaflets ("Assert Your Rights!") and send them to draftees who had just passed their induction physicals. The government determined that the hand written minutes were recorded by Elizabeth Baer, making Schenck and Baer coconspirators. In addition to the minute book, the government offered in evidence circulars found at the party headquarters, newspaper clippings containing the names of draftees, and envelopes containing circulars returned to authorities from drafted soldiers who complained about receiving the envelopes through the mail.¹¹⁴

Among the witnesses testifying for the government were eleven draftees who received letters containing the Socialist Party antidraft circulars. Not surprisingly, all eleven testified under defense cross-examination that the circular did not cause them to evade the draft or to become insubordinate to the U.S. government. After presenting the soldiers' testimony, the government rested its case. None of the five defendants took the witness stand to testify in his or her own defense.¹¹⁵

Before giving his instructions to the jury, the presiding judge, J. Whitaker Thompson, directed the panel to return not-guilty verdicts for

¹¹³ Transcript, *United States v. Schenck et al.*

¹¹⁴ Ibid.

¹¹⁵ Ibid.

defendants Sehl, Root, and Higgins for lack of evidence. The jury found the two remaining defendants, Schenck and Baer, guilty on all three counts charged in the indictment. A sentencing hearing for the pair was scheduled for March 1918.

Less than a month after the *Schenck* case convictions, eight of the thirteen Socialists arrested in July for distributing antidraft pamphlets in West Philadelphia were convicted by the Commonwealth of Pennsylvania for unlawfully endeavoring to persuade persons from entering military service.¹¹⁶ At trial, the defendants contended they had the right to express their opposition to the draft law and urge its repeal. Charles E. Bartlett, the assistant district attorney who prosecuted the case, argued that such literature, falling in the hands of "lukewarm citizens" would cause unrest among them and dissatisfaction with the government. All the male defendants, except for Casper Oberstadt, said to be the ringleader, were sentenced to fifteen days in county prison and fined \$150. Oberstadt was sentenced to thirty days and also fined \$150. The three women were each given one year probation. All eight were sentenced on March 9 after deciding not to appeal their convictions.¹¹⁷

Just two days later, Schenck and Baer appeared again before Judge Thompson to be formally sentenced for their federal espionage convictions. At the sentencing hearing, attorney Henry Nelson said that as a show of loyalty the Philadelphia Socialist Party agreed to censor itself. Since the December trial, the party had stopped distributing antidraft literature and would do so for the duration of the war unless a higher court ruled in its favor.¹¹⁸ In passing sentence, Thompson remarked that the persons really responsible for authoring the antidraft circulars had escaped the net of federal authorities and that Schenck and Baer were comparative small fries. Even the jury recommended mercy, believing there was no evidence to show that they originated the idea of opposing the draft. Thompson sentenced Schenck to serve six months in prison and Baer to serve ninety days, relatively light sentences considering that

¹¹⁶ Records of Quarter Session Court, Sept. 1917, court docket number 310, City of Philadelphia Department of Records, City Archives. The names of the defendants are Louis Abramson, Isadore Axelrod, Solomon Bolif, Walter A. Ebbitts, Isaac Leiberman, Casper Oberstadt, Anna Palmer, Carrie Palmer, and Celia Rotter.

¹¹⁷ "Eight Anti-Draft Advocates Guilty," *Public Ledger*, Jan. 16, 1918; "Socialists Decide to Serve Sentences," *Public Ledger*, Mar. 10, 1918.

¹¹⁸ "Socialist Officers Here Are Sentenced to Prison," undated newspaper clipping, box 40, folder 2, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals.

defendants in other espionage cases received five and ten year sentences.¹¹⁹ But despite the light sentences, the Socialist Party had effectively been censored. The previous July, Nelson talked about using state courts to test the legality of police arrests of Socialists for distributing antidraft literature. It now appeared that the *Schenck* case was shaping up to be that test case, but at the federal level. Nelson ultimately appealed the Schenck and Baer convictions to the Supreme Court, mostly on First Amendment grounds. The high court agreed to hear the case in January 1919, and the defendants remained free on bail pending the court's decision.

With the successful prosecution of Socialists at the state and federal levels, the federal government next turned its attention to *Tageblatt* editors Werner and Darkow. Beginning on March 18, 1918, the two stood trial for treason, and U.S. Attorney Francis Fisher Kane personally prosecuted the case. To make a case for treason, the government amassed a collection of published *Tageblatt* articles appearing between April 6, 1917, the day Congress declared war on Germany, and September 10, the day the government raided the *Tageblatt* offices. Using such articles as evidence, the government needed to prove that Werner and Darkow traitorously gave "aid and comfort" to the imperial German government.¹²⁰ Defense attorney William A. Gray, however, sensed that the government's case was weak and midway through the trial decided to offer no defense. "Why should I," Gray said in a *Public Ledger* story, "when the government is winning the case for me? I shall ask that the indictment be dismissed, and on the case which the prosecution has presented I ought to win this without the slightest anxiety."¹²¹ This was no idle boast. By order of Judge Oliver B. Dickinson, the jury returned a verdict of not guilty. Dickinson found that the prosecution had simply not offered substantial evidence to show that the defendants committed overt acts giving aid and comfort to Germany. Both defendants were still under indictment for Espionage Act violations.¹²²

The espionage trial for Werner, Darkow, and three other *Tageblatt* defendants did not get underway until mid-September. Through the intervening months, the federal government continued its crackdown on dissent and draft dodgers. On May 18, 1918, Congress passed the

¹¹⁹ "Draft Obstructors Sentenced to Jail," *Philadelphia Inquirer*, Mar. 12, 1918.

¹²⁰ Transcript, *United States v. Werner and Darkow*, NARA-Mid Atlantic.

¹²¹ "Tageblatt Editors Freed of Treason," *Public Ledger*, Mar. 27, 1918.

¹²² "Acquittal Ordered for *Tageblatt* Men," *Philadelphia Inquirer*, Mar. 27 1918; Transcript, *United States v. Werner and Darkow*.

Sedition Act, which amended the Espionage Act of 1917. Attorney General Gregory asked Congress to adopt the Sedition Act to address what he believed were weaknesses in the earlier Espionage Act. The Sedition Act forbade citizens, when the country was at war, from speaking or publishing disloyal, profane, or scurrilous language about the U.S. government, the Constitution, the military, the flag, or the uniform of the army and navy. Furthermore, it forbade persons from displaying the flag of a foreign enemy, calling for the shutdown of military production, supporting the cause of the enemy, or opposing the cause of the United States.¹²³ Whereas the Espionage Act was intended to foil conspiracies, the Sedition Act made it easier for the government to prosecute individuals for seditious speech. Supporters of the new measure said that the act would discourage the vigilantism that had taken root across the country among conservative extremists who claimed they were forced to take the law into their own hands in attacking individuals for allegedly making unpatriotic utterances because the government had not been empowered to act.¹²⁴

In addition, in response to criticism that the government was not doing enough to arrest draft dodgers, Attorney General Gregory's Justice Department, with the assistance of thousands of American Protective League agents, staged a series of "slacker raids" in cities across the country.¹²⁵ In Philadelphia, the most dramatic raids occurred in August, during one of the hottest summers on record. Seeking outdoor pleasures to find relief from the heat, many young men of draft age congregated in large groups with their dates in public places like Woodside Park, a North Philadelphia amusement park. On Friday, August 2, a Justice Department raiding party, consisting of two hundred men, surreptitiously gathered in the park around 9:45 p.m., when a fireworks display was scheduled to begin. By 10 p.m., the fireworks came to an abrupt halt when a detail of "government men" moved through the crowd of over two thousand looking for men of draft age who did not have registration cards. They quickly rounded up seventy-five men who could not produce cards. When draft age men realized they were caught in a slacker raid, they tried to make their escape to one of the six park entrances only to find them guarded by government agents. By a prearranged signal worked out between agents and park

¹²³ Stone, *Perilous Times*, 186.

¹²⁴ Murphy, *World War I and the Origin of Civil Liberties*, 82.

¹²⁵ *Ibid.*, 125–26.

managers, all the many amusement rides were shut down, swelling the crowd of park visitors. In all, three hundred men were detained in a nearby guardhouse for about two hours until police could find enough patrol wagons to transport them to various station houses where they would remain through the night. The next day the *Inquirer* gushed that the federal raid had been “planned as though it had been a campaign to capture the Kaiser and his entire army of Huns.” Most of the arrested men were released days later as they produced their draft cards. The Justice Department held sixty for further investigation.¹²⁶

The raids continued. On August 6, federal agents and two hundred members of the APL staged another raid in Shibe Park, arresting twelve hundred men who could not produce registration cards. As visitors surged through the gates to enter the park to watch boxing matches, federal agents intercepted men of draft age without registration cards and detained them inside a roped enclosure under the big grandstand, where they were allowed to call relatives to retrieve missing registration cards and bring them down to the park. About six hundred men who could not produce cards were taken to the Second Regiment Armory until relatives arrived with their draft cards.¹²⁷

On the night of August 15, three hundred Justice Department agents and members of the APL motored from Philadelphia to Atlantic City, New Jersey, looking for draft dodgers. Joined by about two hundred Atlantic City policemen, agents quietly congregated at about 10 p.m. at the ocean end of Steel, Steeplechase, Young’s, and Million Dollar piers, just off the city’s famous boardwalk. From here squads of agents marched towards the front of the piers intercepting draft age men along the way who could not produce registration cards. The summer slacker raids finally culminated in the arrests of thirty thousand men in New York City in early September.¹²⁸ Out of all the men picked up in raids across the country to date, it was estimated that only 5 percent were genuine draft dodgers. The heavy handedness of the raids provoked public outrage and concerns about civil liberties. President Wilson was able to defuse much of the criticism when he sent John Lord O’Brian, head of the War Emergency

¹²⁶ “U.S. Agents Get 300 Men of Draft Age in Woodside Raid,” *Philadelphia Inquirer*, Aug. 3, 1918; “More Draft Raids on Pleasure Parks,” *Philadelphia Inquirer*, Aug. 4, 1918.

¹²⁷ “1200 Men Arrested in Ball Park Raid on Draft Dodgers,” *Philadelphia Inquirer*, Aug. 7, 1918.

¹²⁸ “Slackers Gathered on Seashore Piers,” *Philadelphia Inquirer*, Aug. 16, 1918; “Seize 20,000 Here in Slacker Search,” *New York Times*, Sept. 4, 1918.

Division of the Justice Department, to New York to learn whether the raids were an unconstitutional infringement on civil liberties.¹²⁹

The summer slacker raids occurred one year after federal agents raided the headquarters of the Philadelphia Socialist Party and the *Tageblatt* office. Many of the men who reported to local draft boards just a year before, and who were the targets of a Socialist Party anticonscription campaign, were now in the thick of the fighting on the western front in Europe. Almost daily, Philadelphia newspapers carried reports of local men who had been killed or wounded in the fighting. By the end of the summer, mounting casualties produced war rage and a new surge of anti-German American hysteria. The timing could not have been worse for the five *Tageblatt* defendants scheduled to go on trial in September for Espionage Act violations. *Tageblatt* editors Werner and Darkow were accused of writing and editing false or distorted articles about the war. The government also claimed that the officers of the company, Schaefer, Vogel, and Lemke, were equally culpable because they were empowered with editorial oversight responsibilities as outlined in the newspaper's governing charter.¹³⁰

In presenting its case, the government appeared to back away from earlier allegations as first reported in the press. It presented no evidence to support a German-backed censor on staff, or a previous report about German agents in Mexico funneling money to the paper, or that the paper had other nonunion sources of income. After reviewing every issue of the paper from April to September 1917, the government offered as evidence fifteen articles and editorials that it alleged contained pro-German content, as well as newspaper clippings attached to brown sheets of paper. The government charged that Werner and Darkow cut these clippings from English- and German-language papers and translated the English articles and re-edited the German articles in a way to create false reports.¹³¹

So was the *Tageblatt* a pro-German organ? During cross-examination, Darkow admitted to government prosecutor Owen Roberts that the paper was pro-German *before* America entered the war. "Yes, from the beginning of the war the paper was anti-Kaiser and pro-German," Darkow told Roberts. "It was a pro-German paper." When asked if the

¹²⁹ Murphy, *World War I and the Origin of Civil Liberties*, 126, 127.

¹³⁰ Transcript, *United States v. Schaefer et al.*

¹³¹ *Ibid.*

policy changed immediately after the United States entered the war to oppose Germany, Darkow replied, "not immediately." "But," he continued, "you could not continue [to be] pro-German with the United States in the war." The paper had to change its position, but the change "could not be made from one day to the other" without losing many subscribers. When Roberts responded by asking Darkow if he believed the *Tageblatt's* subscribers "were people whose sympathies were with the Germans," Darkow responded, yes, "we felt we had the right . . . before we entered the war to sympathize with Germany."¹³²

Compared with Darkow's testimony, Werner's statements under cross-examination were evasive and laconic. Werner conceded that he was responsible for the editorial policy of the paper. Yes, the character of the paper did change when the war started in Europe in 1914. *Tageblatt* readers, who could only read German, wanted war news, he said. During a lengthy cross-examination, prosecutor Roberts read into the record several editorials verbatim, which Werner conceded authoring. After several tense exchanges with Roberts, Werner admitted only that he opposed the entry of the United States into the war, but he denied ever publishing any editorial opinion with the intent to interfere with America's participation in the conflict. If he had objections, he kept them to himself.¹³³

After the testimony of Werner and Darkow, the jury heard from *Tageblatt* officers Schaefer, Vogel, and Lemke. As part of his defense strategy, attorney William A. Gray tried to distance the three from the editorial function of the paper. Schaefer testified, for instance, that as president, he presided over board of directors meetings once a month, and because union business took him out of town, he may have been present for five or six meetings in the last two years. Schaefer testified further that he had nothing to do with the editorial operation of the paper.¹³⁴

To undo some of the damage inflicted by the prosecution, the defense offered exhibits of articles that proved the paper supported the American cause. Gray read into evidence headlines like "We Must Help," "The victory of the allies cannot be obtained without the strong support of Uncle Sam," "Berlin Admits a Retreat in Flanders" (June 9); "Russian Success" (July 15); "Berlin admits enemy successes at Lens and before Verdun" (August 23); and so on.¹³⁵

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

The five defendants were charged under the Espionage Act with making false reports (count one and counts five through eight), obstructing enlistments (counts two through four), and conspiracy (count nine). The jury found officers Schaefer, Vogel, and Lemke guilty of conspiracy only. It found Werner guilty of making false reports, obstructing enlistments, and conspiracy, and Darkow of making false reports and conspiracy. Both Werner and Darkow were sentenced to five-year prison terms. Lemke received a two-year sentence. Both Schaefer and Vogel were given one-year prison sentences.¹³⁶

* * *

The first espionage cases reached the Supreme Court after the war had officially ended with the armistice of November 11, 1918, during the nation's first red scare. Three of these cases arose from the repression of Philadelphia socialism during the war years: *Schenck v. United States*, *Schaefer v. United States*, and *Stilson v. United States*. *Schenck*, the first such case to come before the court in early 1919, presented the panel with a basic question: could the government place restrictions on political dissent during wartime? Surprisingly, the Supreme Court up to this point had not offered much guidance in the area of civil liberties since so few cases of this kind had come before the panel. With little direction from the high court, lower courts and legislatures had been free to interpret the First Amendment rather narrowly and impose measures to repress speech. Federal and state authorities routinely trampled on the rights of citizens to speak and publish unpopular opinions, going back to the much hated Alien and Sedition Acts of 1798, which the first Adams administration used to suppress the criticism by its political opponents.¹³⁷

Interpretation of the First Amendment from the early republic through the early twentieth century was deeply rooted in English common law. In respect to freedom of expression, the First Amendment states that "Congress shall make no law . . . abridging the freedom of speech or of the press or the right of the people peacefully to assemble, and to petition the government for a redress of grievances." To many legal scholars, this simply meant an absence of prior restraint as defined by eighteenth-century legal commentator Sir William Blackstone. Government could

¹³⁶ Ibid.

¹³⁷ O'Brien, *Civil Rights and Civil Liberties*, 344; Murphy, *World War I and the Origin of Civil Liberties*, 39–44.

not impose prior restrictions on the press, impose prior censorship, or otherwise prevent publication. This did not mean that speakers or writers could not be censored or punished after speech or publication.¹³⁸

With the burgeoning number of cases involving speech and political dissent during World War I, the Supreme Court had come to a critical crossroads. Up to this point the Blackstone common law definition of speech remained the guiding principle in First Amendment cases, especially among conservatives. Legislatures could pass statutes to curb speech that had a “bad tendency” to create a harmful result. However, the legislation adopted by federal and state governments in the years leading up to World War I resulted in the arrests of an unprecedented number of individuals, raising concerns about civil liberties and making it imperative for the high court to reevaluate common law definitions of speech and define what appropriate limits could be placed on speech during wartime.¹³⁹

In 1919, attorneys Nelson and Gibbons, representing the defendants in *Schenck*, argued in their Supreme Court brief that the circular that members of the Philadelphia Socialist Party distributed to soldiers simply raised the issue of the constitutionality of the Selective Draft Act and urged citizens to come to the Socialist Party headquarters to sign a petition to repeal the act. It did not urge readers to do anything illegal. Both sides of the circular, in fact, quoted or referenced the U.S. Constitution. According to the brief, “the worst that could be charged against the circular was that it said ‘a conscript is little better than a convict,’ and these, according to the Congressional Record, were the exact words used by [House Speaker] Mr. Champ Clark in a speech in Congress.”¹⁴⁰

The defense further argued that the Espionage Act had the effect of chilling all political speech. Citing the Blackstone definition of free speech, the attorneys acknowledged that the government was restrained from censoring speech prior to publication but could by legislation punish the speaker or writer after publication. The new wartime restrictions on speech, however, were so draconian and inflicted such severe punishment that they had the effect of prior restraint. A speaker or writer convicted under the Espionage Act could face up to twenty years imprisonment. “How can a speaker or writer be said to be free to discuss the actions of the government,” they argued, “if twenty years in prison stares

¹³⁸ O'Brien, *Civil Rights and Civil Liberties*, 338–44.

¹³⁹ Ibid., 348; Murphy, *World War I and the Origin of Civil Liberties*, 36.

¹⁴⁰ Writ of Error Brief, *United States v. Schenck et al*, at <http://www.firstamendmentcenter.org>.

him in the face if he makes a mistake and says too much; severe punishment for sedition will stop political discussion as effectively as censorship.”¹⁴¹

In a unanimous decision handed down on March 3, 1919, the court ruled against Schenck and Baer and upheld the constitutionality of the Espionage Act. Writing the opinion for the Court, Justice Holmes offered a new test for redefining the limits of protected speech, the “clear and present danger” standard. The famous Holmes opinion, however, seemed nothing more than an eloquent restatement of the old “bad tendency” test.¹⁴² In the first part of the opinion, Holmes reviewed the contents of both sides of the leaflet, which urged readers to oppose the conscription law. The message left little doubt, wrote Holmes, that the Socialist Party wanted persons in the military to oppose the draft. “Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out,” Holmes wrote. If the “tendency” of the circular was to encourage persons to commit an illegal act, was the speech protected by the First Amendment? Clearly not, thought Holmes. He explained why this could not be protected speech in the famous final passages of the opinion:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced.¹⁴³

¹⁴¹ Ibid.

¹⁴² Stone, *Perilous Times*, 195.

¹⁴³ *Schenck v. United States*.

On March 10, 1919, just a week after the *Schenck* decision, the Court upheld convictions in two other espionage cases, *Frohwerk v. United States* and *Debs v. United States*. In both cases, Holmes wrote the opinions for the Court. In the *Debs* case, the Court upheld the conviction of the Socialist Party leader, who had been charged under the Sedition Act with attempting to obstruct military recruitment and causing insubordination in the armed forces. He was sentenced to ten years in prison.¹⁴⁴

For civil libertarians, the new standard was a disappointing setback. Holmes's "clear and present danger" formulation as applied in these early cases, according to historian Fred D. Ragan, was clearly intended to act "as a negative or restraining device rather than as a positive, libertarian or permissive rule."¹⁴⁵ The summer Supreme Court recess, however, afforded Holmes time to reflect on the scholarly criticism of his opinions in the recent civil liberties cases. By the time the Court reconvened in the fall, Holmes had come to a new philosophical position on First Amendment cases, just as the Court was about to consider three new espionage cases.¹⁴⁶ In October, the Court heard arguments for *Stilson v. United States*, involving members of the Lithuanian Socialist Federation in Philadelphia who had distributed an antiwar paper and circulars; *Schaefer v. United States*, involving the Philadelphia *Tageblatt* defendants; and *Abrams v. United States*. In all three cases, Holmes, joined by Justice Louis D. Brandeis, wrote dissenting opinions, breaking with the Court's majority. The *Abrams* case involved four Russian immigrants convicted under the Sedition Act for distributing circulars that the government argued attempted to interfere with war production. In a majority opinion handed down in November, the Court upheld the convictions using Holmes's "clear and present danger" standard.

In a reformulation of his own standard, however, Holmes argued that such speech should be permitted unless "an immediate check is required to save the country." In one of the more famous passages from the opinion, Holmes wrote:

¹⁴⁴ *Debs v. United States*, 249 U.S. 211 (1919).

¹⁴⁵ Fred D. Ragan, "Justice Oliver Wendell Holmes, Jr., Zechariah Chafee, Jr., and the Clear and Present Danger Test for Free Speech: The First Year, 1919," *Journal of American History* 58 (1971): 36.

¹⁴⁶ Polenberg, *Fighting Faiths*, 217–28.

... when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.¹⁴⁷

In November, the court majority upheld convictions in the *Stilson* case, which largely involved procedural questions. The Court did not hand down a decision in the *Tageblatt* case (*Schaefer v. United States*) until March 1920. Attorneys for the defendants had appealed their convictions contending that the government failed to prove that they made false statements and that the trial judge made technical mistakes while delivering his instructions to the jury. In a six-to-three ruling, the Court upheld the convictions of Werner, Darkow, and Lemke but reversed the convictions of Schaefer and Vogel, the paper's president and treasurer, respectively, for lack of evidence. The Court's majority ruled that the jury rightly convicted Werner and Darkow for publishing false reports to obstruct military recruiting, among other counts. In upholding the convictions, Justice Joseph McKenna, writing for the majority, rejected all defense objections.¹⁴⁸

Justice Brandeis and Justice John H. Clarke wrote separate dissenting opinions. Holmes joined the Brandeis dissent. In analyzing the case against Werner and Darkow, Clarke concluded that the *Tageblatt* editors had not created false reports in editing and reprinting articles from other papers, but rather, in most instances, merely omitted text that was unfavorable to Germany. The reprinted articles did not interfere with U.S. military operations or discourage recruiting and so could not have violated the Espionage Act "merely because they had been published in a different form in another paper."¹⁴⁹ Brandeis argued that convictions for all five defendants should have been reversed simply because the government failed to show that the *Tageblatt* articles in question would have obstructed recruiting, promoted the success of the enemies of the United States,

¹⁴⁷ *Abrams v. United States*, 250 U.S. 616 (1919).

¹⁴⁸ *Schaefer v. United States*.

¹⁴⁹ *Ibid.*

or could have interfered with the military, causing insubordination or disloyalty and thereby creating a "clear and present danger."

* * *

While throughout American history civil liberties have been repressed during wartime emergencies, the excesses of World War I may make it the most repressive period in the nation's history. What happened in Philadelphia and the nation at large raised a number of legal questions for civil libertarians during the war years. What rights do citizens have to criticize the war and public officials? Does the Constitution permit citizens to express sympathy for the enemy? Do police have the right to enter or break up private meetings held on private property? Do police have the right to stop distribution of literature in public places?¹⁵⁰ The prevailing national view at the time was that the First Amendment rights Americans enjoy during ordinary times could be limited for the sake of the common good when the nation was under threat. Many believed that civil liberties at home could be sacrificed for the duration of the war to achieve a greater good. By pursuing a world war to wipe out autocratic regimes and spread democracy through the world, democratic values would be strengthened at home and abroad.¹⁵¹ Americans accepted and believed an unfortunate paradox: to defend liberty abroad, it was necessary to suppress it at home. Prior to World War I, states and local municipalities like Philadelphia had been free to enforce state statutes restricting what citizens could say and print. As a practical matter, the Bill of Rights only restricted the federal government from abridging speech. During the first several months of 1917, Philadelphia Socialists appeared to face more harassment from local police and state courts than from the federal government. To control radicals who were U.S. citizens, New York, New Jersey, and Wisconsin enacted criminal anarchy laws that made it a crime to advocate the forcible overthrow of the government. Twenty-three states enacted criminal syndicalism laws. Such laws made it a crime to advocate unlawful acts to achieve political change.¹⁵² It was only after America entered World War I that the federal government used new legislation to abridge civil liberties

¹⁵⁰ National Civil Liberties Bureau, *Constitutional Rights in Wartime* (New York, 1917), 1–2, quoted in Murphy, *World War I and the Origin of Civil Liberties*, 262.

¹⁵¹ Murphy, *World War I and the Origin of Civil Liberties*, 65.

¹⁵² Heale, *American Anticommunism*, 45, 63; Eric Foner, *The Story of American Freedom* (New York, 1998), 178.

on a national scale, using federal agencies such as the Justice Department and the Postal Service to enforce the new statutes.

The Progressive Era rationale for repressing civil liberties was formulated at a time when such liberties simply did not extend to women, African Americans, Native Americans, recent immigrants (particularly aliens from eastern Europe), and American citizens tainted by radical economic and political ideologies. Civil liberties were extended to responsible property-owning individuals, committed to traditional American values, who did not pose a threat to society.¹⁵³ During the war years and beyond, forces of reaction at state and federal levels decided that ideas that seemed foreign in origin and therefore un-American were not protected under the First Amendment. To minimize the perceived threat, the federal government used the Immigration Act of October 1918 to stop anarchists who advocated the violent overthrow of the government from entering the country and to deport anarchists already in the country found to have this view.¹⁵⁴ Finally, to eliminate the threat of subversion from abroad, Congress enacted the Immigration Acts of 1921 and 1924, effectively closing the door to many immigrants, most especially Russians and Italians wanting to emigrate from eastern and southern Europe.¹⁵⁵ A resurgence of American nationalism and a continued distrust of ethnic Americans fueled demands among conservative groups, such as the new American Legion, for 100 percent Americanism.¹⁵⁶ German Americans especially, who were subjected to an anti-German backlash, were forced to submerge their ethnic identity during the war years and the decades beyond.¹⁵⁷

When the post-World War I red scare hysteria receded, it seemed the threats to the country from the radical left were, in fact, highly exaggerated. Wartime suppression of civil liberties and the cases which followed, beginning with *Schenck*, brought the issue of free speech into the public consciousness. As the meaning of the First Amendment was debated in the press and in the academic world, more Americans would come to believe that freedom of speech and press were part of the nation's core values and needed to be vigorously defended. An early defender of such

¹⁵³ Murphy, *World War I and the Origin of Civil Liberties*, 40–45.

¹⁵⁴ Heale, *American Anticommunism*, 58.

¹⁵⁵ *Ibid.*, 88.

¹⁵⁶ *Ibid.*, 66.

¹⁵⁷ Kazal, *Becoming Old Stock*, 273.

rights, the Civil Liberties Bureau, founded in 1917 to defend pacifists, in 1920 became the American Civil Liberties Union, a coalition of pacifists, Progressives, and lawyers outraged by wartime repression that would defend clients in numerous landmark civil liberties cases throughout the rest of the century.¹⁵⁸

The adoption of a more expansive view of the First Amendment began to take hold during the years between the two world wars. Between 1919 and 1927, beginning with *Schenck* and ending with *Whitney v. United States*, the Supreme Court upheld convictions in nine speech cases and rejected constitutional arguments. Between 1927 and the eve of World War II, however, the Court sustained First Amendment claims. In many of these cases, the Court adopted the more expansive Holmes/Brandeis “clear and present danger” standard.¹⁵⁹ In the 1925 *Gitlow v. New York* case, the Supreme Court decreed that freedom of speech and press were fundamental personal rights that could not be abridged by the states, bringing states and local authorities under the same First Amendment restrictions as the federal government.¹⁶⁰

During the waning days of the Wilson administration, more than ten thousand people signed a petition asking the president to pardon convicted *Tageblatt* defendants Werner, Darkow, and Lemke. Two years after the war, these three old men hardly seemed a threat to national security. Werner and Darkow in particular were in failing health. Among those recommending clemency was Francis Fisher Kane, the former U.S. attorney now working in private practice. In a letter to his successor, Kane wrote “that we are now. . . at peace with Germany. . . all that justice required has been already secured and it would serve no good purpose now to send any one of the three defendants to jail.” In June 1920, President Wilson pardoned the three.¹⁶¹ Before leaving office, he would release or reduce the sentences of two hundred other prisoners serving time for Espionage or Sedition Act convictions. In 1921, President Harding pardoned Eugene Debs, and President Coolidge released all

¹⁵⁸ Foner, *Story of American Freedom*, 183.

¹⁵⁹ Stone, *Perilous Times*, 238.

¹⁶⁰ *Gitlow v. New York*, 268 U.S. 652 (1925).

¹⁶¹ William A. Gray to Hon. A. Mitchell Palmer, attorney general, Apr. 7, 1920; Francis Fisher Kane to Hon. Charles D. McAvoy, U.S. attorney, Apr. 15, 1920; Hon. A. Mitchell Palmer, telegram to Hon. Charles D. McAvoy, U.S. attorney, June 11, 1920, box 7, folder 1, Precedent Case Files, 1911–1943, Records of the Office of the United States Attorney for the Eastern District of Pennsylvania, Records of U.S. Attorneys & Marshals.

remaining prisoners by December 1923. In 1920, Congress repealed the Sedition Act, despite objections from Attorney General Palmer, who believed the country needed a peacetime sedition law. The Espionage Act of 1917, however, remains in effect to this day.¹⁶²

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¹⁶² Stone, *Perilous Times*, 230, 232; Heale, *American Anticommunism*, 71.